

Restoring Balance



RESCUING THE CALIFORNIA TRIAL COURTS

A Report of the Alliance of California Judges

November 18, 2011

Introduction

Restoring Balance

The trial courts of our state are in crisis.

The problem is not simply lack of money. The problem is that a bureaucracy, not the courts, has failed to deliver needed funds and failed to make the trial courts its first priority. The Legislature enacts the annual budget for trial court operations but *current law does not require that the Judicial Council fully deliver all of the money which the Legislature has appropriated to the trial courts.* This imbalance frustrates the fundamental purpose of economy and efficiency in state trial court funding. Instead, it promotes many “diseconomies.” The current structure has led to waste and mismanagement by the Administrative Office of the Courts (AOC), the administrative arm of the California Judicial Council.

The statutes need to be reformed so that the money the Legislature allocates for operation of the trial courts is actually delivered for its intended purpose.

Assembly Bill 1208, authored by **Majority Leader Charles Calderon**, has passed committee and is pending on the floor of the Assembly. This legislation provides an essential “first step” in building a solution to the trial court funding crisis. The immediate passage of AB 1208 is imperative.

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Courts are in Crisis

Presiding Judge Katherine Feinstein of the San Francisco Superior Court has stated “the civil justice system in San Francisco is collapsing.” As reported in the New York Times, uncontested divorces could take 18 months to complete and child custody battles could take more than six months. In 2010, the Los Angeles Superior Court system terminated more than 300 employees and closed 17 courtrooms. The problem is felt by all local courts. It will get worse.

Overall, with adjustments, the courts have absorbed a \$605 million loss of funding since 2008. Courts are expected to absorb an average 20% permanent loss of funding by next fiscal year.

The state is now facing even a further drop in expected revenues. The Legislature will likely be considering further budget reductions as early as January. Because a restoration of funding is unlikely, the Legislature must act to ensure that the trial courts receive the maximum funds available within the existing Judiciary budget.

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The Problem: Existing Law Does Not Require Full Funding of the Trial Courts

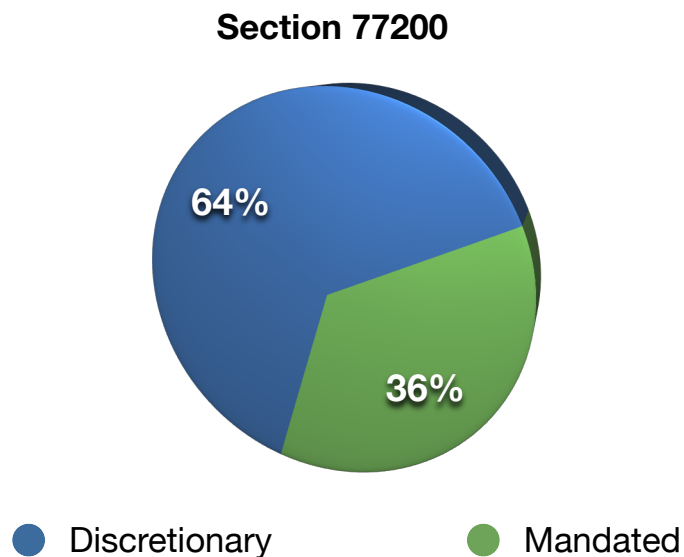
The current structure of trial court funding was created by the Legislature in 1997 under the **Lockyer-Isenberg Trial Court Funding Act**. After unification of the municipal and superior courts, the essential feature of the Act was to move trial court funding from the counties to the state.

The basic plan of the law was to “cap” the obligation of the counties for trial court funding, with the balance of needed money coming from the state. The continued county contribution and certain fees, fines and assessments were to be placed in the Trial Court Trust Fund. The Legislature declared that state funding would increase efficiency and economy, but that the trial courts be locally controlled in a decentralized system of management.

Unfortunately, the law was put into place without clarifying the respective roles of the Judicial Council on the one hand, and the trial courts on the other. All funds, including trial court appropriations, were put into the hands of the Judicial Council, which was never designed to be a governing body.

The essential problem is embodied in Government Code section 77200, which currently states that the Judicial Council shall “allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council, but in no case shall the amount allocated to the trial court in a county be less than the amount remitted to the state by the county in which that court is located....” This provision, along with other sections, provides the Judicial Council with discretion to withhold money that the Legislature appropriates annually for local trial court operations. The Judicial Council is only obligated to provide the courts with the amount of the county maintenance of effort funding.

The following chart illustrates the problem. For this fiscal year, the county maintenance of effort obligation was \$658 million. The total allocation to the trial courts (Budget Account No. 250.45.10) was slightly over \$1.8 billion. This means that the Judicial Council has discretion over nearly 2/3’s of the money the Legislature has set aside for the trial courts.



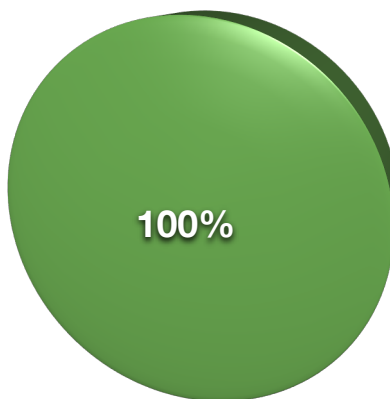
The First Step to a Solution: AB 1208

This imbalance creates a number of problems within the funding model for the trial courts. First, this unregulated discretion has made the AOC a bloated, unresponsive and wasteful bureaucracy. It has led to a situation where the constitutionally independent trial courts feel forced into subservience or obligation to a central administration instead of being perceived as partners in the administration of justice.

The AOC has diverted millions of dollars away from the trial courts, primarily to spend it on an ill-conceived and poorly executed statewide computer project. **The Legislature is now divorced from its constitutional role to determine where public dollars should be spent.** This existing law has created serious diseconomies that need to be corrected.

The first step in strengthening the funding model for the courts is to provide for a full funding from available resources—**AB 1208**. **AB 1208** changes section 77200 so that the Judicial Council shall “allocate funds to the individual trial courts pursuant to an allocation schedule ~~adopted by the Judicial Council as set forth in Section 77202~~, but in no case shall the amount allocated to the trial court in a county be less than the amount remitted to the state by the county in which that court is located” **AB 1208** then amends section 77202 to provide that *the Judicial Council or its designee shall allocate 100 percent of the funds appropriated for trial court operations according to each court’s share of statewide operational funding.* The bill further provides that commencing with the 2011–12 fiscal year, the amount allocated to each trial court from the amount appropriated for trial court operations *shall be equal to the pro rata share of the adjusted base budget of the prior fiscal year*, with appropriate annual adjustments that currently take place. Of course, these changes will now change the mandated payments to the trial courts to 100%.

