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To Members of the California Judicial Council

Re: May 11, 2010 Letter to Sacramento Superior Court

We are writing this letter to express, with the strongest sentiment possible, our objection to the letter of May 11, 2010 sent by the Chair of the Executive and Planning Committee to Presiding Judge Steve White of the Sacramento Superior Court. That letter asserts that the Executive and Planning Committee is acting on behalf of the Judicial Council pursuant to California Rules of Court, Rule 10.11(a). That letter improperly asserts an unconstitutional authority by an arm of the Judicial Council over an independent and autonomous constitutional California trial court to the extent it purports to direct the Sacramento Superior Court regarding its data management.

We are also especially concerned because it appears from the typed initials on the document that it was at least co-authored by general counsel to the AOC.

The Judicial Council does not govern the trial courts. The Judicial Council's grant of constitutional authority is limited. Article VI, Section 6(d) provides only as follows: "To improve the administration of justice the council shall survey judicial business and make recommendations to the courts (emphasis added), make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute."

Article VI, section 4 of the Constitution establishes the superior courts of the state. Government Code section 77001 mandates that local trial courts have the exclusive authority to manage their day-to-day operations. Trial courts have constitutional and statutory autonomy. The Lockyer-Isenberg Trial Court Funding Act of 1997 also provides that trial courts must have flexibility in the management of their affairs. The May 11 letter's citation to article VI, section 6(f), and Government Code section 68505 are not authority for any different proposition.

The statutory and constitutional scheme for the Judiciary provide for a system of divided sovereignty, cooperation, and mutual assent between the Judicial Council and the trial courts.

We ask that the Judicial Council rescind the May 11, 2010 letter as a directive.

This May 11 letter once again exposes a serious problem with respect to the governance of the judiciary which our Alliance has repeatedly pointed out. In the findings and declarations by the Legislature in adopting the Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233), the Legislature stated in Sec. 3 (l) that the Judicial Council was to adopt a Trial Courts Bill of Financial Management Rights, to be approved no later than January 1, 1998. As you are aware, the Judicial Council has ignored this directive and never carried it out. The time is long overdue for this Council to prepare and circulate a proposed Trial Court Bill of Rights.

Turning to CCMS itself, the reference in the May 11 letter to the OCIO's report is a selective and misleading reading. Although the OCIO report recognized the overall benefit of standardization, the report also appropriately recognized that "[t]he governance plan for CCMS should be augmented to ensure the commitment of the county superior courts to adopt and use the system." This latter point raises a concern that we have previously addressed to the AOC in correspondence with Mr. Stephen Nash.

In the recent April 2010 Status Report to the Legislature on CCMS and the Phoenix Project, the Administrative Office of the Court reported a combined actual and estimated expenditure through the end of fiscal 2010 for CCMS in the amount of approximately \$477 million. Of that amount, \$133 million was to have been expended from the Trial Court Trust Fund. The amount of \$72.4 million was estimated for CCMS from the Modernization Fund, and the amount of \$202 million is estimated from the Trial Court Improvement Fund.

We have had a course of correspondence with Stephen Nash, AOC Finance Director, beginning with our correspondence of October 21, 2009, to which he replied on November 23, 2009. In a December 7, 2009 letter to back to him, we asked some questions about statutory funding authority. Mr. Nash replied on January 15, 2010. Copies of all of this correspondence are enclosed. We presume that the Judicial Council members have all been previously apprised of this course of correspondence.

We questioned and still question whether these expenditures meet the requirements of statutory authorization and whether CCMS expenditures have exceeded statutory funding authorization. It appears to us that neither the Judicial Council nor the Legislature was ever presented with any clear proposal that outlined the exact scope and projected cost of CCMS.

The Trial Court Trust Fund is established pursuant to Government Code section 68085. That section requires the apportionment of its proceeds for the purposes stated in that section, including apportionment to the trial courts only to fund "trial court operations" as defined by section 77003, which does not include technology expenditures.

