

The Access to Justice Crisis Facing California Families: An In-Depth Background Paper for An Informational Hearing of the Assembly Judiciary Committee

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State Capitol, Room 447

By the Staff Counsel of the Assembly Judiciary Committee

"Regardless of other issues that divide today's political spectrum, all policy leaders should be able to stand shoulder to shoulder when it comes to the need for adequate and sustainable funding for our courts. Our liberty depends on it."

-- Edwin Meese III and William T. Robinson

I. Introduction

Unable to get a timely court hearing on her request for a restraining order, a victim of domestic violence is forced to sleep in her car to avoid further assault at home. Another woman waits in line for days with her infant child to attempt to secure a child support and custody order and, after three days of going to the court and waiting, she still has not been able to file her paperwork. An infirm senior dies in his car awaiting an emergency writ preventing him from being locked out of his apartment. These tragic stories reported by court observers demonstrate the real world impacts that five years' of recession-caused court reductions are having in California.

Ensuring access to justice is at the heart of any democracy. As Martin Luther King, Jr., so poignantly noted, "Injustice anywhere is a threat to justice everywhere." Courts provide the critical forum to protect and defend constitutional and statutory rights and freedoms. Without access to the courts, those rights can become illusory. Unfortunately, as a result of the Great Recession, the state has made substantial cuts to our justice system, reducing state General Fund support for the branch by about \$1.2 billion since 2007-08 according to the state Administrative Office of the Courts, but, luckily to this point, being able to backfill many of those cuts with "one-time fixes" which are largely set to expire next year. Paradoxically, at the very time the budget cuts have closed courtrooms, reduced clerks' office hours and self-help programs, and eliminated civil court reporters in some courts, the need for the courts has only increased as the recession has further disrupted the lives of those who most need courts to protect their homes, their employment, their children, and their families. Compounding these enormous challenges, legal aid programs that serve the neediest Californians have suffered additional funding cuts, increasing an already severe "justice gap."

This paper will examine the state takeover of court funding, some of the effects of this major restructuring, recent budget changes, and the reported impacts thus far of those changes on the courts and their legal aid partners in the provision of justice. It will also review reported impacts of reductions in court services and legal aid to the public, as well as some of the possible options that might be available to reduce the damaging impacts on California families.

The paper will conclude that there has been a seemingly mysterious disconnect between the types and severity of disturbing service reductions occurring in many of our trial courts and the, thus far, partially mitigated overall funding cuts to the trial courts. What appears to be the most plausible explanation for this seeming budgeting paradox – that is, already broad and deep service cuts to some trial courts notwithstanding what appear to be largely successful efforts by all three branches and court stakeholders to substantially mitigate prior General Fund cuts with backfills, fee increases and other emergency actions?

It appears to be that the affected courts have concluded they have had very limited options for addressing the thus far *relatively* smaller funding reductions than those that are anticipated in the near future. This may be because many trial court expenses appear not to be subject to reduction by the trial courts themselves, such as judicial salaries (and the great bulk of branch costs are employment costs). Thus it appears, sadly, that the very services that are most critical to many court users, especially those with the least resources – such as open courtrooms, fully staffed clerks’ offices, robust self-help centers, and available interpreters and court reporters – are almost always the first ones on the chopping block, rather than the last, as shown in Chart 1 below.

Chart 1: Trial Court Reported Service Reductions in the Last Five Years

Service Reduction	Number of Courts	Impact
Closed Courthouses	18	46 courthouses closed
Closed Courtrooms	25	164 courtrooms closed
Reduced Clerk's Office Hours	43	19% fewer public service hours available
Reduced Self-Help/ Family Law Facilitators	37	Significant reduction in services
Laid Off Staff	36	1,885 employees laid off
Instituted Furloughs	50	25 courts with 12 or more furlough days annually
Left Vacancies Unfilled	51	38% average vacancy rate
Reduced Court Interpreters	22	Interpreter service reduction primarily in civil cases because interpreters are constitutionally required in criminal cases
Reduced Court Reporters	36	30 courts completely eliminated reporters in civil, family, and probate matters
Reduced Security	26	
Switched Employee Positions to Contractors	15	
Cancelled Contracts for Good or Services	42	

Source: 2013 Committee survey of the 58 trial courts

It is thus timely and important for the Legislature to continue its ongoing review of the nature and breadth of impacts that have thus far hit the trial courts, court users, and the judicial branch generally, due to the recent recession in order to learn how individual courts are making their budget reduction decisions, and how they are planning for the coming years of potential additional budget reductions.

II. Court Unification and Restructuring in the 1990's Begins Process for Centralized State Administration of the Courts, While Maintaining Local Control

Trial Court Unification and the Need for More Stable and Equitable Trial Court Funding. Historically, trial courts in California were county entities, and each county operated three separate court systems – municipal court, justice court and superior court. In an effort to reduce inefficiencies, California voters passed Proposition 191 in 1994, which merged the municipal and justice courts. In 1998, Proposition 220 again merged courts, this time the superior and municipal courts.¹ By 2001 all municipal and superior courts in the state had unified, increasing efficiency of court operations by reducing duplication of efforts.² Additionally, unification allowed for better utilization of courtrooms, a reduction of case backlogs and greater responsiveness to users' needs.³

Even with greater efficiencies from unification, the configuration of trial courts as 58 separate county entities created significant hurdles for the uniform and efficient delivery of justice across California. Financial support for trial court operations still remained largely the responsibility of individual counties.⁴ Funding levels for trial courts varied greatly across the state.⁵ While visiting all 58 county courts, then-Chief Justice Ronald George discovered that chronic under-funding of many courts in the county-based court system substantially impaired access to justice, including “woefully inadequate facilities, insufficient staff, unavailable interpreter services, and antiquated information processing systems.”⁶ Though many policy-makers today don't realize it, this is not the first financial crisis that has faced the trial courts. In his first year as chief justice, Chief Justice George twice had to seek emergency funding from the Legislature in order to prevent the shutdown of some trial court operations.⁷

The Lockyer-Isenberg Trial Court Funding Reforms of 1997. The Legislature agreed that the significant problems with the county-based courts required urgent remediation and passed the Lockyer-Isenberg Trial Court Funding Act in 1997 ("1997 Act").⁸ That bipartisan legislation was approved by near unanimous bipartisan votes in each house of the Legislature. It sought to create a centralized, stable and long-term funding base for the state's trial courts by requiring the state to assume responsibility for funding the courts. Additionally, it sought to bring the court system in California into the 21st century by centralizing court administration, seeking to promote fiscal responsibility and accountability by better managing scarce state resources, and allowing for long-term statewide planning and oversight.⁹ As then-Senator Lockyer noted at the time, the state takeover of trial court funding "represented the most meaningful reform of the California judicial system this century. The state ... recognized its essential responsibility to ensure that there is equal access to a quality judicial system statewide."

The greater centralization enacted in the new law significantly increased the administrative duties, and authority, of the Judicial Council and Administrative Office of the Courts (AOC). In transferring primary responsibility for funding the courts from the counties to the state, the Legislature also recognized the necessity of finally seeking uniform standards and procedures, economies of scale, and structural efficiency of the trial courts. Importantly, the Act also helped facilitate the Legislature's ability to enact long-term and effective statewide initiatives to improve access to, and the quality of, justice.

The 1997 Act's Quick and Lasting Successes. With enactment of the 1997 Act, along with application of a new state allocation limit (the "SAL") formula starting in 2005-06, the Judicial Council was finally in a position to begin to start addressing the large funding disparities that historically had existed

between the state's 58 trial courts. In 2005, there were a full 18 courts whose budgets were 20 percent or more below their projected funding needs. By 2007, after three years' of workload growth and equity allocations by the Judicial Council, there appeared to be only two courts that could be considered severely underfunded. Under the Funding Act, state funding thus finally allowed the state to begin to equalize the unequal funding of its trial courts, and to improve uniformity and financing for trial courts throughout the state. The Act also permitted the Judicial Council to begin to assist trial courts in benefitting from other courts' best practices, efforts to improve access to justice, and engage in long-term planning. It also provided significant financial relief to all 58 counties, which was desperately needed to allow the counties to redirect scarce local resources to other critical programs.