Amended 77200



● Mandated

It is **imperative** that this first step occur immediately. Once corrected, funding solutions may then be directly applied to the courts at the community level, rather than risking the continued mismanagement of resources by a central bureaucracy.

State Funding of the Trial Courts

The Lockyer-Isenberg Act

The Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233) was enacted to provide state responsibility for funding of trial court operations commencing in the 1997–98 fiscal year.

The Act was intended to provide that county contributions to trial court operations be permanently capped at the same dollar amount as that county provided to court operations in the 1994–95 fiscal year and to provide that the State of California assume full responsibility for any growth in costs of trial court operations thereafter.

The Legislature deemed that such funding was necessary to provide uniform standards and procedures, economies of scale, and structural efficiency and simplification.

The Legislature also acknowledged the need for strong and *independent* local court financial management.

Article VI, section 4 of the Constitution establishes the superior courts of the state. Government Code section 77001 (per Lockyer-Isenberg) 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.

One problem with the new state funding model is that it gave substantial discretion over funding to the Judicial Council, which is poorly equipped for the task. The Judicial Council is not a governing body, and any authority it has is purely a creation of statute. The Judicial Council does not govern the trial courts. The Judicial Council’s grant of authority under the Constitution 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, 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.*”

The Legislature also acknowledged the need for strong and *independent* local court financial management.

“Diseconomies” of Scale

The experience of the last 14 years has demonstrated that the fundamental purpose of the Lockyer-Isenberg Act has been frustrated by a lack of balance between local management and central oversight. From 1997 to date, the LAO has consistently expressed concerns over the lack of justification in judicial budgeting and the failure to implement competitive practices. The LAO specifically stated concerns over AOC management of branch initiatives, including the CCMS project, and questioned whether court facility maintenance and construction should be in the hands of the AOC, as opposed to General Services, when the AOC had no experience in these areas.

The initial solution-- centralized financial control-- was designed to achieve economies of scale. Economies of scale work best in a competitive environment. For the Executive Branch, this “competition” is created through divergent agency missions; for the Legislative Branch it is inherent in the two-house, two-party system.

For the Judicial Branch, consolidation has had the unintended consequence of diseconomies of scale.

The JC has adopted a “Carverized” methodology of management, by which the Judicial Council only adopts broad policies and leaves the administrative implementation in the hands of the AOC. Unfortunately, the voting majority of the Judicial Council consists of working judges who have little time to provide oversight. The Judicial Council only meets about six to eight times per year.

Because the Judiciary is an independent branch of government, the Legislature and Executive branches defer substantial oversight out of concern for separation of powers, perhaps not appreciating that the Judicial Council and the AOC are not *courts* — they are administrative agencies charged with responsibility for billions of dollars of public funds. This leaves an agency (the AOC) without the typical internal governmental “tensions” that promote the efficiencies originally intended. The AOC has responded with unrestrained growth, very expensive initiatives, loose organizational decision-making, and a lack of transparency and accountability.

The initial goal of increased efficiency by centralized financial control has been frustrated by these diseconomies of scale. Features of this phenomenon are apparent in the AOC and Judicial Council management of the branch: lack of transparency in communication and reporting, duplication of effort, organizational hubris and aggrandizement, political justifications instead of economic justifications, isolation of decision-makers, slow response, and inertia (resistance to change).

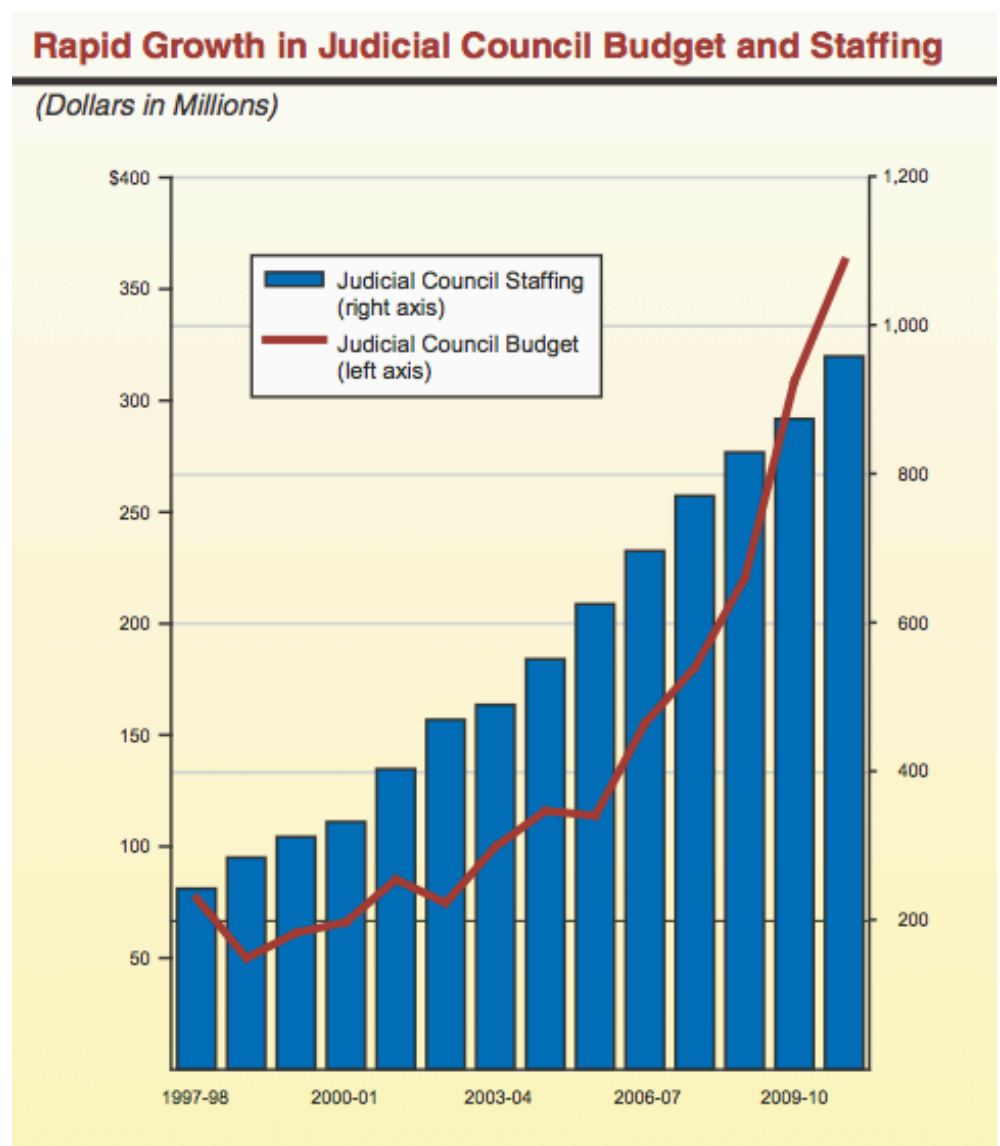
The AOC is Too Big

A recent report of the Legislative Analyst’s Office has documented that the number of positions in AOC has more than tripled from 244 in 1997-98 to 960 in 2010-11.