Section 68085 (in subsections (a)(2)(A) and (B)) further provides for direct payment or reimbursement to the Administrative Office of the Courts to fund the costs of operating one or more trial courts (including "any expenses related to the operation of the court or performance of its functions, including, but not limited to, statewide administrative and information technology infrastructure supporting the courts"). Under these subsections, disbursement from the TCTF is

not limited to the purposes set forth in section 77003. However, payments and reimbursements from the TCTF not limited to “court operations” under section 77003 may only be made “upon the consent of the participating courts.” (See § 68085(a)(2)(A).)

We do not believe that the express consent of the trial courts has been obtained to authorize expenditures from the Trial Court Trust Fund for CCMS. Mr. Nash, on behalf of the AOC, agrees that consent of the trial courts is required, but he asserts that it has been obtained because no court objected. We doubt that trial courts would agree that they have expressly consented, merely because they did not expressly object, or because they had judges or staff attending forums or participating in appointed committees.

As to the funds allocated from the Trial Court Improvement Fund, that fund is established pursuant to Government Code section 77209. That section requires that the 2% “automation fund” revenues under section 68090.8 paid into the TCIF be devoted to statewide initiatives for the development of automated administrative systems. We assume that CCMS is authorized in part by section 68090.8. That section requires that during the development phase of any such system, prior to implementation, and as an apparent condition of implementation, that the Legislature shall make recommendations to the Judicial Council as to the breadth and level of detail of the data to be collected.

Mr. Nash disagrees that section 68090.8 is the statutory authorization for the project, but only provides for a funding source. He states that it is a failure of the Legislature to provide its recommendations, and that failure does not limit proceeding with the project. He states that this report was in any case limited to data collection. We are not sure that the Legislature would agree with Mr. Nash on these points.

Further, as to the TCIF, the 2% automation fund must be allocated to the section 68090.8 program. However, it would appear that revenues from the 2% automation fund have been far less than the money that has been allocated for CCMS. It appears that the Judicial Council is not limited to the 2% automation fund under section 77209, and may apply additional funds for CCMS, if it is a project “approved by the Judicial Council.” We question whether the scope and cost of the CCMS project has ever been approved by the Judicial Council. Mr. Nash points to a number of minutes of meetings where he contends that approval was obtained, but it does not appear that the full scope of the project and its entire budget was ever presented and approved.

The same issue arises as to allocations from the Administration Efficiency and Modernization Fund. This fund is established by Government Code section 77213. This section provides broad authority to the Judicial Council to allocate from the fund for projects “approved by the Judicial Council.”

We have a concern as constitutional judicial officers for the issue of lawful appropriation that is implicit in the question of lack of consent by the trial courts, and apparent failure of express approval by the Judicial Council of a specific budgeted project. We presume that each member of the Judicial Council has previously been fully advised by counsel of the premises underlying

appropriations for CCMS.

We urge the following:

1. That the Judicial Council explicitly rescind the May 11, 2010 letter as a directive to the Sacramento Superior Court.
2. That the Judicial Council suspend all further payments and funding of CCMS, including rescinding existing but unencumbered allocations, until the following is accomplished:
  - A. That the pending audit of the project by the State Auditor be completed.
  - B. That a specific funding source be identified.
  - C. That the AOC present a detailed further plan and actual budget for the deployment of CCMS taking into account the recommendations of the OCIO and findings of the State Auditor, and submit it to each trial court for each court to be surveyed and, to the extent that the TCTF is proposed as a source of funding, to register its express consent as a participating court pursuant section 68085 to further future appropriation of its share of the TCTF for CCMS development, or to decline.
  - D. That the AOC thereafter present a detailed revised plan and actual budget for the deployment of CCMS, taking account the consent or lack of consent of the trial courts determined after survey, for express vote of the Judicial Council as an approved project.
  - E. That the AOC present a plan for reimbursement of operational funds to courts who have never expressly consented to the appropriation of their share of TCTF money for CCMS deployment for their pro rata share of TCTF funds already expended.
  - F. That as to non-consenting courts, the AOC provide for rules and recommendations to ensure that if any non-participating court revises or changes its information technology systems in the future, that such changes are compatible with a statewide system so that, on a long-term basis, the ultimate goal of CCMS for compatible statewide data exchange may be accomplished.

Sincerely,

Directors of the Alliance of California Judges