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ADMINISTRATIVE OFFICE OF THE COURTS

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January 15, 2010

Alliance of California Judges
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Attn: Hon. Mark R. Forcum, Hon. Maryanne G. Gilliard, Hon. Daniel B. Goldstein,
Hon. Dodie A. Harman, Hon. Thomas E. Hollenhorst, Hon. Charles Horan,
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Dear Judges:

This letter responds substantively to your letter of December 7, 2009, in which you requested further information regarding (1) allocations that the Judicial Council recently made from three statewide special funds to cover the cost of technology projects and programs supporting the trial courts, and (2) planning for proposed court facilities construction projects.

1. Questions concerning allocations for statewide technology infrastructure projects

At its meeting on October 23, 2009, the Judicial Council approved allocations from three statewide special funds to cover the costs of certain technology projects and programs supporting the trial courts. The information that you request for each fund is set forth below.

a. Trial Court Trust Fund and consent

At its October meeting, the Judicial Council allocated money from the Trial Court Trust Fund (TCTF) to pay for the continued development of several statewide technology projects, their

deployment in the trial courts, and ongoing programs and services related to their maintenance and operation. You note that my report to the council recommending the allocation observed that the council had the statutory authority to approve it,¹ and you ask whether Government Code section 68085 provided the authority.

The answer is yes. “[T]o promote statewide efficiency,” Government Code section 68085 permits the Judicial Council to authorize the use of TCTF money to directly pay or reimburse any actual court operations costs, including costs related to “statewide administrative and information technology infrastructure supporting the courts.”² This means that, rather than allocating all money contained in the TCTF to the courts and having courts pay all of their operational expenses themselves, the council may authorize the use of TCTF money to directly pay or reimburse certain court operations costs, including the costs of statewide administrative and information technology projects and programs supporting the courts. The TCTF distributions to individual courts that are participating in the funded projects or programs then may be reduced in some instances to the extent that the described direct payments or reimbursements support those courts and reduce the related expenditures that they make directly.

You note that Government Code section 68085(a)(2)(A) contains a consent requirement. Specifically it enables the Judicial Council to authorize the use of TCTF money to directly pay the above-discussed court operations costs “upon the consent of the participating courts.”³ You ask whether such consent was obtained and, if so, the form in which it was given and the courts from which it was obtained. The answer is yes, consent was obtained and it came from those courts that opted to participate in the statewide technology projects and programs in question. The courts demonstrated their consent by opting to participate, i.e., to receive support services, equipment, and other property as a part of those projects and programs, after having been advised that the necessary funding would come in part from the TCTF.⁴

Courts received information that the TCTF would be one funding source for statewide technology projects and services in 2006 in the same time period that the Legislature added the “consent” language to Government Code section 68085(a)(2)(A).⁵ In this time frame, the Trial Court Budget Working Group (TCBWG) and staff of the Administrative Office of the Courts (AOC) developed and recommended the adoption of a new funding process for statewide administrative infrastructure services. Under the new process, certain expenses were to be

¹ See Judicial Council of Cal., Rep., *Allocation of Special Fund Monies for Court System Projects and Programs in Fiscal Year 2009–2010* (Oct. 20, 2009) (hereinafter *Special Funds Report*), p. 1, available on the California Courts Web site at www.courtinfo.ca.gov/jc/documents/reports/102309itemg.pdf. As you note in your letter, Ronald G. Overholt, the AOC Chief Deputy Director, co-authored the report.

² Gov. Code, § 68085(a)(2)(B).

³ *Id.*, § 68085(a)(2)(A).

⁴ For a description of the support services and equipment that will be funded by the Trial Court Trust Fund (TCTF) allocations that the Judicial Council approved at its October 23, 2009 meeting to finance statewide technology projects supporting the trial courts, please see the *Special Funds Report*, *supra* note 1, at pp. 16–30.