The Efforts to Address the State's Many Dangerous and Dilapidated Trial Court Facilities. In addition to administrative centralization, the 1997 Act created a task force to decide what to do with court facilities, which remained under county ownership after restructuring. Inspection of California's 451 court facilities by the task force revealed that "[N]inety percent [of the state's court facilities] require significant renovation, repair, or maintenance."¹⁰

As a result of the task force's findings, the Legislature, with bipartisan support, enacted the Trial Court Facilities Act to transfer responsibility for all court facilities from the counties to the state.¹¹ Those transfers to the state from the counties were completed by the end of 2009, thanks to the leadership of former-Assemblyman Dave Jones (AB 1491 (Jones), Ch. 9, Stats, 2008.)¹² The condition of court facilities was found to warrant substantial additional funding, leading to the passage of SB 1407 (Perata) in 2008, which significantly increased civil fees and criminal fines to fund new courthouse construction.¹³ Those increased fees and fines generate approximately \$300 million annually, which, when used to support revenue bonds for courthouse construction, reportedly could generate a potential \$5 billion for 40 new courthouses. The Judicial Council was tasked with the responsibility for managing all those funds, as well as all courthouse construction, renovation and maintenance.

III. Recent Events Impacting the Courts

A. AOC Management and Practices

As noted above, statewide control of the court system, and then-Chief Justice George's strong advocacy efforts in the Legislature and with governors, had large dividends in substantially increasing funding for the trial courts and the AOC and vesting greater centralization of authority in the Judicial Council. In addition, the AOC helped bring California's courts into a more unified court system, through, among other things, the adoption of uniform rules of court and forms, including forms in plain language; development of helpful bench guides to assist judicial officers; and task forces on conservatorships, dependency, family law and domestic violence that have helped protect many of our most vulnerable Californians. Thus the breath of accomplishments that have occurred through the enactment of trial court funding reform is extensive and impressive.¹⁴

However, in recent years, the AOC's proposed information technology project known as CCMS, management of court construction projects, and the AOC's hiring and compensation practices have all been seriously criticized for a variety of reasons and concerns.

The Court Case Management System. As has been well-reported, the AOC has been severely criticized in recent years due to the controversial way it handled development of the now-failed Court Case Management System (CCMS), an ambitious court technology project originally to provide all 58

superior courts with a long-needed uniform, linked case management system. Despite numerous cost overruns and ballooning cost estimates to complete the project, the AOC and its leadership continued to make the funding of CCMS one of its top priorities – even while significant cuts to judicial branch funding in recent years was leading trial courts to reduce court operations to the dismay of many judges, public servants and members of the public.¹⁵ Originally projected to cost \$260 million,¹⁶ the amount for complete deployment of CCMS shockingly grew to \$1.9 billion, based on the AOC's January 2010 estimate.¹⁷ The AOC eventually spent over half a billion dollars (\$527 million)¹⁸ on the project, much of that coming from funds designated for supporting trial court operations. Virtually all of this funding was ultimately lost, and this failure exacerbated the funding problems facing the trial courts in recent years.

In February 2011, the California State Auditor issued a report roundly criticizing the AOC's lack of proper management and oversight of the project. In its report, among other things the Auditor concluded among other criticisms that the AOC did not ensure adequate independent oversight of CCMS, as would be expected of a project of this size and complexity.¹⁹

Concern about the computer project continued, resulting in internal and independent reviews,²⁰ legislative hearings,²¹ and proposed legislation.²² In March 2012, the Legislature concluded the project must be halted, and it denied any further funding to CCMS. Later that month, the Judicial Council terminated it. Thus, after expending, and critics contended misspending, over half a billion dollars, the termination of CCMS not only depleted increasingly scarce court resources, it left many trial courts with failing case management systems, no practical replacements on the horizon, fewer branch reserves to help mitigate the burgeoning court funding turmoil, and evidence of an agency apparently not paying nearly adequate attention to properly overseeing expensive court programs and needs.

Management of the Court Capital Construction Program. Recent budgetary constraints have also spotlighted concerns that have been raised over the AOC's management of another high-cost statewide program, the Court Capital Construction Program ("Construction Program"). Critics have charged that the AOC has repeatedly failed to maximize use of limited judicial branch dollars by mismanaging expensive court facility construction projects while providing little transparency or accountability for court construction decisions.

A recent audit of the Construction Program (known as the "Pegasus report"), commissioned by the Judicial Council itself and completed in August 2012, identified several areas in which the auditors found that the AOC should act to better manage and control the construction program. Among other things, the auditors found that: (1) there was no formal delegation of authority or responsibility at either the program or project level, resulting in confusion and disagreement as to who was accountable for Construction Program decisions and actions; (2) policies and procedures for managing and controlling the Construction Program were not uniform or transparent and did not provide for the level of accountability expected for a program of its size and complexity; and (3) the AOC did not engage in the practice of comparing and analyzing differences between original project cost estimates and adjusted project budgets or final project costs.²³ The Judicial Council has since stated all these recommendations have already or will be implemented.

The Long Beach Courthouse. One of the first court construction projects undertaken by the AOC after transfer of court facilities to the state was the new Long Beach Courthouse. The Judicial Council elected to proceed using a public-private partnership ("P3") that requires a private developer to finance,

design, build, operate, and maintain the facility in exchange for annual lease payments that will average approximately \$60 million over a 35-year period for a total project cost of \$2.3 billion. The high cost of the project was highlighted in a recent review by the nonpartisan Legislative Analyst's Office (LAO) that provided further concern about the AOC's oversight record, concluding that the AOC failed to utilize best practice criteria in the process of selecting the Long Beach courthouse project for a public-private partnership, noting that had it done so, it would have found the Long Beach courthouse to be inappropriate for P3 procurement.²⁴ In addition, the LAO determined that the AOC likely overpaid for the project by up to \$160 million.²⁵

While the Judicial Council maintains that funding for the Long Beach Courthouse annual lease payment should come from a General Fund appropriation, the Governor's Budget proposes that it come from existing court construction funding. As a result, the Judicial Council recently delayed indefinitely funding for four other, critical courthouse construction projects so those funds could be redirected to pay for the Long Beach court, scheduled to open in August 2013.²⁶

Controversial Growth and Compensation of AOC Staff. Another area of continuing concern both within and without the judicial branch has been the growth and compensation of AOC staff. In 1992, the AOC's workforce numbered only 225 employees. By 2010-11, that figure had increased to over 1,100 positions.²⁷ According to the Strategic Evaluation Committee (SEC), courageously appointed by Chief Justice Tani Cantil-Sakauye shortly after she took office to conduct an in-depth review of the AOC, the size and growth of the AOC were among the most consistent concerns that were raised by policymakers, trial courts, and many others about the AOC.²⁸ According to the SEC, while some of the AOC's five-fold growth could be attributed to the wholesale changes in the judicial branch arising from reorganization and state funding of the trial courts under the 1997 Act, not all can be.²⁹ Instead, some of the growth was attributable to hiring several categories of temporary and contract workers for supplemental positions not authorized by the budget act. According to the SEC, the AOC inappropriately circumvented its own hiring freezes by employing large numbers of temporary and contract staff to backfill permanent positions that became vacant,³⁰ and increased the total number of its staff to levels that exceeded the number of authorized positions – even in the face of painful cuts to the trial courts.³¹

The SEC also found the AOC to be a “top-heavy and unwieldy organization,” with deficient internal management processes, and, most importantly, it had not been “credible or transparent concerning such important matters as budgeting, staffing levels, hiring freezes and furloughs, large-scale projects, and other areas of importance.”³² For example, at the time the SEC review began in 2011, the AOC had twelve separate divisions, two specialized offices, and three regional offices, all managed by high-level directors reporting directly to the Executive Office.³³ Additionally, the SEC found that the AOC employed a generous compensation structure for most of its position classifications, including 17 positions in the AOC that had maximum salaries above \$175,000 per year, and several hundred positions over \$100,000.³⁴ In fact, of the 200 separate position classifications maintained by the AOC, 140 (70 percent) had maximum salary levels above \$75,000 per year.³⁵

The SEC went on to make over 120 recommendations to increase the transparency, accountability and efficiency of the AOC. The Judicial Council reported that it has accepted the vast majority of the SEC's recommendations and has already implemented some of them, including reducing its "top heavy" management structure, and is in the process of implementing others.

B. 2012-13 Budget Provisions Limited Certain Judicial Council Funding Authority

In response to these and other concerns about AOC operations and decisions, last year the Legislature approved and the Governor signed SB 1021 (Ch. 41, Stats. 2012), budget trailer legislation that, among other things, restricts the Judicial Council's authority over certain trial court funding and operational decisions. Most notably, SB 1021 prohibits the Judicial Council from spending Trial Court Trust Fund monies for any purpose other than allocation to trial courts unless authorized by statute.³⁶ In short, SB 1021 places a number of new limitations on the discretion of the Judicial Council and AOC to allocate trial court operations funds.