In fact, the problem is even worse.

AOC records reveal 878 “employees” and 112 “temporary employees” hired through Apple One. Some of the “employees” that the AOC notes were “laid off” have been hired back as “temporary” employees at a substantially higher hourly rate.

Further, in 2011 the AOC executed 55 new “independent contracts” for technology projects — primarily CCMS — and retained many other “independent contractors” for construction, architecture, environmental consulting, real estate consulting, engineering, project management, inspection and other services.



Reprinted from LAO Report, September 28, 2011, page 11 (See Resources)

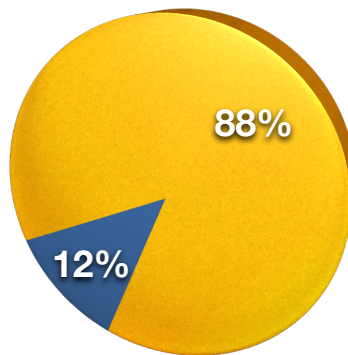
The AOC pays far more than 1,100 people. Unfortunately, the way the AOC maintains records obfuscates the actual number of workers.

As an example of excess, there are 100 employees in the AOC connected with “judicial education.” This is one full time employee for every 17 trial judges in this state, and these staff people do not do the teaching. The teaching is done by judges who volunteer.

In the last year, 80 percent of all AOC employees received a retroactive pay raise. The 30 top paid employees, who earn from approximately \$140,000 to \$217,000 per year, make no personal contribution to their retirement plans, which are completely provided at public expense.

The same LAO Report details the expansion of the Judicial Council’s Budget. As also shown in the LAO’s table, the Judicial Council’s budget has quadrupled from \$77 million in 1997-98 to \$362 million in 2010-11. When compared to the \$2.2 billion devoted to trial court operations, this represents a 12% overriding administrative cost (including maintenance) *on top* of the administrative costs of the trial courts, which are absorbed within their own funding.

Comparison of AOC Budget to Trial Court Operations



● AOC Total Budget ● Trial Court Operations

The AOC is Uncontrolled

AOC recommendations to the Judicial Council are routinely approved without serious discussion. Until recently, nearly every vote of the Judicial Council has been unanimous. The staff recommendation to close the trial courts in 2010, perhaps the most significant issue ever facing the courts, resulted in a unanimous vote of the Judicial Council. Recently, there have been one or two spirited dissenting votes, but the council still largely defers to the recommendations of its administrative arm.

Even when facing the difficult decision of how to allocate \$350 million in cuts to the Judiciary's budget this year, the Judicial Council acted on recommendations from the AOC. There were no independent fiscal advisers, auditors or financial experts consulted. The AOC — the very bureaucracy that had a vested interest in protecting itself from the budget ax — was given the responsibility of suggesting how the cuts could best be absorbed by the Judiciary.

The Judicial Council and the AOC are Isolated and Trial Courts and Judges are Disaffected

The trial courts and judges of the state, the elected Constitutional officers who are charged with conducting justice within their communities and who must face the voters of those communities, have become disaffected and disenfranchised by the explosion of unrestrained AOC authority.

Examples of typical responses by trial judges to a recent survey are revealing. Judges in Sacramento have stated in an official response:

"Their growth appears to be unlimited based on the addition of more and more functions that they can usurp from others."

"The AOC operates with unchecked authority and no ceiling on its own bureaucracy."

"The AOC is too large. The AOC is bloated. There are too many staffers based on the number of judicial officers that they are supposed to serve."

"AOC management and staff fail to comprehend and communicate that they are in service to the judicial branch, and specifically, to the courts. A 'palace mentality' has developed because they are insular and removed from the day-to-day operations of court management," said one judge. "If the AOC were to cease, courts would continue to perform their constitutional functions; if the courts were to cease, there would be no AOC."

"On an appearance level, the opulent and spacious work site of the AOC and its regional offices is indefensible when compared to the relative shabbiness we ask jurors to deliberate in and decide real important issues."

"AOC management is arrogant and retaliatory," one judge said. "As an organization the AOC is an unproductive, unnecessary bureaucracy employing hundreds and hundreds of overpaid people who produce very little that is of utility to the judges and court management throughout the state." The judge adds "Simply stated, the AOC 'Abuses and Overcharges Californians.'"

"AOC has so completely dominated major policy that I feel like a cog in a machine," the judge wrote.

These responses are representative. Judges in Orange County have stated:

"It appears to me that the AOC believes it exists to tell the courts what to do."

"The AOC leadership, down to and including the regional directors, are arrogant and dismissive of judges and act as though the judges are subservient to the AOC and its directives."

"The Judicial Council has a reputation among trial court judges as an insular group that does not tolerate dissent, going so far as to rebuke and abuse trial court judges who have attempted to respectfully offer a different point of view or an objection to a proposal."

The judges of the Los Angeles Superior Court have produced a profound report that adds to this picture. That report states:

- The Judicial Council has not insisted on a complete business case analysis for significant initiatives undertaken by the AOC which results in a loss of accountability for stewardship of branch funds.
- Committees of Judges formed to provide oversight do not operate independently of staff. AOC staff take over the management of court committees in a manner that diminishes input by judges.
- The AOC staff lacks expertise in court operations. Staff displays a lack of respect for the contributions of judges.

- The AOC does not operate with appropriate business expertise, analysis, and controls.

Attempted Takeover by Means of an Unapproved Trailer Bill

In June of 2009, during the height of budget negotiations which included a shutdown of the courts, judges in the state learned of a proposed trailer bill that had been drafted in the AOC office that completely altered the California judicial system, removing local authority. The proposed amendments were as follows:

“Section 77001 of the Government Code is amended to read:

The Judicial Council shall adopt rules, policies, or directives which ~~establish a decentralized system of trial court management. These rules shall ensure provide, consistent with statute:~~ (c) ~~The authority and responsibility of trial courts to manage all of the following, consistent with statute, rules of court, and standards of judicial administration:~~

- (a) ~~Local authority and responsibility of trial courts to manage day-to-day operations.~~
- (b) ~~Countywide administration of the trial courts.~~
- (1) ~~Annual allocation of superior court funding, including policies and procedures about moving funding between functions or line items or programs.~~
- (2) ~~Local personnel plans, including the promulgation of personnel policies.~~
- (3) (b) Processes and procedures to improve court operations and responsiveness to the public.
- (c) ~~The trial courts of each county shall establish the means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerks of court, and jury commissioners.~~
- (d) ~~Tri~~ Superior court input into the Judicial Council budget process.
- (e) Equal access to justice throughout California utilizing standard practices and procedures whenever feasible.