⁵ See Assem. Bill 1806; Stats. 2006, ch. 69, § 12 (adding that language effective July 12, 2006).

statewide expenses funded directly from the TCTF, while others were to be the responsibility of the individual courts. Courts that could not absorb all assigned costs could seek supplemental funding from the TCTF and the Trial Court Improvement Fund (TCIF). The AOC sponsored a series of regional forums to inform courts of this funding proposal in March 2006.⁶ The following month, the Judicial Council approved the funding proposal and the proposed breakdown of statewide and local expenses,⁷ and the Legislature subsequently amended section 68085. The AOC provided updates concerning both actions at a TCBWG meeting attended by court representatives⁸ and during regional office forums held for all courts in August 2006 and January 2008, respectively.⁹ No court objected to the proposed use of TCTF or TCIF moneys, and all subsequently have opted to participate in the funded projects and programs.

The “consent” language was added to Government Code section 68085 as part of a budget trailer bill, and consequently the legislative history of the amendment is exceedingly sparse. Giving the language a reasonable interpretation, however, and considering it within the context of the statutory framework as a whole, we do not think that the Legislature intended that courts provide consent more than once—for example, each time that special funds allocations are provided or each time that a court selects a new presiding judge. Section 68085, like numerous other provisions of the Government Code applicable to the judicial branch, emphasizes the need for “statewide efficiency” and is designed to foster the creation of effective statewide programs supporting the courts.¹⁰ Neither would be possible if each court were to periodically opt in to and then out of such statewide programs.

b. The TCIF and legislative recommendations

The TCIF is funded in part from money collected pursuant to Government Code section 68090.8. That code section directs that counties transmit 2 percent of “all fines, penalties, and forfeitures

⁶ See March 1, 2006 notice advising all courts that it was “critically important” that they attend the March 2006 regional forums, available on Serranus at http://serranus.courtinfo.ca.gov/programs/finance/latest_06.htm.

⁷ See Judicial Council of Cal., Rep., *Approval of Statewide Administrative Infrastructure Services Funding Process and Delegation of Authority to Allocate Funds From the Trial Court Trust Fund and the Trial Court Improvement Fund* (April 14, 2006) and Judicial Council of Cal., mins. (April 21, 2006), available on the California Courts Web site, respectively, at www.courtinfo.ca.gov/jc/documents/reports/0406ItemF-2.pdf and www.courtinfo.ca.gov/jc/documents/min0406.pdf.

⁸ The following trial courts were represented on the Trial Court Budget Working Group during this period: Alameda, Butte, Calaveras, Contra Costa, El Dorado, Fresno, Glenn, Los Angeles, Madera, Monterey, Orange, Riverside, San Bernardino, San Diego, San Joaquin, Santa Barbara, Santa Clara, Santa Cruz, Sierra, Sonoma, Tehama, Tulare, and Yuba.

⁹ See notices dated July 17, 2006, and Dec. 5, 2007, regarding those forums, available on Serranus at http://serranus.courtinfo.ca.gov/programs/finance/latest_06.htm and http://serranus.courtinfo.ca.gov/programs/finance/latest_07.htm, respectively.

¹⁰ See also Gov. Code, § 68502.5(c) (The Judicial Council retains “the ultimate responsibility” to allocate funding for the trial courts and perform other activities . . . that best . . . promote implementation of statewide policies, and promote the immediate implementation of efficiencies and cost saving measures in court operations”); *id.*, § 77202(b) (same); *id.*, § 77206(a) (The Judicial Council shall seek to ensure that “the fiscal affairs of the trial courts are managed efficiently, effectively, and responsibly”).

collected in criminal cases” to the TCIF to be used exclusively to pay for “automated administrative systems” for the trial courts.¹¹ In your letter, you state that you assume the statewide technology projects supported by the Judicial Council’s October 23, 2009 special fund allocations “are authorized in part” by section 68090.8, and you note that the section requires the Legislature to make recommendations to the council regarding “any such system” before implementation “and as an apparent condition of implementation.”¹² You ask whether the council received such recommendations, and if so, you request a copy.