C. Trial Court Funding Workgroup – Review of the Progress Under the 1997 Act

In 2012, Governor Brown and Chief Justice Cantil-Sakauye established a collaborative workgroup between the executive and judicial branches to conduct a comprehensive evaluation of the state's progress in achieving the goals outlined in the Trial Court Funding Act of 1997, particularly the goal of providing "equal access to justice" for all Californians. Comprised of six members appointed by the Governor and four members appointed by the Chief Justice, the Trial Court Funding Workgroup began conducting monthly public meetings in November 2012 and anticipates providing its final report to the Governor and Judicial Council by April 2013, in which it will propose options "to effectively meet and maintain the goals of having a state-funded trial court system and enhance transparency and accountability."³⁷

IV. Overview of Court Funding by the Legislature Since Restructuring

A. Legislature Increases Court Funding After Restructuring

After the 1997 Act, the Legislature began allocating substantial additional resources to the courts through budget increases and application of SAL. Applying the SAL formula resulted in increases well above the inflation and the consumer price index for the three budget years it was in effect, from 2005 to 2008. In total, from fiscal year 2000-01 to 2007-08, trial courts expenditures (excluding judicial salaries) grew by a robust 53 percent, increasing from \$1.93 billion to \$2.95 billion, according to data provided by the Judicial Council and analyzed by the Legislative Analyst's Office. The SAL increases were designed in large part to help address the chronic disparities in trial court funding inherited by the state when it took over responsibility from the counties and, to a large extent, it did so. Yet even with these substantial increases, courts continue to have different relative resource levels, with some courts still significantly better funded than others.

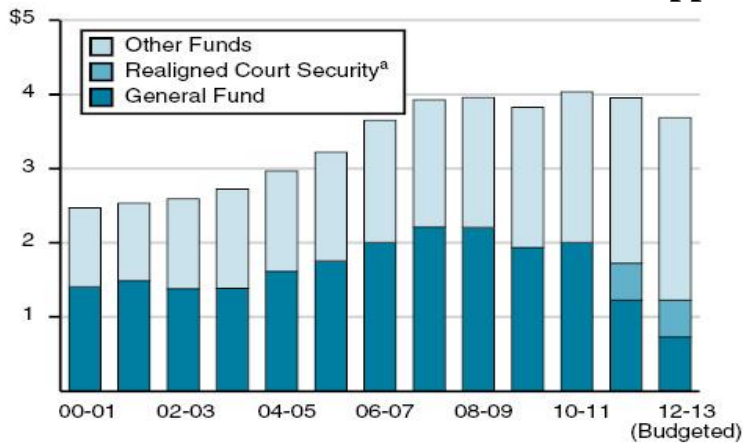
During that same period, the budget for the Judicial Council (which includes the AOC) nearly doubled – a 97 percent increase – from \$66 million to \$130 million. While the relative increase to the Judicial Council and AOC was substantially greater than the increase experienced by the trial courts, it is important to note that the responsibilities of the Judicial Council and the AOC also increased significantly during that time period, particularly in the area of court facilities. In addition to operational support, the state takeover of court facilities necessitated increased resources to support courthouse construction and renovation. Yet the relative large growth of the AOC was and continues to be a substantial cause of concern by many trial court leaders and other court stakeholders.

B. The Dramatic Recession-Caused General Fund Cuts to the Courts

As was inevitable, the SAL increases to the courts were not sustainable in a down economy. After three years of increases, annual cuts to the courts’ budget began in 2008-09 as the Great Recession and resulting falling state revenue led to dramatic cuts to virtually all state programs funded from the state General Fund, including K-12 education, higher education, vital health and social services programs, and the state judiciary. Beginning that year, the Governor and the Legislature reduced General Fund support for the branch, as they were forced to do throughout state government. However, as discussed below, unlike with many other state programs, the General Fund reductions were largely paired with "one-time" fixes, backfills and new revenues to substantially spare the court system the brunt of the General Fund reductions.

Today, the branch reportedly receives about \$1.2 billion less in General Fund support than it did at its high water mark in 2007-08. As a result, as Chart 2 shows, General Fund support for the courts dropped from well over half (56 percent) in 2008-09 to just 20 percent this year. (As seen in the chart below, during this time the General Fund reductions were actually not without interruption. Thanks to the leadership of former-Assemblyman Mike Feuer, the courts actually received more General Fund support in 2010-11.)

Chart 2: Declines in Judicial Branch General Fund Support (in Billions)



^a 2011 realignment shifted funding for most court security from the state General Fund to counties. Displayed for comparison purposes.

Source: Legislative Analyst’s Office, *Cal Facts* 56 (2013)

C. General Fund Reductions Have Been Partially Mitigated By Other Measures Thus Far – But Major Dislocations Have Already Occurred, and More Substantial Difficulties Clearly Lie Ahead Without Further Action

While General Fund support has substantially declined, as seen above, focusing on General Fund reductions alone does not tell the whole story. Although the General Fund reductions certainly have already had large and detrimental effects on many court users in California’s justice system, Chart 2 also importantly shows that redirections and transfers from within the judicial branch itself, new fees on

court users, and one-time use of court reserves have in fact substantially helped to cushion the true impact of the cuts in General Funds to the trial courts. In fact, this year over \$900 million of the \$1.1 billion trial court General Fund reduction is reportedly being offset by transfers, redirections, new fees and use of local reserves. Thus, the Governor's Budget Summary for 2013-14 notes that through the judicial branch's use of these other funds, the court's overall total funding levels have not in fact dropped nearly as substantially as they otherwise might have.

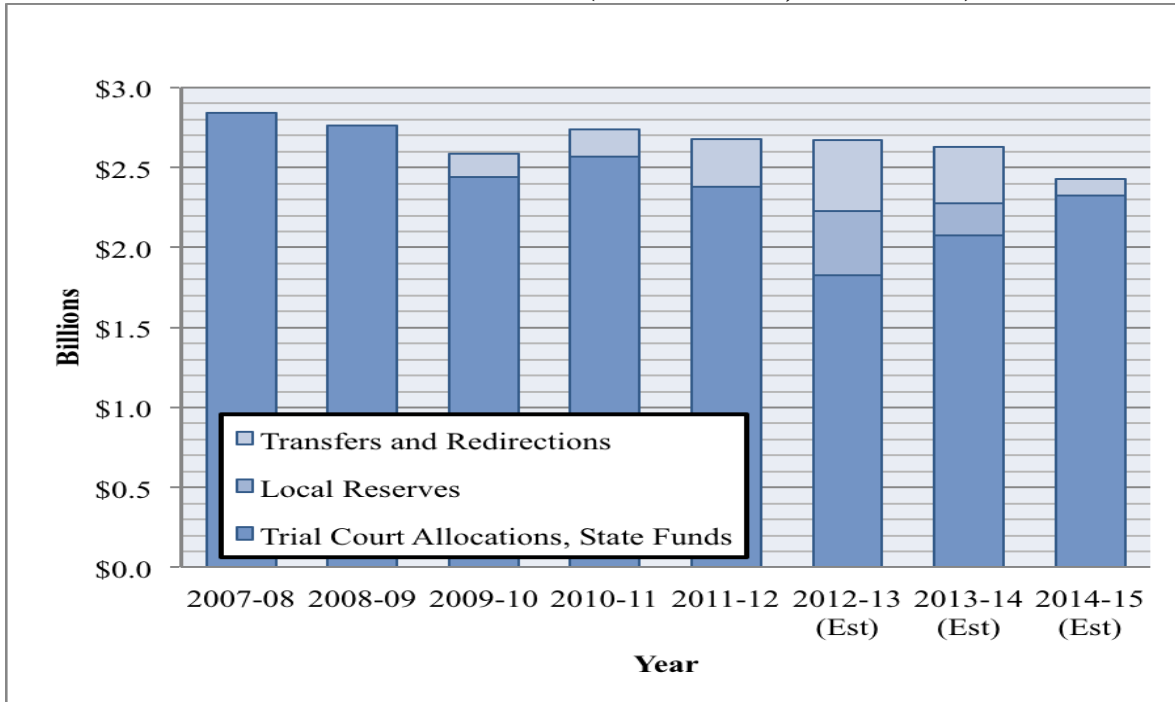
Past Fund Transfers to Address the General Fund Reductions. As part of its financial structure, the judicial branch maintains several separate funds, as well as several court construction funds. Many of these funds are supported by specific fines or fees, while others contain some General Fund support. In 2009-10, these funds had a combined balance of \$867 million. In light of the General Fund reductions to the trial courts, the branch transferred money from these funds to support the trial courts. These transfers ranged from a low of \$152 million in 2009-10 to a high of \$440 million this year. It is anticipated that there will be an ongoing \$107 million annual transfer from these funds to continue to support the trial courts. As a result of these transfers (and construction fund transfers directly to the General Fund, discussed below), the AOC estimates that the combined balances of these special state funds will reduce to \$246 million at the end of this fiscal year, a 72 percent reduction in such balances from prior years.³⁸ As a result, in the coming years, these special funds will no longer be nearly as fruitful a source of backfill to help mitigate reduced General Fund support.