When news of this controversial proposed bill became public knowledge, the AOC’s response was that the language had been written by the Department of Finance. The Department of Finance denied requesting a bill with such sweeping changes. The AOC has now identified the matter as a mistake, but the employee who wrote the changes has not been identified, nor has any detailed public information been forthcoming to explain how the proposed draft bill came about or who authorized it to be drafted.

The Judicial Council and AOC are Unresponsive--Refusing to Prioritize the Trial Courts

Perhaps the most glaring and immediate example of how unresponsive the Judicial Council and the AOC have become occurred at the July 22, 2011, meeting of the Judicial Council, which considered allocations of trial court funding to implement \$350 million of reductions to funding of the Judiciary. The AOC staff made a proposal that gave itself equal footing with the courts, and also proposed to limit the mitigation to the trial courts authorized by the Budget Act.

The Legislature provided \$150 million for mitigation to the trial courts. The AOC recommendations provided for only \$67,839,000 of authorized mitigation. The Alliance of California Judges proposed that the additional \$82,161,000 remaining of authorized mitigation be used. The Alliance proposed that this further mitigation be provided so that trial courts could ratably reduce reserves to avoid immediate draconian consequences.

This proposal was supported by very strong appeals by **Presiding Judge Katherine Feinstein** of San Francisco, PJ-elect **Judge Laurie Earl** of Sacramento, court employees and the California Judges Association. Kern County **Judge David Lampe** made an appeal on behalf of the Alliance.

A motion which mirrored the Alliance proposal was offered by **Judge David Wesley** and seconded by **Judge Burt Pines**, both of Los Angeles. Judge Wesley and Judge Pines were the only two that voted for the measure. The 17 members who voted "NO" included the Chief Justice. The action of the Judicial Council and the Chief Justice therefore ignored the requests of Los Angeles judges, San Francisco judges, Sacramento judges, Kern judges, court employees, and the two organizations that together comprise virtually all of the trial judges of California.

The CCMS Fiasco

In 2003, the AOC began the development of a statewide case management project—the California Court Case Management System (CCMS). The AOC's records show that the full cost of the project is likely to reach nearly \$1.9 billion. This amount does not include costs that superior courts and other county and state agencies will incur to implement CCMS, which have never been estimated.

The overwhelming problems with the AOC management of this project have been well documented. One of the most significant issues is that this project has never had any independent funding. That means that the entire cost of the project has been paid for with money otherwise available to support the trial courts.

A May 18, 2011, report of the AOC to the Legislature reveals that the total expenditures through the 2010-2011 fiscal year were projected at \$546 million.

California Court Case Management System (CCMS) Project, Ongoing Programs and Services, and Interim Case Management System Funding and Expenses - Early Adopter Deployment (FY 2010-2011 through FY 2012-2013 Estimated)¹						
	Subtotal, FY 2002-03 through FY 2009-10	Estimated FY 2010-11	Estimated FY 2011-12	Estimated FY 2012-13	Total	
FUND SOURCES						
General Fund	\$ 7,097,685	\$ 310,278			\$	7,407,963
Modernization Fund	\$ 72,216,579	\$ -			\$	72,216,579
Trial Court Trust Fund	\$ 116,662,916	\$ 83,507,033			\$	200,169,949
Trial Court Improvement Fund	\$ 195,494,279	\$ 7,703,903			\$	203,198,182
Trial Court Reimbursements	\$ 12,947,997	\$ 1,310,947			\$	14,258,944
Trial Court Expenditures (direct pay by court)	\$ 49,622,207	\$ -			\$	49,622,207
TOTAL FUNDING	\$ 454,041,663	\$ 92,832,161	\$ -	\$ -	\$	546,873,824
EXPENDITURES						
CCMS Project Costs						
Civil, Small Claims, Probate, MH Development & Deployment	\$ 94,683,072	\$ -	\$ -	\$ -	\$	94,683,072
CCMS Development (Incl. Planning & Strategy)	\$ 198,951,794	\$ 25,471,899	\$ -	\$ -	\$	224,423,693
All CCMS Deployment Costs	\$ 3,680,113	\$ 26,476,813	\$ 48,770,181	\$ 16,545,305	\$	95,472,412
DMS Project Costs	\$ -	\$ 703,903	\$ -	\$ -	\$	703,903
TOTAL CCMS PROJECT	\$ 297,314,979	\$ 52,652,614	\$ 48,770,181	\$ 16,545,305	\$	415,283,080
Ongoing Program & Services						
CCMS Operational Costs	\$ -	\$ 12,567,987	\$ 55,044,518	\$ 53,431,907	\$	121,044,413
DMS Operational Costs	\$ -	\$ -	\$ -	\$ -	\$	-
TOTAL OPERATIONAL	\$ -	\$ 12,567,987	\$ 55,044,518	\$ 53,431,907	\$	121,044,413
Interim CMS						
Criminal & Traffic Development	\$ 14,229,162	\$ -	\$ -	\$ -	\$	14,229,162
Criminal & Traffic Maintenance & Support	\$ 56,789,445	\$ 6,568,156	\$ 6,933,526	\$ 6,999,483	\$	77,290,610
Civil, Small Claims, Probate, MH Maintenance & Support	\$ 85,708,078	\$ 21,043,404	\$ 13,842,277	\$ 11,027,324	\$	131,621,083
TOTAL INTERIM CMS	\$ 156,726,684	\$ 27,611,560	\$ 20,775,803	\$ 18,026,807	\$	223,140,854
TOTAL CCMS PROGRAM EXPENDITURES	\$ 454,041,663	\$ 92,832,161	\$ 124,590,503	\$ 88,004,019	\$	759,468,347

As can be seen from the table of expenses, the cost to maintain these interim programs is also exorbitant, costing over \$40 million per year. It is costing nearly \$7.0 million per year in subsidies from the state to keep one calendar system for criminal and traffic operating in only one court (Fresno County).

With this enormous cost, CCMS runs only a small portion of case management in seven counties. In Los Angeles County, this system only operates in one courthouse, calendaring approximately eight small claims cases per day. It is now clear that the courts will never be able to afford to implement the system in all 58 counties.