Before responding directly to your question, I respectfully must disagree with you on two points regarding Government Code section 68090.8. First, the section does not require that the Legislature make recommendations about *any* (i.e., *all*) automated administrative systems that may be developed for the trial courts. Although the Legislature creates a source of funding for all such systems,¹³ the provision about legislative recommendations is included in subdivision (a)(3), which focuses exclusively on “automated *data collection*”¹⁴ systems, a subset of the larger category (automated administrative systems). Thus, the Legislature need not make recommendations concerning other automated administrative systems that may be developed for trial courts, such as “automated accounting” systems or “automated case-processing systems.”¹⁵

Additionally, however, and more importantly, Government Code section 68090.8 is not the source of the Judicial Council’s authority to allocate money for statewide technology projects. Other sections of the Government Code confirm and describe that authority.¹⁶ “The purpose” of section 68090.8, in contrast, “is to make a fund available” to pay for such projects.¹⁷ Thus, the section instructs *counties* to transmit certain moneys to the TCIF. It also directs the *Legislature* to make certain recommendations to the council. But we do not read the section as limiting the *council’s* authority to implement such statewide technology projects.

Consequently, although the answer to your question is no, we are not aware that the council has received any recommendations from the Legislature of the kind described in Government Code section 68090.8(a)(3); we also do not think that such recommendations are, as you suggest, a “condition of implementation.”¹⁸ The Legislature’s instruction to itself in that section (that it provide recommendations to the council) more reasonably is interpreted as “directory” rather than “mandatory.” It is a procedural step for the Legislature to take, but the Legislature’s failure

¹¹ Gov. Code, § 68090.8(b) and (a)(2), respectively.

¹² Your letter of Dec. 7, 2009 (hereinafter “your letter”), p. 2, par. 2.

¹³ Gov. Code, § 68090.8(b).

¹⁴ *Id.*, § 68090.8(a)(3), italics added.

¹⁵ See *ibid.* (“[T]he Legislature shall make recommendations to the Judicial Council as to the breadth and level of detail of the data to be collected”), italics added.

¹⁶ *Id.*, §§ 68085(a)(2)(A), 68502.5(a) & (c), 77207.5, 77209, 77213.

¹⁷ *Id.*, § 68090.8(a)(2) (“The purpose of this section is to make a fund available for the development of automated administrative systems . . . for the trial courts, together with funds to train operating personnel, and for the maintenance and enhancement of the systems”).

¹⁸ Your letter, p. 2, par. 2.

to take that step does not invalidate any subsequent action by the Judicial Council to implement the described automation systems.

That the Legislature did not intend such an effect is evident from the provision's lack of specified consequence for noncompliance. Moreover, such a result would be inconsistent with the purpose of the statute. The Legislature cannot reasonably have intended that its own failure to make the described recommendations would prohibit the council from implementing the automated systems for trial courts that the Legislature itself envisioned as a necessity for the courts and a resource for other state actors.¹⁹ Nor can the Judicial Council be faulted for the Legislature's omission, as its staff has provided the Legislature with numerous updates concerning the status of work on key trial court administrative automation projects.²⁰

c. The TCIF, the Modernization Fund, and Judicial Council approval

Government Code sections 77209 and 77213 permit moneys contained in the TCIF and the Judicial Administration Efficiency and Modernization Fund (the Modernization Fund), respectively, to be spent to implement projects approved by the Judicial Council.²¹ You ask whether the council approved the projects and programs to which it allocated TCIF and Modernization Fund money during its October 23, 2009 meeting, particularly the California Court Case Management System (CCMS). If the answer is yes, you request a copy of the minutes of the meeting in which the council formally voted to approve CCMS.²²

The answer is yes, the Judicial Council formally voted to approve the development and implementation of a state case management system, now known as CCMS. Below we list meetings during which the council approved action related to this ultimate goal, along with links to the minutes reflecting such approvals. You may also wish to review the agendas, minutes, and materials for other Judicial Council meetings—all publicly available on the California Courts Web site at www.courtinfo.ca.gov/jc/meetings.htm—as many reflect status updates and other information that the Judicial Council received regarding CCMS and similar statewide technology projects.²³

¹⁹ See Gov. Code, § 68090.8(a)(1) (recognizing the need “to implement appropriate levels of administrative automation” for trial courts); *id.*, § 68090.8(a)(3) (expressing the expectation that automated data collection systems for trial courts will be a resource for judicial branch and nonjudicial branch entities alike).