Trial Court Reserves. Each trial court has traditionally maintained its own local reserves, with some courts historically holding substantial reserves, while others have held much more limited reserves. The reserves of the 58 trial courts totaled \$562 million in 2010-11, ranging from \$123 million held by Los Angeles to just \$60,000 held by Sierra.³⁹ This year's state budget for the first time created an effective state-level trial court reserve, and it directed the trial courts to reduce their local reserves to one percent of their allocation by June 30, 2014. Thus the trial courts' budgets for this year and next assume a substantial portion of their funding will come from spending down their local reserves. The trial courts have reportedly strenuously objected to this new requirement, maintaining that they cannot adequately manage their expenses, nor save for necessary capital outlays, without the ability to maintain larger reserves. In any event, given the required reserve spending this year and next, local reserves likely will also no longer be a major source of General Fund backfill for the trial courts after next year.

New Revenue. Finally, to keep courtrooms open, court users have been asked to shoulder more of the costs of the justice system. In recent years various civil fees have been increased substantially to help fund court operations. The AOC estimates that these new fees will generate approximately \$120 million a year to support the courts. Certain criminal penalties have also increased, although the relative burden of fee increases and service reductions between civil and criminal courts is not clear.

Actual Reported Reductions to the Courts. Thus as noted earlier, while the courts have lost very significant General Fund funding in recent years, much of that loss has, thus far, has apparently been cushioned by use of other funding sources that were thus far available in the branch. Chart 3 below attempts to reflect the actual reported reductions to the trial courts, *taking into consideration the intra-branch transfers and the use of reserves*. As Chart 3 shows, trial court funding will be reduced 7.5 percent in the budget year, as compared with 2007-08, and, assuming only minimal future intra-branch transfers and no available reserves, the reduction will grow to 14.5 percent in 2014-15.

**Chart 3: How Trial Court Allocations Have Been Reduced
FY 2007-08 to 2014-15 (State Funds, in Billions)**



Source: Data from Governor's Budget Summary -- 2013-14; May Revise 2012-13; 2014-15 estimates by AOC

It is important to note that these reductions described above, as significant as they are, do not tell the whole story. The trial court budgets in fact contain a number of line items that the courts do not have the ability to reduce. These include constitutionally-set judicial salaries (\$307 million), funding for court interpreters (\$93 million) and funding for court appointed counsel (\$104 million).⁴⁰ Contra Costa Presiding Judge Barry Goode notes in this regard that if such mandated expenditures are removed from the trial courts' budget, the remainder is the funding that the trial courts have the discretion to reduce. Judge Goode suggests that taking this so-called "discretionary" budget view shows that the cuts to the trial courts, as compared with their 2007-08 budget, are actually more significant – 10.2 percent in the budget year, growing to 18.8 percent the following year (compared to 2008-09).

Reductions Facing the Supreme Court, the Judicial Council and the AOC. Some state-level judicial branch entities have also had reductions in their budget since 2007-08, though their percentage cuts have not yet reportedly been as large as the reductions to the trial courts. The Supreme Court's budget has reportedly been reduced 2 percent since 2007-08, while the budget for the courts of appeal has reportedly increased by 2.1 percent.⁴¹ During that same time, the budget for the Judicial Council and AOC has reportedly decreased by 6.7 percent (excluding a \$29 million appropriation for several trial court-level expenditures, which if included, as it is in the Governor's budget, would actually show a 15.6 percent increase.)⁴²

Additional Branch Cuts and Delayed Court Construction Projects. It is also important to reiterate that the budget cuts have not been the only reductions to the judicial branch. To help balance the state budget, construction funds have substantially been re-directed from court construction accounts to the General Fund – a \$40 million transfer in 2009-10, and a \$750 million transfer in 2011-12 (consisting of

a \$310 million direct transfer and a \$440 million loan). As a result of these transfers, as well as the proposal that the Long Beach Courthouse average annual \$60 million lease payments come from the court construction accounts and not the General Fund, the Judicial Council has reportedly cancelled construction of two small courthouses in Alpine and Sierra counties and indefinitely delayed 11 new courthouse construction projects in Fresno, Kern, Los Angeles, Monterey, Nevada, Placer, Plumas and Sacramento counties.⁴³ Thirty-five other construction projects, with a total projected cost of \$4.4 billion, are still apparently proceeding.⁴⁴ Moreover, as discussed above, by significantly depleting the construction fund accounts to help balance the state budget, these funds will be much less available to help alleviate ongoing cuts to the trial courts in the future. Unfortunately, it also seems likely that court construction costs will be higher when the economy rebounds in the future.

V. "The Real Story": The Impacts of Budget Cuts on Trial Courts, Parties and Access to Justice

A. Measures Taken by the Trial Courts to Absorb Recession-Caused Budget Reductions

In order to better understand the impacts of budget reductions on the trial courts, this Committee independently surveyed the 58 trial courts to assess what measures the courts report they have taken over the last five years to address the cuts. Responses were received from 55 of the trial courts, with the exception of the courts in Glenn, Lassen and Santa Barbara Counties.⁴⁵ Chart 1 (on page 2 of this paper) briefly sums up key service reductions made by trial courts across California. In short, the budget reductions have resulted in some courts: (1) closing their doors, some on selected days and others completely; (2) laying off or furloughing employees; and (3) reducing services, including substantial cuts to self-help and family law facilitator assistance, and providing fewer court reporters and court interpreters. As Chart 1 shows, the cumulative effect of these cost-reduction measures is that those who most depend upon the courts for timely and effective assistance are less able to access the justice system and obtain needed relief. (Committee staff has not studied how each court decided which steps to take (*e.g.*, layoffs vs. reduced hours), which job classifications were affected (*e.g.*, window clerks vs. self-help staff), which departments were chosen (*e.g.*, complex litigation vs. housing), nor the savings generated by each selected service reduction. It is hoped that at some point the AOC will be able to provide this information.)

Courthouses and Courtrooms Closed. As also noted in Chart 1, the judicial budget cuts have thus far reportedly led 43 superior courts to take the drastic measure of closing courtrooms or shuttering whole courthouses indefinitely. In the last five years, 46 courthouses, and 164 courtrooms, have reportedly closed across the state. An additional 8 superior courts informed the committee that they anticipate further courtroom and courthouse closures in the upcoming year.

The courtroom closures in Fresno provide a dramatic example of the impacts of trial court service reductions on the public. In the last five years, Fresno has closed 10 courthouses, including all 9 locations outside of the city of Fresno. The people who live in the outlying communities naturally feel the greatest impact from these cuts, particularly since Fresno lacks a comprehensive transit system. One of the outlying communities, Coalinga, for example, is over 70 miles from downtown Fresno, which greatly increases travel time and makes it extremely difficult for those people to rely on public transportation to get to the court. Los Angeles, in light of additional anticipated budget reductions, reportedly plans to close 10 of the 48 courthouses in the upcoming year, and an undetermined number of

courtrooms, which may result in a further elimination of staff.

Courtroom and courthouse closures typically save money if the associated personnel are eliminated. Otherwise, there may be no short-term facility savings associated with the closures if the state cannot quickly sell the building or get out of a long-term lease. Moreover, court closures do not of course reduce the courts' workload. When courthouses and courtrooms close, the cases that would have been handled at the closed facilities are reallocated to those remaining open. In addition, when outlying courts close, litigants living in those areas, particularly low-income parties who are unable to take additional time from work or lack reliable transportation, may find it literally impossible to access the courthouse.

Court Closure Days. Designated court closure days have become a hallmark of the state judiciary's budget response, and have been mandated both statewide and at the trial court level. In 2009-10, the Judicial Council ordered that all courts close on the third Wednesday of each month for 10 months.⁴⁶ In addition, many individual courts opted for additional court closures as a means of coping with budget cuts. While some courts have limited their closures to holiday periods, others have instituted more frequent, ongoing closures. For example, Placer instituted 12 mandatory closure days in 2011-12. Court closure days are almost always twinned with furlough days – unpaid days off – for court personnel, discussed below.