Criminal and Civil System Implementations to Date

INTERIM SYSTEM	CASE TYPES	SUPERIOR COURTS						
		FRESNO	LOS ANGELES*†	ORANGE*	SACRAMENTO	SAN DIEGO*	SAN JOAQUIN	VENTURA
Criminal system	Criminal	✓						
Criminal system	Traffic	✓						
Civil system	Civil			✓	✓	✓	✓	✓
Civil system	Probate			✓	✓	✓	✓	✓
Civil system	Small claims		✓	✓		✓	✓	✓
Civil system	Mental health			✓			✓	✓

Reprinted from BSA Report, February 2011, page 15 (See *Resources*)

In February 2011, the State Auditor’s review of the AOC’s oversight of the development of CCMS revealed that the AOC:

- **Inadequately planned for the statewide case management project and did not analyze whether the project would be a cost-beneficial solution to the superior courts' needs.**
- **Was unable to provide contemporaneous analysis and documentation supporting key decisions on the project's scope and direction.**
- **Did not structure the development vendor's contract to adequately control cost and scope—over the course of seven years, the AOC entered into 102 amendments and increased the cost from \$33 million to \$310 million.**
- **Failed to develop accurate cost estimates—in 2004 the cost estimate was \$260 million and by 2010 the estimated cost was \$1.9 billion.**
- **Has not obtained the funding needed for statewide deployment and without full deployment to the 58 superior courts, the value of the project is diminished.**
- **Must gain better support from the superior courts for the project—the superior courts of Los Angeles and Sacramento counties asserted that they will not adopt the system unless their concerns are resolved.**
- **Did not contract for independent verification and validation of the statewide case management project until 2004 and independent project oversight services until 2007.**
- **The statewide case management project may be at substantial risk of future quality problems as a result of the AOC's failure to address certain of the consulting firm's concerns.**

The work undertaken by the AOC on the statewide case management project lacked sufficient planning and analysis. The AOC had a consultant prepare a business case in December 2007 (2007 consultant study), four years after the project's inception. The AOC maintains that it commissioned the study to quantify the benefits that would be realized from CCMS. The Auditor found that rather than critically analyzing the propriety of the statewide case management project, the AOC commissioned the 2007 consultant study to *justify its previous actions and decisions*.

The work undertaken by the AOC on the statewide case management project lacked sufficient planning and analysis.

Moreover, the AOC was unable to provide contemporaneous analysis or documentation supporting key decisions on the project's scope and direction.

Additionally, the AOC did not structure its contract with Deloitte Consulting LLP (development vendor), to ensure that the AOC could adequately control the total cost and size of the contract. Over the course of seven years, the AOC entered into 102 amendments to develop, deploy, and support the civil system; to deploy and support the criminal system; and to develop CCMS. Further, the AOC did not ensure that it could benefit from the warranty for the civil system because no superior court had begun to use the civil system in a live operational environment before the warranty expired.

In addition to planning inadequately for the statewide case management project, the AOC consistently failed to develop accurate cost estimates. Projected in 2004, the AOC's earliest available cost estimate for the system was \$260 million, an amount that grew substantially to \$1.9 billion based on the AOC's January 2010 estimate. The \$1.9 billion estimate fails to include costs that the superior courts have already incurred to implement the interim versions—which they reported to us as costing nearly \$44 million—as well as the unknown but likely significant costs that superior courts will incur to implement CCMS. The latest estimate also does not reflect the nature of the costs that state and local government justice partners will incur to integrate their systems with CCMS. The Auditor has estimated that full implementation may cost \$3.0 billion.

The Auditor also found that the AOC did not provide the Legislature with additional beneficial information about the projected increases in total project costs. Specifically, the four annual reports that the AOC submitted to the Legislature between 2005 and 2009 did not include comprehensive cost estimates for the project, and the 2010 report did not present the costs in an aggregate manner. As a result, these annual reports did not inform decision makers about the true cost of the statewide case management project.

The AOC's "annual reports [to the Legislature] did not inform decision makers about the true cost of the statewide case management project."

The project is at risk of not being funded for statewide deployment. The AOC estimates that it will need roughly \$1 billion to deploy the system statewide. Future funding remains most uncertain.

Barring any delays, the useful life of CCMS may be very short. Even under the most optimistic estimates, CCMS technology will be almost 10 years old if and when fully deployed. If CCMS is ever fully deployed, it will likely be outdated shortly after its deployment.

The Court Construction Fiasco

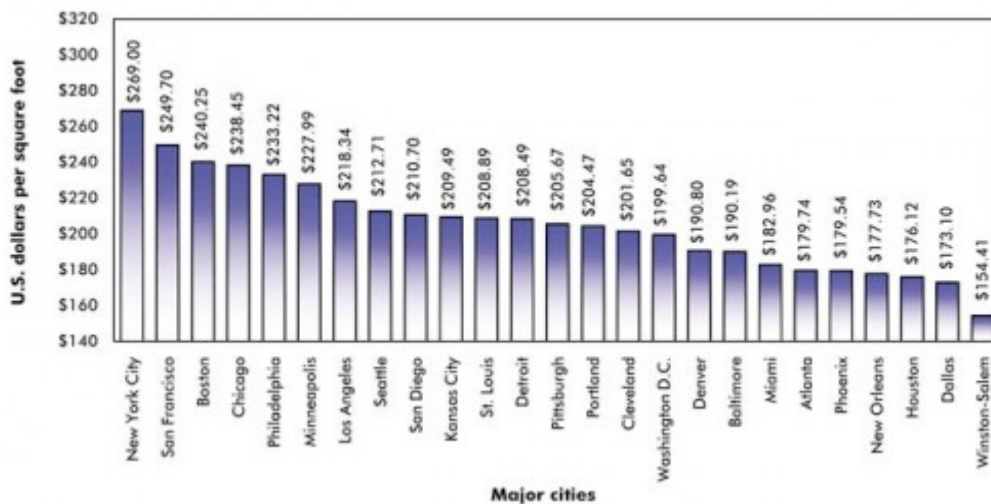
The cost per square foot of courthouses designed and built through the AOC's Office of Construction and Maintenance has been the subject of numerous allegations of failure to responsibly design and build courthouses with the needs of the community in mind. Excessive spending, exorbitant and unnecessary features, square footage and numbers of courtrooms disproportionate to the populations they serve, and a general lack of apparent concern for taxpayer dollars have all been demonstrated.

The anticipated cost per square foot for courthouse construction has been evaluated by an industry leader in projection of costs, RSMMeans. The chart below sets forth costs to build courthouses in various counties in California and elsewhere throughout the United States.