²⁰ See reports to the Legislature (1) advising concerning the status of the California Court Case Management System (CCMS) and the Phoenix Program dated Dec. 2005, Dec. 2006, Apr. 2008, and Dec. 2008, respectively, and (2) detailing the use of special funds money for statewide technology projects dated Jan. 2008, Dec. 2008, and Dec. 2009. These reports are available on the California Courts Web site at www.courtinfo.ca.gov/reference/legislaturereports.htm.

²¹ Gov. Code, §§ 77209(g), 77213(b).

²² Your letter, p. 2, pars. 3–4.

²³ See also, e.g., on the California Courts Web site at www.courtinfo.ca.gov/reference/factsheets.htm, Admin. Off. of Cts., *Court Case Management System (CCMS)* (fact sheet, Aug. 2009); Admin. Off. of Cts., *Information Technology* (fact sheet, June 2007).

- **August 14, 1998, Judicial Council minutes, item 3**²⁴
At this meeting, the Judicial Council adopted the *Strategic Plan for Court Technology*.²⁵ Among other things, the plan approved the goals of seeking assistance to obtain funding for information technology projects (*id.*, at p. 3), supporting funding of case management systems that met council standards (*id.* at p. 5), and developing model case management systems that met branch requirements (*ibid.*).
- **January 26, 2000, Judicial Council minutes, item 3**²⁶
At this meeting, the Judicial Council adopted the *Tactical Plan for Court Technology*.²⁷ Noting that the executive and legislative branches were unwilling to provide technology funding for the judicial branch that perpetuated 58 different approaches to the same problem, and that those other two branches expected the judicial branch to propose a comprehensive approach that met its business objectives in a coordinated and cost-effective manner, the plan announced the objective of funding technology from a statewide, rather than a local, perspective and of providing the foundation for a multiyear implementation plan. (*Id.* at pp. 2, 4.)
- **February 28, 2003, Judicial Council minutes, item 6**²⁸
At this meeting, the Judicial Council reaffirmed its policy of developing and implementing statewide administrative infrastructure initiatives. Among other things, this included specific *direction to continue developing and implementing “the California case management system as quickly as possible as the statewide case management system intended for use by all courts.”* (*Id.* at pp. 19–20, italics added.)
- **December 5, 2003, Judicial Council minutes, item 16**²⁹
At this meeting the Judicial Council adopted the *2003-2006 Judicial Branch Operational Plan*,³⁰ one proposed objective of which was the creation of a statewide infrastructure for technology that provided “more consistent, uniform, and cost-effective administrative services and programs to support daily court operations.” (*Id.* at p. 8.) One desired technology outcome of the plan was to “[s]upport the continued implementation of the California

²⁴ www.courtinfo.ca.gov/jc/documents/min8_14.pdf at pp. 4–5.

²⁵ www.courtinfo.ca.gov/reference/documents/splanrev.pdf.

²⁶ www.courtinfo.ca.gov/jc/documents/min0100.pdf at pp. 6–8.

²⁷ www.courtinfo.ca.gov/reference/documents/tactical.pdf

²⁸ www.courtinfo.ca.gov/jc/documents/min0203.pdf at pp. 19–21.

²⁹ www.courtinfo.ca.gov/jc/documents/min1203.pdf at pp. 14–15.

³⁰ www.courtinfo.ca.gov/reference/documents/opplan2003.pdf.

case management system by courts statewide.” (Ibid., italics added.)