Like the indefinite closure of courtrooms, closure days do not reduce workload, they simply increase demand and delays on the days following the closure. A Judicial Council report reviewing the impact of the 2009-10 statewide closures found increased filing rates on days following closure days, increased caseloads on other calendar days, interruption of jury trials, courthouse congestion during closure weeks, extra security to manage increased traffic, and longer waits for trial and hearing dates.⁴⁷ The combination of increased demand and reduced services led to hours-long wait times, increased public frustration, staff burnout, and a growing inability to help those who come through the courthouse doors in need of assistance.⁴⁸

Layoffs, Hiring Freezes, and Unpaid Furlough Days. While layoffs may represent a last resort for many court administrators, it is clear that terminating employment generates significant budget savings in light of the very high proportion of operational costs dedicated to employee salaries and benefits, and some courts have elected to terminate the employment of selected staff.⁴⁹ Most layoffs are accompanied by courtroom closures, although committee staff have not studied the precise relationship, and it is hoped that the AOC will do so. For example, in 2010 Los Angeles closed 17 courtrooms and laid off 329 employees in order to offset budget cuts.⁵⁰ In 2011, San Francisco closed 14 civil courtrooms and laid off 75 employees.⁵¹

In addition, many courts have instituted a policy of maintaining vacancies, also known as “hiring freezes,” where courts decline to hire replacements when existing personnel leave. This practice, when combined with layoffs, has reportedly led to “astronomical staff vacancy rates” in many courts,⁵² such as Alameda, where the court's workforce has reportedly been reduced by 20 percent over the last three years. For courts that have been historically underfunded and were struggling to maintain basic services *before* California's budgetary woes began, such as San Joaquin, the inability to fill vacancies as they arise is particularly debilitating.⁵³ For these courts, there is a substantial risk that continued budget cuts will result in the discontinuance of the most basic services if they continue to implement the cuts as they have.⁵⁴

Another common method of reducing operational costs is the institution of unpaid employee furlough days, usually twinned with court closure days. Some courts have implemented voluntary policies, but many have mandated unpaid furlough days for court employees. For example, Fresno required 12 mandatory furlough days in 2009-10 and again in 2010-11. Contra Costa plans to require 10 annual mandatory furlough days through 2015-16. Most courts are reporting that they are significantly understaffed and increasingly unlikely to be able to serve the public effectively.

Reduced Court Clerk's Offices, Court Interpreters, and Court Reporters. In addition to operational closures, many trial courts have reduced services provided by court clerks, court interpreters, and court reporters. For example, in the last five years, 41 trial courts have reduced their clerks' office hours, including Contra Costa, which has reduced their hours by nearly 40 percent. An additional five trial courts anticipate reducing the clerks' office hours in the upcoming year. The result has been hours-long wait times, to the point that one Sacramento judge reported that "people are bringing lawn chairs to the court because of the long wait for civil services."⁵⁵ Committee staff have not studied the relationship between reduction in clerks' office hours and budget savings, and it is hoped that this type of information will soon be available from the AOC.

In addition, 36 trial courts have reduced expenditures for court reporters, and 30 trial courts have ceased providing court reporters for many civil proceedings.⁵⁶ In those courts, parties who wish to have an official record of proceedings must hire and pay the substantial cost of providing their own private court reporter.⁵⁷ It is expected that litigants in family law, most of whom are unrepresented, have been impacted most by the absence of court reporters because they lack the funds to pay for a private reporter. Lack of court-provided reporting services frustrates the goals of California's system of justice. Without a transcript of court proceedings, litigants are unable to appeal decisions, parties may be unable to draft orders effectively, and those attempting to recount what actually happened during proceedings – including jurors deliberating on the case – are unable to do so. Additionally, the Commission on Judicial Performance is concerned that lack of court reporters hampers its efforts to investigate and prove judicial misconduct.⁵⁸

The Crisis in Self-Help Service Reductions. In addition to reductions of court clerks, interpreters and court reporters, many courts have sadly reduced the services of their self-help centers and family law facilitators who help family law litigants, the vast majority of whom are unrepresented. Self-help centers assist unrepresented litigants obtain required forms and help them competently complete, file and serve their paperwork.⁵⁹ Self-help services save time and money, prevent delays, and facilitate the court process for those who cannot afford counsel. One judge in Sacramento has described self-help centers as a "salvation" in smoothing the handling of cases involving unrepresented litigants. In response to budget cuts, Placer has reduced its self-help services by over one-third, and completely eliminated its telephone help line.⁶⁰ Alameda's self-help center no longer provides required Judicial Council forms, but instead just provides a basic information sheet. San Diego's family law facilitator now fully serves 25 percent fewer litigants than five years ago, not because of reduced need, but because of budget reductions. These reductions some trial courts have made may prove to be penny-wise and pound-foolish in the longer run, creating additional workload for the court and delays for all parties, for example, when hearings must be continued due to lack of timely notice by unrepresented parties.

B. Measures Taken by the Administrative Office of the Courts to Absorb Budget Cuts

In response to reductions to the judicial branch budget, the AOC reports having implemented a number of cost-saving measures, including workforce reductions, hiring freezes, and furloughs, among others. According to the AOC, it has reduced its workforce to 802 employees (733 regular employees and 69 contractors) as of the end of 2012, with an ongoing hiring freeze on all but critical positions, effective since 2008-09.⁶¹ This reflects the elimination of 104 vacant positions and an additional 190 positions eliminated in 2011-12 through voluntary separation incentives, layoffs and other reductions.⁶²

The AOC further reports that additional cost-savings have resulted from: (1) implementing a 4.6 percent salary reduction for every employee due to mandatory monthly furloughs; (2) eliminating cost-of-living increases and reducing step increases; (3) merging divisions and eliminating some executive-level staff positions; and (4) establishing restrictions on committee meetings, travel expenditures, and educational and training programs.⁶³

C. How Court Service Reductions Have Impacted Particular Types of Cases, and Those Least Able to Hire Counsel

In almost all instances, court service reductions inevitably reduce the public's access to justice. In announcing the 2009-10 statewide court closures, then-Chief Justice Ron George bemoaned that loss of access:

[Each day the court is closed] an estimated 3 million cases will be delayed, 150 jury trials interrupted and 250 child custody cases unheard. Jails will be more crowded as arraignment and release dates are postponed; attorneys and their clients will be inconvenienced, as will jurors; and the public will experience longer lines, more delays and more crowded courtrooms.⁶⁴

Not surprisingly, the impact is greatest for those with the fewest resources and least able to fend for themselves. Well-off litigants and businesses can agree to use private judging if wait times are too long. If rural courthouses close, those with reliable transportation and those who can afford to take a day off of work can much more easily travel to the next closest courtroom. Self-help services are not necessary for parties who can afford attorneys. Lack of court-supplied court reporters is not too detrimental for parties who can afford to bring in their own reporters. The absence of a court interpreter presents no obstacle for those who are proficient in English. The negative impacts of service reductions are thus compounded for those most in need of justice from our courts.

Impact on Family Law Litigants and Domestic Violence Victims. In family law, where child custody, spousal support and child support orders impact the daily lives of parents and children, the effects of service reductions can be especially harmful. In a survey of California trial courts nearly 10 years ago, it was estimated that 67 percent or more of petitioners in family law cases were unrepresented by counsel at the time of filing.⁶⁵ This figure is widely believed to be significantly higher now. Cutbacks for self-help centers and family law facilitators are especially devastating for these families. Family courts are already an under-funded segment of the court system.⁶⁶ One experienced family law attorney notes that the reductions are putting families in more financial and social turmoil than ever before, even for those privileged enough to have legal counsel.⁶⁷ As systemic delays increase, this attorney is concerned that "children will spend months, if not years, in emotional turmoil in legal limbo because there are no

courtrooms available to hear their custody disputes.”⁶⁸ In some counties, it has been reported that courts are scheduling contested custody hearings one and a half years out,⁶⁹ while in other counties the wait for a court mediator in child custody and visitation disputes is now stretching to three or four months, creating greater risks and burden for the families and children involved.⁷⁰

These lengthy delays can cause concerned parents to take matters into their own hands. Parents awaiting hearings seeking to limit custodial rights of an abusive parent have been known to steal their own children, causing obvious havoc to all their lives.⁷¹ In another example, a victim of domestic violence was reportedly forced to sit by for eight months while custody of her children was given to her abuser until she could fight the restraining order he had filed against her after she left him.⁷² Needless to say, timely resolution of support matters is critical for families’ financial stability. Waiting months to modify an outdated support order after the supporting parent has lost her job “can cause extreme financial strain and sometimes homelessness.”⁷³ A stay-at-home parent, who needs child support and temporary spousal support after the primary wage earning spouse has left cannot afford to wait months for relief.⁷⁴