Construction Cost per Square Foot for a Courthouse

Posted by Dean Dalvit • April 21, 2011

"In an ongoing series to maintain the most updated construction cost information available to us from RSMMeans, the leader in construction cost estimating, new data has come out for the construction cost per square foot for Courthouses and similar facilities."



*Construction Cost per square foot Courthouse March 2011 per RSMMeans
(<http://rsmeans.reedconstructiondata.com/>)*

The highest cost per square foot is in New York City at \$269.00 per square foot, while the low end in Winston-Salem is at \$154.41, with a median of \$208 per square foot. These costs are higher than ordinary market rate office buildings because of security requirements.

Under AOC management, the figures for court construction far exceed anything reasonable in any economy, but especially in the one we are currently experiencing. An article by **Maria Dinzeo** of the Courthouse News Service reports that a new one-room Lake Tahoe courthouse is estimated to cost \$747 per square foot for construction. A three-room courthouse in Plumas County will cost \$644 per square foot for construction. A new courthouse in San Diego is estimated to cost \$523 per square foot for construction. The price skyrockets to \$900 per square foot when all other costs, such as land, are included.

"That strikes me as absurd," said **Dean Dalvit**, a Colorado-based architect and engineer. He questioned whether the AOC is planning to "gold-plate the walls."

Typical examples of the cost per square foot the AOC has spent or anticipates spending to build a variety of courthouses is set forth below. The AOC's estimates of construction costs are at odds with those recently calculated by the Legislative Analyst's Office.

Butte County, Chico Courthouse

Courtrooms: 5
Square footage: 67,443
Estimated total cost per AOC website:
\$76,065,000
Cost per LAO Report -- \$76,947,000
Estimated construction cost per square foot
from AOC website: \$634
**Cost of construction per LAO Report -- \$798
per square foot (\$53,863,000/67,443 sq ft)**
Current status: Architectural design, preliminary
plans
Expected completion: 1 Q 2014
Total Cost per square foot from LAO report: \$
1,141
Cost per courtroom: \$ 15,389,400

Kern County, New Delano Courthouse

Courtrooms: 3
Square footage: 39,780
Estimated total cost per AOC website:
\$41,924,000
Cost per LAO Report -- \$41,425,000
Estimated construction cost per square foot per
AOC website: \$607
**Cost of construction per LAO Report -- \$786
per square foot (\$31,255,000/39,780 sq ft)**
Current status: Site selection and acquisition
Expected completion: 4Q 2014

Total Cost per square foot: \$ 1,041
Total Cost per courtroom: \$ 13,808,333

San Diego County, Central Courthouse

Courtrooms: 71
Square footage: 704,000
Estimated total cost per AOC website:
\$633,934,000
Cost per LAO Report -- \$642,596,000
Estimated construction cost per square foot
from AOC website: \$523
**Cost of construction per LAO Report -- \$713
per square foot (\$502,286,000/704,000 sq ft)**
Current status: Architectural design, preliminary
plans
Expected completion: 1 Q 2016

Cost per square foot: \$ 913
Cost per courtroom: \$ 9,050,633

Santa Clara County, New Santa Clara Family Justice Center

Courtrooms: 20
Square footage: 233,906
Estimated total cost per AOC website:
\$241,950,000
Cost per LAO Report -- \$241,950,000
Estimated construction cost per square foot per
AOC website: \$625
**Cost of construction per LAO Report -- \$791
per square foot (\$184,966,000/233,906 sq ft)**
Current status: Site selection and acquisition
Expected completion: 2 Q 2014

Total Cost per square foot: \$ 1,034
Total Cost per courtroom \$ 12,097,500

Additionally, as of July 8, 2011, the AOC's court construction and management division had 141 employees, when 31 "temporary employees" through Apple One Temps are included. Over 85% of the employees in this division earn salaries exceeding \$80,000 per year. This number does not include a large number of independent contractors performing services such as architecture and engineering, design, environmental consulting, and construction services.

The Court Maintenance Fiasco

The AOC has encountered significant problems in managing the maintenance of court facilities.¹ AOC mismanagement has resulted in significantly inflated maintenance costs, which exceed the amount paid into the Court Facilities Trust Fund by the counties. Because this maintenance money has been inadequate, the AOC has been using court construction money to perform routine maintenance, which appears to conflict with statutory and regulatory restrictions. Staff reports to the California Legislature indicate the following issues.

The Trial Court Funding Act of 2002 enacted a process for transferring most trial court facilities from the counties to the Judicial Council. As of December 31, 2009, 532 trial court facilities had been transferred and are now administered by the Office of Court Construction and Management at the AOC..

The courts spent \$104 million on operations and maintenance in 2009-10, including \$5.7 million from the state general fund. The AOC spent another \$40 million on facilities modification projects.

As part of the courthouse transfer process, the counties agreed to pay an annual fee to the AOC based on average annual maintenance costs, including utility costs, between 2000 and 2005. That fee remains static; it does not rise due to inflation or other factors.

To provide routine maintenance and some major repairs, the AOC entered into contracts with two companies: Jacobs Facilities managed courthouse maintenance for most court facilities in Southern and Central California, and Aleut Global Solutions (AGS) managed most court facilities in Northern California. The companies won the contracts to manage the courthouses through a competitive bidding process. These contracts have recently been re-bid. Jacobs Engineering is no longer a contractor.

The AOC paid the companies in three ways:

- **Labor costs.** The companies invoiced the AOC for hourly wages of its employees, plus costs for travel, materials, health benefits and other indirect labor costs. All maintenance work is subject to state prevailing wage laws.
- **Management Fee.** The companies were paid a fee to manage maintenance at courthouses that is determined by multiplying a set percentage by the total labor cost incurred. The percentages vary by the size of the total courthouses managed.
- **Performance-Based Compensation.** The companies were also paid based on a semi-annual evaluation by the AOC. The AOC allotted a pool of money available to the companies based on their performance. The companies are eligible for 70 percent of the available performance-based compensation for scoring a "satisfactory" score on the evaluation.

To handle most issues at court facilities, ranging from burnt-out light bulbs to water leaks, court officials must call the AOC, which then forwards the concern to one of the contracted companies. To save time, the AOC typically allows the companies to address the problem based on the understanding that it will not cost more than \$500. A spreadsheet of work orders sent to an Assembly committee indicates that even minor issues, such as removing snow or weeds from courthouse grounds, is approved by the AOC at a maximum cost of \$500. The companies then respond to the concern, and send monthly invoices to the AOC totaling their charges.