- **August 26, 2005, Judicial Council minutes, item 6**³¹
At this meeting, the Judicial Council approved the submission of a budget change proposal to provide a level of baseline funding that would address information technology needs in the court, including funding to develop and implement CCMS. (See Report to the Judicial Council dated August 16, 2005,³² providing additional detail regarding this item at pp. 2, 14–17.)
- **April 21, 2006, Judicial Council minutes, item F**³³
At this meeting, the Judicial Council (1) approved a supplemental funding process to assist courts in meeting the costs of statewide administrative infrastructure initiatives, including CCMS, and (2) approved a proposed designation of related costs, including CCMS costs, as either statewide or court expenses. (See Report to the Judicial Council dated April 14, 2006,³⁴ pp. 2–3, 7–12.)
- **December 1, 2006, Judicial Council minutes, item 10**³⁵
At this meeting, the Judicial Council adopted its *2006-2012 Judicial Branch Strategic Plan*,³⁶ which, among other things, stated as a goal the establishment of a “branchwide technology infrastructure that provides the hardware, software, telecommunications, and technology management systems necessary to meet the case management, information-sharing financial, human resources, education, and administrative technology needs of the judicial branch and the public.” (*Id.* at p. 48.)
- **April 25, 2008, Judicial Council minutes, item 9**³⁷
At this meeting, the Judicial Council adopted the *2008–2011 Judicial Branch Operational Plan*,³⁸ one objective of which was to “[c]ontinue to develop, implement, and support the [CCMS] technology.” (*Id.* at p. 52.)

³¹ www.courtinfo.ca.gov/jc/documents/min082605.pdf at p. 6.

³² www.courtinfo.ca.gov/jc/documents/reports/0805item6.pdf.

³³ www.courtinfo.ca.gov/jc/documents/min0406.pdf at pp. 15–16.

³⁴ www.courtinfo.ca.gov/jc/documents/reports/0406ItemF-2.pdf.

³⁵ www.courtinfo.ca.gov/jc/documents/min120106.pdf at p. 14.

³⁶ www.courtinfo.ca.gov/reference/documents/strategic_plan_2006-2012-full.pdf.

³⁷ www.courtinfo.ca.gov/jc/documents/min0408.pdf at pp. 19–20.

³⁸ www.courtinfo.ca.gov/reference/documents/2008_operational_plan.pdf.

2. Questions Concerning Court Facilities Construction Costs

Your second group of questions concern planning for proposed court facilities construction projects. Specifically you ask about (1) the possibility of partnering with the private sector to finance and develop such projects, (2) projected costs, (3) internal AOC charges, (4) contract costs for the 2010–2011 fiscal year, and (5) cash flow projections. Please see the information below.

a. Partnering with the Private Sector

You question whether the AOC has fully explored the potential benefits of partnering with the private sector to finance the costs of court facilities construction projects—also referred to as “Performance-Based Infrastructure” (PBI)—and you ask whether that alternative is to be “revisited.” The answer is that we are actively pursuing this alternative now. In 2007, the Judicial Council secured legislation, Senate Bill 82, authorizing it to explore such arrangements,³⁹ and that year’s Budget Act, Senate Bill 77, directed the AOC to examine the possibility of making the new Long Beach Courthouse project the first such project of this kind in California.⁴⁰

The AOC has worked closely with the Governor’s Office, the state Department of Finance (DOF), the Joint Legislative Budget Committee (JLBC), and lawmakers concerning the new Long Beach Courthouse project. In May 2009, we issued a request for proposals and subsequently received proposals from three private consortia to design, build, finance, operate, and maintain the new courthouse. We are now in the process of reviewing and evaluating those proposals and anticipate that the selected consortium will be announced in March 2010. We expect that the results will assist us in evaluating the effectiveness of the PBI model for such projects in California.⁴¹

You also ask why the AOC recommended state funding as the financing option for court facilities construction projects “without further exploration of the actual costs” of PBI.⁴² As noted, we continue to actively explore the potential for cost savings that may result from adoption of the PBI model through the pilot project described in the last paragraph, working together with the Governor’s Office, the DOF, and the Legislature. We expect to learn a great deal from the pilot project about the potential value and benefits of pursuing that model for delivery of the new Long Beach Courthouse and future projects and we also will continue to

³⁹ Stats. 2007, ch. 176, § 60, adding Gov. Code, § 70391.5.

⁴⁰ Stats. 2007, ch. 171, § 2, item 0250-301-3037, provisions 7–8.

⁴¹ More information about the Long Beach Courthouse project and PBI projects generally can be found on the California Courts Web site at www.courtinfo.ca.gov/programs/occm/projects_lalongbeach.htm.