Likewise, domestic violence victims cannot afford to wait in line all day for restraining orders, only to be turned away and told to come back in the morning to wait in line all over again because the clerks’ office must close early.⁷⁵ A woman in a rural county who could not receive a restraining order because the court had reduced its hours of operation “spent the night with her child in a car rather than return home to a boyfriend she said physically and sexually abused her.”⁷⁶ In cases where victims of domestic violence seek protection from the court, service reductions and long waits for service can delay and discourage those seeking relief. As one service provider for domestic violence victims contends:

The self-help centers are crucial to access and empowerment. Sadly, the cuts in funding have made us less accessible and less effective. For our clients, just going to court is scary. The long lines are intimidating and the wait is especially hard for those clients who must bring small children. Often staffing is limited and the client feels confused and unable to deal with the forms herself. So she does what she has done for much of her life; she simply withdraws.⁷⁷

Budget cuts in dependency courts have also left judges with overcrowded calendars and not enough time to fully hear their cases, potentially putting abused children at further risk of harm.⁷⁸

Impact on Tenants in Unlawful Detainer Cases. As a result of the recession, many Californians struggle to pay their rent on time each month. Other families living in rental units may face eviction due to foreclosure on the owners.⁷⁹ These harsh economic realities have impacted both renters and the court system. Reduced self-help services and the growing delays in court give rise to troubling implications for low-income tenants who already face an uphill battle in eviction proceedings. In unlawful detainer cases, it has been estimated that 90 percent of tenants come to court without a lawyer, while 90 percent of landlords *have* a lawyer.⁸⁰ As discussed above, without meaningful access to self-help services, many self-represented litigants are simply unable to navigate through the court system. This results in confusion, frustration, and, in some cases, homelessness. In addition, some courts have proposed to consolidate eviction proceedings in courthouses located far from the residence of many tenants.

Impact on Business Litigation. Civil litigants who need to promptly resolve commercial disputes are also expressing heightened concern about the backlogs in court operations. Delay and uncertainty in

dispute resolution can lead to increased expenses and reluctance to transact business in the state. Where prospective litigation promises to be especially prolonged, businesses may often incur additional costs. When litigation delays threaten to stretch a case out for years, some companies will “entertain settlements that lack merit just because the company has got to get past the litigation morass.”⁸¹

VI. Impacts of Court Cuts Compounded for Legal Services Clients

As troubling as the court service reductions have been for the general public, they have been especially dangerous for poor people – because the neediest are the most vulnerable to loss of their legal rights and most require the courts' protection, and because the burden of court budget cuts in some counties may fall most heavily on services that are disproportionately used by low-income parties. Court functions that are particularly indispensable for low-income parties include self-help services, court interpreters, and court transcription services. Court proceedings that are particularly sensitive for poor litigants include housing eviction and domestic violence, among others.

California Continues To Suffer Under An Overwhelming "Justice Gap" In the Availability of Legal Services. Poor people have been doubly disadvantaged by cutbacks resulting from the economic recession. Not only have court functions been cut, funding has plummeted for the nonprofit legal aid organizations that provide free services poor people rely on for basic legal needs.

There has long been a dire need for civil legal services for poor Californians – especially underserved groups, such as elderly, disabled, children and people needing assistance with English. By many measures, California suffers from an overwhelming "justice gap" between the legal needs of low-income people and the legal help they receive. It has been estimated that the cost of closing the gap would amount to \$400 million. Even in the best of times, legal aid providers have been able to address only a fraction of the demand for help. Because of insufficient resources, legal services programs can offer assistance in only a few types of cases; many poor and moderate-income Californians do not qualify for services; and most of those who meet the strict eligibility limits and seek assistance regarding problems for which a legal services office provides service are nevertheless turned away, simply for lack of staff. Even those who receive services are frequently under-served with brief advice and consultation, rather than full and fair representation.

In light of the legal aid funding crisis discussed below, the justice gap is growing.

The Lack of Legal Services Has Negative Consequences For The Administration of Justice. Courts are facing an ever increasing number of parties who appear without legal counsel, largely because they cannot afford it. The unavailability of civil legal services not only disadvantages people with legal problems, it also burdens the system and impairs the administration of justice. Unrepresented litigants typically are unfamiliar with court procedures and forms as well as with their rights and obligations, which impedes their proceedings and consumes significant court resources. By requiring greater judicial resources, unrepresented parties also exacerbate the shortage of court personnel and judicial officers. Moreover, a lack of representation detracts from public confidence in the justice system when the financial situation of a party is more likely than the merits of an issue to determine the outcome. Opinion surveys show that public trust and confidence are negatively affected by impressions of procedural unfairness, and that the opportunity for people to be heard in a meaningful way is the biggest impediment to improved sense of procedural fairness. Disturbingly, opinion surveys show that more

than two-thirds of Californians believe low-income people usually receive worse outcomes in court than others.

The Collapse Of Bank Interest Rates Since Has Caused IOLTA Funding To Drop Over 75% To A Record Low. For over 30 years, the primary mechanism on which the state has relied to fund legal aid programs has been the Interest On Lawyer Trust Accounts (IOLTA) program, which collects bank interest paid on client trust funds held by lawyers. The historic plunge in interest rates now poses an unprecedented challenge to the premise that legal aid programs can rely on IOLTA funding to help maintain their essential mission.

It seems likely that when the IOLTA program was instituted in 1981, no one anticipated that bank interest rates would be virtually zero, as the federal funds rate has been (.25%) since the 2009-10 IOLTA grant cycle. As a result, IOLTA revenue has dropped over 75 percent – from \$20.2 million in 2007-08 to a record low estimated to be less than \$5 million in 2012-13. (See chart 4.)

Because interest rates are not expected to rise for the foreseeable future, legal aid programs in California will be provided with only a fraction of their usual IOLTA support unless other actions are taken. Moreover, legal aid programs cannot expect to replace that loss with other sources of funding because those sources are likewise diminishing. Federal funding from the Legal Services Corporation which forms the bulk of non-IOLTA funding for California legal aid programs has been down sharply over a number of year, as has private foundation and other charitable giving.

Legislative Intervention and The Prudent Use of Reserve Funds Have Partially Mitigated The Full Brunt Of This Reduction, But These Measures Have Been Temporary And Are Currently Scheduled To End. The Legislature and the State Bar have long been partners in an ongoing effort to ensure that basic legal needs of poor Californians are addressed, starting with the creation of the IOLTA program in 1981, as well as creation of the Equal Access Fund in 1999 which provides \$10 million in General Fund support, augmented by an additional amount of approximately \$5 million from a small percentage of first-paper filing fees (\$5 of the \$435 unlimited civil fee), for a total of approximately \$15 million distributed by a grant program under the auspices of the Judicial Council.

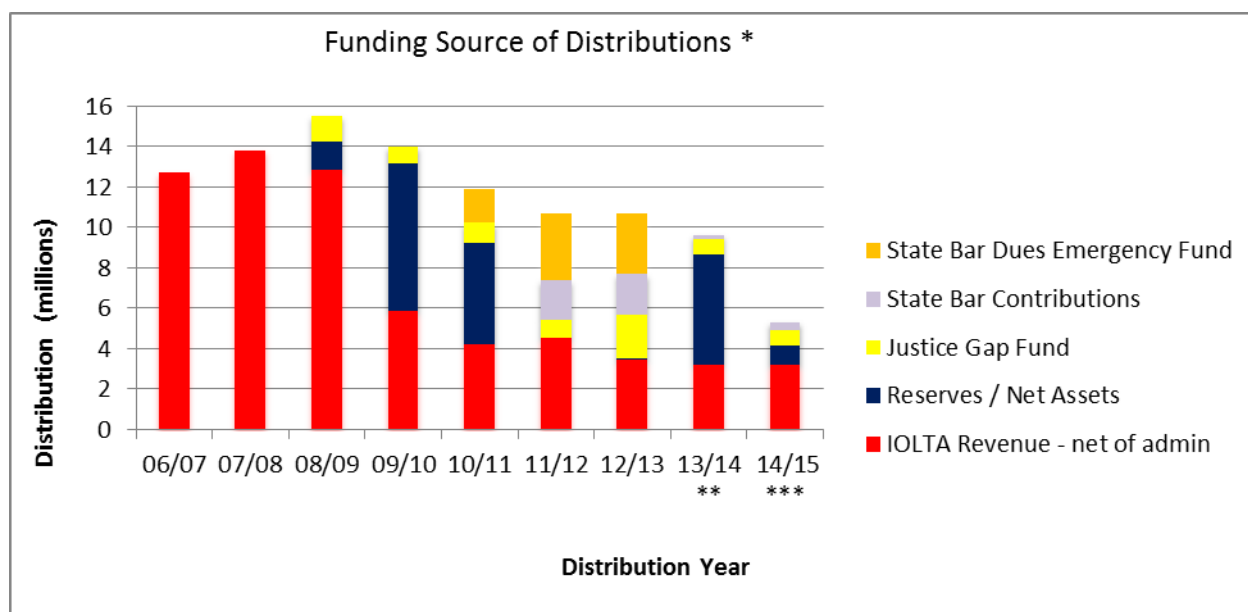
Over the past ten years, this Committee in particular has brought renewed legislative attention to the legal needs of poor people in California, and the struggles facing the nonprofit legal aid organizations that play a crucial role in helping to meet the promise of our national pledge to ensure equal justice for all. In a series of hearings, the Committee has examined the persistent and widening justice gap and has been instrumental in crafting a string of bills intended to address these needs, including AB 913 (Steinberg) of 2001 (requiring pro bono efforts by law firms that contract with the state); AB 2301 (Judiciary) of 2006 (establishing the Justice Gap Fund), AB 1723 (Judiciary) of 2007 (IOLTA interest rate comparability); AB 590 (Feuer) of 2009 (civil representation pilot); AB 2764 (Judiciary) of 2010 (establishing the Temporary Emergency Legal Services Voluntary Assistance Option until 2014); and SB 163 (Evans) of 2011 (amended in this Committee to enlarge the Temporary Emergency fund and obligate the State Bar to contribute \$2 million to the support of legal aid programs in both the 2012 and 2013 fiscal years).