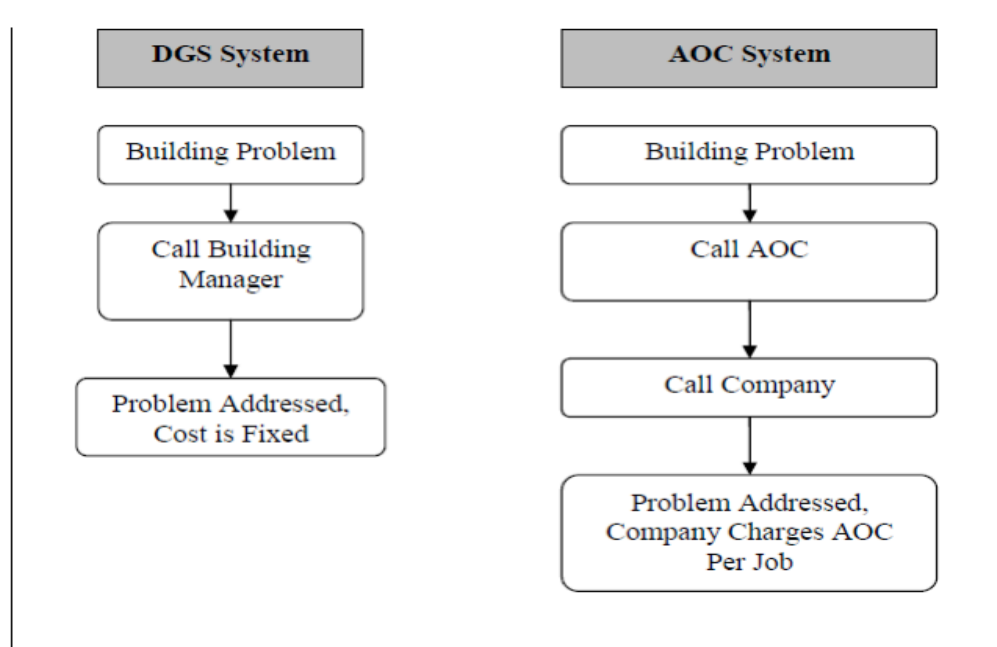
The AOC sued both Jacobs and AGS in December 2009 for working without appropriate contractor's licenses. Both companies thereafter acquired the proper licensing.

¹ The materials and graphics in this section are restated and reprinted from a staff background report to the California State Assembly Committee on Accountability and Administrative Review for a hearing held on August 10, 2010. This report is available on the Committee website.

The system set up by the AOC can lead to high maintenance costs. Paying a management fee that is based on the cost of labor for each job performed at a courthouse incentivizes high costs. Documents indicate that the AOC routinely pays more than \$150 to replace light bulbs, for example. In a spreadsheet showing work orders commissioned by the AOC to AGS in 2009, there were 58 calls for replacing lights that totaled more than \$14,000. Other costs include:

- \$1,980 to remove gum from a sidewalk at a courthouse in San Bernardino County;
- \$15,126 to remove gum from a court facility in Sacramento;
- More than \$14,000 to paint a restroom in a Solano County courthouse;
- \$112 to empty trash cans and \$74.90 to empty ash trays in a Northern California juvenile court facility;
- \$178 to replace the batteries in a clock;
- \$149 for a worker to escort another worker through a courthouse;
- \$124 to reorganize a storage room maintained by the maintenance company that was hired by the AOC.

The process used by the AOC to maintain courthouses differs from how the state Department of General Services (DGS) charges state agencies to maintain their office space. Based on the previous year's costs, DGS establishes a fixed fee per square foot they will charge state agencies to maintain buildings, including minor repairs. DGS then employs a building manager in each building who responds to daily concerns from building occupants. There is no calculation of charge; it is done through the fixed fee. For larger-scale repairs, DGS has established an hourly rate for specialty employees, such as engineers or plumbers, and charges based on the hours required to fix a problem. In contrast, when a minor or major problem occurs in a court building, court officials first call the AOC. The AOC then calls one of its contracted companies. The companies then dispatch workers to address the issue. Once the problem is addressed, the company calculates its costs and sends monthly invoices to the AOC. Below is a flow chart depicting the two systems:



DGS charged state agencies an average of \$1.95 per square foot to maintain buildings in 2009-10. AOC spent about \$2.43 per square foot, or about 25 percent more than DGS.

These inflated costs have caused the AOC to quietly deploy construction money to pay for routine maintenance.

Government Code section 70374 provides that construction funds shall only be used for the planning, design, construction, rehabilitation, renovation, replacement, leasing, or acquisition of court facilities. Judicial Council rules provide that: “Facility modifications *exclude routine maintenance and repair activities* in that the latter include routine system parts replacement or repair on existing building components, as recommended by the manufacturers or industry-recommended service cycles to ensure the continued operation of systems. Maintenance activities may also include unplanned emergency repairs. Routine maintenance and repair activities include both minor activities, which involve unplanned and planned maintenance, and major activities, which are of a greater scope and typically require some design and engineering support.”

Notwithstanding these admonitions, the AOC’s Office of Court Construction and Maintenance has accessed construction funds to augment the lack of funds in the Court Facilities Trust Fund.

An annual report of the Facilities Modification Working Group of the Judicial Council reveals that not a single planned facilities modification was accomplished for FY 2009- 2010. Instead, the money was spent on unforeseen, out of cycle, or unplanned priorities. In fact, these expenditures were for the most part spent for routine maintenance. For example, an AOC report to the Legislature in February 2011 revealed that a total of 1,692 facility modification projects, costing \$17,637,330, were completed in FY 2009–2010. A list of these projects discloses that the bulk of expenditures were for maintenance, not facilities modification, such as the items set out above, and including repairing an overflowing toilet and remediation (\$13,842), installing two 125-amp breakers (\$13, 543), leak in jury deliberation restrooms, repair plumbing, cosmetic work performed (\$6,572), replace six failed light fixture thermal couplers in main lobby - several lights are not working (\$4,155), palm tree trimming and removal (\$8,521), landscape renovations (\$8,006), removal and clean up of birds' nests (\$8,007), lighting - replace ballasts and lamps - several lights are out (\$7,570), prune two large cypress trees, remove waste (\$10,876), remove and replace P-Trap in men's public restroom (\$2,366), scalp lawn for over seeding of winter rye grass, and adjust sprinkler times for germination period and fertilization of lawn (\$3,625).

Conclusion

Rebalancing

From the very beginning of the existence of the Alliance of California Judges, we have warned that our courts faced a growing financial catastrophe, in part due to the out-of-balance priorities established by judicial leadership. That catastrophe has finally arrived.

There are few sources available to mitigate budget cuts. In some combination, the AOC’s operations must be drastically reduced, needed construction must be delayed, and continued funding for CCMS must be eliminated.