⁴² Your letter, p. 4, par. 4.

explore other viable economic opportunities that exist for such projects.⁴³ Traditionally, however, the state of California has relied on the issuance of bonds to finance the development and construction of state facilities and almost all other infrastructure projects.

b. Projected costs

You express concern in your letter that “the AOC has no construction experience” and you ask whether the AOC has sought preliminary cost estimates from qualified contractors for proposed court facilities construction projects.⁴⁴ Regarding the first concern, please note that the AOC’s Office of Court Construction and Management (OCCM) is staffed with personnel possessing considerable experience in the facility planning, design, and construction fields. All OCCM project managers, for example, have at least 23 years of experience and more than half have 30 or more years of experience. Regarding your second concern, we have drawn upon the experience of OCCM staff to develop planning cost estimates for all proposed projects. In addition, as is customary in the field, an outside construction cost estimating firm has prepared more detailed project cost estimates. Typically, for initial budgeting purposes, construction project cost estimates are developed by a specialized firm that possesses and maintains extensive cost-estimating data bases suitable for such an endeavor.

You also ask whether the projected costs of court facilities construction projects have been reviewed or vetted by other state agencies that have construction experience, such as the Department of General Services (DGS). As a point of interest, OCCM staff currently includes a former DGS deputy director who had responsibility over that agency’s facilities program. To answer your question, however, the state DOF, the Governor’s Office, the Legislative Analyst’s Office (LAO), the Legislature, and the State Public Works Board all review the budget, scope, and schedules for court facilities construction projects and the Office of the State Architect, the Office of the State Fire Marshall, and the Corrections Standards Authority also review certain aspects of technical design.

c. Internal AOC charges

You ask whether the costs of proposed court facilities construction projects will include any “internal charges for services or administration by the AOC or its staff.”⁴⁵ The answer is no. The project costs do not include any internal charges for services or administration by the AOC or its staff. The Legislature funds related AOC staff costs separately as part of the annual state budget process through appropriations from the State Court Facilities Construction Fund.

⁴³ See, e.g., Gov. Code, § 70371.5(e)(2)(A) & (e)(4)–(5) (directing the Judicial Council to consider viable “economic opportunities” for court facilities construction projects and defining that term).

⁴⁴ Your letter, p. 4, pars. 4–5.

⁴⁵ *Id.* at p. 4, par. 6.

d. Contract Costs for the 2010–2011 Fiscal Year

You request the names of people who or entities that “are receiving funds” in the next fiscal year, 2010–2011.⁴⁶ We are unable to answer this question at present because no funds have yet been encumbered for that year. Please note, however, that we have more than 100 contracts with a range of providers (e.g., architects, engineers, real estate firms, environmental consulting firms, and construction firms) for court facilities construction projects, and the expectation is that many of those contracts will be funded for the next fiscal year.

You also ask how contractors are selected for court facilities construction projects and whether there is competitive bidding process. The answer is that contractors are selected in accordance with the Judicial Council’s *Court Facilities Contracting Policies and Procedures*, which includes a competitive bidding process.⁴⁷

e. Cash Flow Projections

Finally, you request a copy of any “detailed cash flow projection” that has been developed for “these funds and projects.”⁴⁸ We understand this request to be asking for projections related to (1) expenditures from the State Court Facilities Construction Fund and the Immediate and Critical Needs Account (both of which you referenced earlier in your letter) and (2) proposed court facilities construction projects. We can provide you with fund condition statements that offer point-in-time cash flow projections for those funds and projects. We hope to have those available shortly and will forward them to you without delay. (Note that such projections change over time—for example, as planning progresses or money saved on one project is moved to another or actual data replaces projections.)

I hope that the above information is helpful.

Sincerely,



Stephen Nash
Director, Finance Division

SN/BF/RB

cc: William C. Vickrey, Administrative Director of the Courts

⁴⁶ *Id.* at p. 4, par. 7.

⁴⁷ The Judicial Council’s *Court Facilities Contracting Policies and Procedures* is available on the California Courts Web site, attached to a report, at www.courtinfo.ca.gov/jc/documents/reports/120707item5.pdf.

⁴⁸ Your letter, p. 4, par. 8.