Unfortunately, The Legislature's Historic Commitment To Support Legal Aid Is Now Threatened Because IOLTA Rates Have Not Rebounded And Recent Stop-Gap Measures Are Running Out. By

relying on these recent legislative intervention measures, and by the judicious use of reserve funds saved during better years, the Legal Services Trust Fund Commission of the State Bar has so far helped legal aid programs avoid the full brunt of the revenue plunge. Even so, however, total distributions using legislative augmentations and reserve funds have diminished by nearly 40 percent, from \$15.5 million in the 2008-09 funding cycle to an estimated \$9.6 million in the next grant cycle (2013-14). Nevertheless this strategy cannot continue. As indicated in Chart 4, reserves will be pushed out in the 2013-14 grant cycle, and effectively exhausted in 2014-15, at the same time that the Temporary Emergency Fund is currently scheduled to sunset.

Unless further urgent action is taken, IOLTA funding is projected to fall to an unprecedented low of \$5.3 million – a level just one-third of what it had been in 2008-09, which itself fell so far short of addressing the justice gap that policymakers called for action. Moreover, this funding reduction is threatened despite the increased need and expected federal funding cuts. By comparison, IOLTA funding was more than 4 times higher (approximately \$22 million) in the early 1990s when poverty rates and population were lower.

Chart 4: Reduced IOLTA Funds FY 2006-07 to FY 2014-15



** 13/14 grant distribution projected based upon 10% decrease from 12/13. Forecasted reserves/fund balances at July 1, 2013 are higher than originally projected due to State Bar Temporary Emergency Fund contributions being \$1.3 million higher than forecast and unanticipated Cy Pres funds received.

*** 14/15 Revenue, distribution, and federal funds rates are estimates. No specific distribution level has been approved.

VII. Possible Solutions to Mitigate Impacts of Court Budget Cuts

Reversing the trend of increased delay, lack of courtrooms, lack of court reporters, lack of self-help, and the attendant lack of access to justice in California’s trial courts will clearly require multiple solutions. Any successful effort to establish predictable, sufficient funding must include stabilizing the decline of the judiciary’s operating budget over the last several years, and hopefully minimizing the impending

precipitous funding drop in 2014-15. Restoring at least some of the reduced resources to trial courts, many court watchers argue, should be a top priority. However they also note that the likelihood of substantial increases in General Fund support for the courts appears uncertain. Regardless of the availability of additional funding, it will, court observers suggest, be crucial to implement additional operational efficiencies at both the trial courts and the AOC so that all resources will be used in the most cost-effective manner while maximizing Californians' access to justice. Finally, before reducing any more services, courts and the AOC will need to take steps to try to ensure that the reductions have the least impact on the public and its access to justice.

A. Restoring General Fund Support of the Judiciary Remains the Branch's Top Stated Priority

Restoration of General Fund support to the branch continues to be the Judicial Council's top expressed priority. While the Judicial Council concedes that, given the state's continued fiscal limits, a reversion to pre-2008 General Fund funding levels is not feasible⁸², the branch is still seeking an additional \$475 million from the General Fund in the budget year. Even as California's economy and state tax revenue have begun to improve, Governor Brown, in his State of the State Address delivered on January 24, 2013, nevertheless cautioned "The people have given us seven years of extra taxes. Let us follow the wisdom of Joseph, pay down our debts and store up reserves against the leaner times that will surely come." Thus, based on the Governor's warning, court watchers suggest it would be unwise for the judicial branch to count on significant increases in General Fund support for the courts, even as the economy hopefully improves.

B. Offsetting Lost Revenue with Special Court Funds and Local Reserves

Given that a complete General Fund restoration is at best uncertain in the current budget climate, a more immediate budgetary solution must, some suggest, at least consider the continued moving of existing court funds to areas of greatest need. However, as discussed above, both state-level funds and reserves have already been used to backfill lost funding to the trial courts and have been substantially depleted over the last few years. As a result, the cumulative balance of state judicial branch funds shrank from \$869 million in 2010-11 to just \$246 million this year.⁸³ While this is a significant reduction, there may still be some room for more transfers to help improve delivery of court services at the trial court level. However, local court reserves, which must be reduced to just one percent of allocation within the next year, will soon no longer appear to be a viable substantial source of backfill for trial court operations.

C. Finding Additional Revenue Sources

Increased civil fees represent another potential source of funding for trial court operations, a source that has been used repeatedly to make-up for lost general fund support in recent years. However, court stakeholders note that there is a limit to how much fees can be further increased, and they worry that limit may either have already been reached or surely soon will be reached. Since 2006, the Legislature has repeatedly increased fees, as well as criminal fines, for both urgent court construction needs and operational needs, with first paper filing fees for unlimited civil cases (including family law) up more than 35 percent over the last five years. Beginning last year, an additional \$50 million was raised for the trial courts through other, assorted civil fee increases. The Governor is again calling for fee and assessment increases in this year's budget, although the fees are all fairly minor and, taken as a whole, might raise only an additional \$5 million. Additional fees have been suggested from, among other

things, complex litigation and from state agencies that benefit from court activities, such as the DMV. However, court watchers worry that any further fee increases clearly should not impose an undue burden on litigants that could inhibit access to justice.

D. Creating Operational Efficiencies

As the judicial branch has struggled to absorb the ongoing reductions, individual trial courts have implemented various practices in order to cut costs and improve efficiency. In order to facilitate efficient practices at the trial court level, members of the Judicial Council's Trial Court Budget Working Group have been cataloguing the various measures taken by trial courts and sharing those alternatives with other courts in need of guidance. These cost-saving practices include more efficient mail processing, position restructuring at both the managerial and staff levels, consolidating the use of court reporters, investments in long-term cost-saving technologies such as advanced phone systems, use of electronic rather than paper library materials, consolidation of vendor contracts and intensified efforts in the area of collections.⁸⁴ Greater use of technology, such as electronic filing, could increase efficiencies, but some courts would need to make up-front, technological investments before they could recognize any savings.

In addition, court stakeholders suggest that the AOC also needs to continue implementing new ways to be more efficient with its resources. This may be found to include faster consolidation of some AOC programs and reductions in others, continued evaluation of its management structure, and reforms in its current executive compensation policies -- all with the goal of directing as many resources as possible to critically needed trial court operations, which also of course need similar reviews to maximize efficiencies and cost savings.

E. Producing Substantive Reforms and Efficiencies

While the operational efficiencies discussed above involve innovative techniques that could take place within the existing system, some have posited that achieving more substantial "efficiency" may require systemic reform. For example, *California Lawyer* queried prominent lawyers and judges about how best to address the state's funding crisis. At least three of the respondents proposed jury reform, including limiting preemptory challenges, using bench trials for misdemeanors, and using six-member juries rather than twelve-member juries in civil cases.⁸⁵ In addition to jury reform, other respondents suggested steering more backlogged cases to mediation. Clearly, such proposals would require fundamental and systemic changes that go far beyond the funding problem per se. However, since they could garner considerable savings, they will likely be part of the discussion about achieving court efficiencies.