There appear to be sufficient construction funds available to partially offset operating budget reductions, obviously at the expense of deferring capital outlays for construction.

There remains further funding associated with CCMS. For example, in 2011- 2012, there is at least \$34,925,534 of maintenance, operations and project funding as follows:

Maintenance and Operations

Criminal and Traffic (V2) (Fresno)	\$6,554,167
Civil, Probate, etc. (V3)	13,787,927
CCMS (V4)	8,867,477

Projects

CCMS Development	3,399,687
CCMS V4 Deployment	2,316,306
Total	\$34,925,564

This continues to represent \$35 million as an annual expenditure to support only a portion of case management systems of seven courts. This product should be delivered to these courts to be operated on their own servers by their own IT staff within their own budgets. The CCMS project cannot continue.

The AOC has a salaries and benefits operation of approximately \$100 million. The AOC has proposed to reduce its operations by only 12 percent. This number needs to be substantially increased in favor of trial court mitigation. Reducing AOC operations by one half would allow a shift of approximately \$50 million.

We can no longer afford a top heavy administration where, unlike judges and most court employees, the top 30 executives of the AOC make no personal contribution to their retirement.

Cooperation—Not Control

Many in the executive and legislative branches deem the AOC valuable because it represents one “place” that these other branches may go to discuss budget and fiscal decision-making. Unfortunately, that “benefit” has put the AOC in charge of the judicial budget. This has led to the “tail wagging the dog” in terms of failed judicial oversight of critical fiscal and budget decisions.

For this reason, AB 1208 is necessary to guarantee every trial court a minimum direct funding of a baseline allocation from the Legislature without AOC discretion. This will allow the AOC to substantially reduce its financial, administrative, and budgetary functions. Those cost savings can be passed on to the trial courts.

The AOC must be remade as a “cost of services” agency. Once the AOC has been reduced by 50% to its core functions, any court services it offers may be rebuilt based upon this model. Trial courts should receive a full allocation of money, including money that is currently allocated to AOC service functions. Then the AOC may *offer* services to the courts, and set a “price” for those services which will be charged to each court’s allocation if the court *chooses* to use AOC services. This model fosters trial court coordination. For instance, some small courts may agree with a larger court under a Memorandum of Understanding or Joint Services Agreement to combine certain functions, such as IT or human resources. This will promote the utmost level of innovation for the courts. Centralization is not a model for innovation.

This model will have a “market” effect of establishing a true assessment of the need for AOC services. There are some issues that do not meet this market model. However, voluntary organizations of judges or collaborative efforts among the courts can serve these policy oriented functions. Trial Courts are independent constitutional entities, and they are fully empowered to legally cooperate and coordinate without any changes in the law.

Judgment Under Law is Inherently Local

The American common law is an organic model of political organization and development. Far from being its fault, it is its genius. There are certain inefficiencies that are inherent within this structure that cannot be “corrected “ through central planning by economists or bureaucrats. Due process, the jury trial, the rules of evidence and the concept of *venue* are all reasons why centralization is the “enemy” of this ancient common law system.

"The life of the law has not been logic; it has been experience. ...The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."

From the first of twelve Lowell Lectures delivered by Oliver Wendell Holmes, Jr. on November 23, 1880, which were the basis for *The Common Law*.

Judges and court employees cannot be forcefully divorced from their community allegiances. This is the vain hope of misguided bureaucracy. It would be the undoing of the law as we know it.

The Next Step

The Legislature must act to protect our trial courts. These courts are the heart and lifeblood of a vital judicial system. The erosion of their power and authority must stop.

All funds appropriated by the Legislature for local trial court operations, in whatever amount, must be fully delivered to the trial courts without reduction or reserve, and each court must be guaranteed a base-line level of funding consistent with historic practices.

This remains the only purpose of AB 1208. This is why it must become law.



Alliance of California Judges

The Alliance of California Judges, now 400 members, was formed on September 11, 2009, in response to the unprecedented financial crisis now facing our judicial branch. We are an organization of judges in the state acting as a meaningful voice to independently advocate and communicate on behalf of judges with the public, media, and Executive and Legislative branches.



Alliance of California Judges

This report of the Alliance of California Judges is designed to assist interested judges, legislators, lawyers, journalists and members of the public in evaluating the reasons why the Alliance has sponsored Assembly Bill 1208, authored by **Majority Leader Charles Calderon**. This legislation has passed committee and is now pending on the floor of the Assembly for the 2012 session of the California Legislature. This legislation provides an essential “first step” in building a solution to the trial court funding crisis. The immediate passage of AB 1208 is imperative.

What AB 1208 Does

Current law does not require that the Judicial Council fully deliver all of the money which the Legislature has appropriated to the trial courts. AB 1208 amends current law to require the Judicial Council or its designee to allocate 100 percent of the funds appropriated for trial court operations by the Legislature, according to each court’s share of statewide operational funding.

What AB 1208 Does Not Do

The bill does not alter the Judicial Council’s authority to ensure uniform practices or its authority to supervise budgeting for the trial courts. The bill does not change the Judicial Council’s rule-making authority (which is set out in the state Constitution). The bill does not alter the uniform rules of practice and procedure. The bill does not violate separation of powers, because it is purely a financial bill. The Legislature routinely enacts statutes that govern matters affecting the judiciary, especially in areas of financial regulation. It was the Legislature that created the current funding scheme in the first place. It is the Legislature that must address the fiscal crisis in the courts by enacting AB 1208.

Resources

The following are hyperlink sources available from the electronic version of this report. Contact the Alliance for an electronic copy or for details about these references.

[Assembly Bill 1208](#)

[Lockyer Isenberg Act](#)

[LAO 2011 Report](#)

[Courthouse News Service "Sac Judges Say Court Bureaucracy Should Be 'Dismantled Forthwith'", July 13, 2011](#)

[Courthouse News Service "OC Judge Survey Delivers Broadside to Top Brass of California Courts", July 11, 2011](#)

[Los Angeles County Superior Court Report on Governance](#)

[AOC 2011 Report to the Legislature on CCMS](#)
[California State Auditors 2011 Report on CCMS](#)

[California Bureau of State Audits Report 2011](#)

[Dean Dalvit, Construction Cost per Square Foot for Courthouses, April 21, 2011](#)

[Courthouse News Service Article on Courthouse Construction by Maria Dinzeo, October 14, 2011](#)

[AOC Facilities Program/OCCM Website](#)

[Courthouse News Service "High Costs for Courthouse Up-keep Raises Legislative Eyebrows: \\$14,000 to Paint Toilets", August 16, 2010](#)

[Annual Report of the Trial Court Facilities Modification](#)