F. Maximizing Access to Justice if Services Must Be Reduced

As discussed above, when courts reduce services in response to budget cuts, access to justice is at best diminished, and, at worst, nearly eliminated. If there is no alternative but to reduce services to the public, then commentators note that these reductions should be done in a way that maximizes access to justice. For example, closing courthouses and forcing those without adequate transportation to travel for half a day or longer to protect a child from an abusive parent or fight an unlawful detainer may effectively shut the door on justice. Likewise, eliminating court reporters and reducing self-help for those who can't afford counsel may prevent a parent from appealing an incorrect child custody or

support order. Thus many urge that before courts reduce access to justice any further, they should be required to consider all the alternatives and best practices by other courts to do their best to ensure that cost-cutting measures do not effectively close courthouse doors to all but the wealthy.

VIII. Possible Solutions to Mitigate Legal Services Funding Cuts

California is not alone in its reliance on IOLTA funding, nor is it unique in its suffering as the result of the free-fall in interest rates. Virtually every state has faced the same emergency. Many have responded with a variety of efforts to staunch the hemorrhage. Most of the methods adopted in other states, such as IOLTA comparability (requiring that IOLTA accounts be treated comparably to other bank products) and voluntary charitable giving programs, have already been employed in California. Other approaches would appear to be unavailable as a practical matter. One of the most common approaches has been to increase court filing fees to provide supplemental funding to legal aid. For example, Maryland nearly doubled civil filing fees with a surcharge designated for the support of legal aid groups. Other states, such as Alabama, have raised funds by increasing the *pro hac vice* fees that out-of-state attorneys must pay to appear in court. In California, both of these fees have been raised in recent years for the purpose of stemming the courts' budget shortfall, making it unlikely that a significant increase in these fees could be sustained to support legal aid programs – especially in light of the courts' continuing needs.

Other than court filing fees, one of the most widely adopted approaches across the country has been to raise attorney license fees specifically for the purpose of funding legal aid programs. A number of states, such as Pennsylvania, Texas and Wisconsin, have done so after unsatisfactory experience with voluntary programs. Others like Illinois and Massachusetts have done so specifically in response to the IOLTA funding crisis. Minnesota has had such a fee since 1997, but increased it because of the decline in IOLTA revenues. According to research conducted by the State Bar, these fees range from \$20 to \$95 per year.

A number of states have also looked to attorneys to help address legal needs by providing pro bono services or making financial donations to legal aid organizations that are recognized as contributing to their pro bono goals. Some states specifically recognize that charitable contributions can be considered toward meeting pro bono goals under rules based on ABA Model Rule of Professional Responsibility 6.1. California currently has such a policy under Bus. & Prof. Code sections 6072 and 6073.

A related movement has been to require lawyers to report their pro bono contributions and services. While both pro bono services and financial contributions are mostly voluntary (New York has recently adopted a mandatory pro bono requirement for newly admitted lawyers), some states have required lawyers to file mandatory reports showing their hours of pro bono work and dollar contributions to legal aid organizations each year, even if they have nothing to report. Tennessee was the most recent state to do so this year, bringing the total number of "mandatory reporting" states to at least 8 since Florida first adopted this policy in 1994. It has been reported that states that have adopted this approach have achieved substantial increases in both the amount of pro bono work and financial contributions.

California has not considered either mandatory pro bono or mandatory reporting. California does ask lawyers and law firms with large state contracts to certify that they will make "good faith efforts" to provide pro bono services and financial contributions at specified targets based on the dollar value size of the contract or the size of the firm. (Bus. & Prof. Code section 6072.) Although the actual number of

hours of pro bono services and contributions is to be taken into account by the state agency in determining whether the good-faith efforts goal has been satisfied, the Committee's research indicates that data on these points is generally not requested or maintained by state agencies, and the statute may not be well known or enforced.

Some states have discovered a new source of funding by dedicating a percentage of *cy pres* residuals remaining from unexpended funds left over from class cases where not all proceeds can be distributed. California law currently allows such undistributed residual funds to be used to promote justice for all Californians, but does not designate a percentage. (Code of Civil Procedure section 384.)

IX. Conclusion and Some Further Questions to Consider

While there appears to be general consensus that all three branches should work together to address the continuing deterioration in access to justice in California, many of the possible solutions reviewed in this paper are necessarily difficult and potentially inadequate. Exploring such options, and developing other ones, suggests continued consideration by all three branches of our government of a host of important questions, including:

- What is the possibility of increased General Fund support for the trial courts or other alternative funding to improve trial court funding in the future?
- Should funding be more equitably divided between the trial courts, and if so, how?
- Have civil and criminal courts thus far shared fairly in the distribution of costs and cuts, consistently with constitutional and statutory obligations?
- By what cost-benefit criteria have court service reduction decisions been made thus far, and are there any alternatives that might generate similar savings with less severe impacts on access to the courts, particularly among the most needy?
- What additional service reductions are likely to be imposed by each court in the absence of new funding?
- Regardless of available funding, should some sort of "access to justice standard" be developed that courts should meet before essential courtrooms and court functions are reduced?
- Is an adequate record of all trial court proceedings a necessary component of our judicial process, thereby requiring greater prioritization of court reporters?
- Is a court interpreter a necessary component of at least some civil proceedings for those who have not yet acquired proficiency in English?
- What is the impact on the administration of justice for unrepresented parties and all court users when self-help services are reduced or eliminated?
- What if any additional oversight should the Legislature engage in when overseeing judicial branch expenditures and programs, and which areas of oversight might be most effective in protecting access to justice?
- Should the Legislature review the ongoing implementation of the SEC recommendations that have been accepted by the Judicial Council, and if so, how and when?
- Given the recent controversies surrounding the court construction program and the recession-caused reductions in the program, should the Legislature more closely oversee court construction projects to ensure that increasingly scarce resources available to build new courthouses are used as efficiently as possible?

- How can the Legislature more effectively address the continuing crisis in legal aid funding, which has come about at the very time poor Californians and the courts most need this help?

These are just some of the many questions facing the judicial branch and California's long-cherished system of justice. In the final analysis, California's court funding challenge is a subset of the state's years of recession-caused budget crises confronting all aspects of public services. The resolution of the former is necessarily largely dependent upon the resolution of the latter. Redirecting finite funds or tapping dwindling reserves, which has substantially mitigated the worst of the cuts to the trial courts over the last five years, obviously cannot maintain a stable justice system, and will not be able to do so in the future. All three branches of state government must continue to work together to explore all available options for best sustaining our courts and the critical role they play in our democracy. And it will likely take all three branches working together to strive to guarantee that regardless of the amount of the cuts that the trial courts experience – including the large reductions poised to hit after next year – that trial courts have the ability to ensure that the very services that are most critical to court users, especially those with the fewest resources, such as self-help centers and court reporters, are not the first ones on the chopping block.

As famous Judge Learned Hand once said, and it may never have been truer in California than now, "If we are to keep our democracy, there must be one commandment: 'Thou shalt not ration justice.'"

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- ¹ Mac Taylor, Legislative Analyst's Office, *Completing the Goals of Trial Court Realignment*, at 4 (Sept. 2011).
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- ⁴ Gabrielle Tracey Letteau, *Crisis in California: Constitutional Challenges to Inadequate Trial Court Funding*, 22 HASTINGS CONST. L.Q. 557, 567-68 (1995).
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- ⁶ Judicial Council, *Special Report: Trial Court Funding* (Sept. 1997) at 2. See Appendix 1.
- ⁷ *Id.*
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- ¹³ SB 1407 (Perata), Ch. 311, Stats. 2008.
- ¹⁴ For a sampling of these judicial council branch accomplishments, see Appendix 2.
- ¹⁵ Strategic Evaluation Committee, *Report on the Administrative Office of the Courts*, May 2012, at 27.
- ¹⁶ California State Auditor, *Administrative Office of the Courts: The Statewide Case Management Project Faces Significant Challenges Due to Poor Project Management*. (February 2011), Report 2010-102, at 40.
- ¹⁷ *Id.* at 3.
- ¹⁸ AOC, *Status of the California Case Management System and the Phoenix Program 2012: Report to the Legislature* (December 2012) at 6.
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- ²⁰ See, e.g., Strategic Evaluation Committee, *Report on the Administrative Office of the Courts* (May 2012); California State Auditor, *Administrative Office of the Courts: The Statewide Case Management Project Faces Significant Challenges Due to Poor Project Management*. (February 2011).
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- ²³ AOC/Pegasus Global Holdings, Inc., *California Courthouse Capital Program Management Audit Report* (August 13, 2012) at 6-8.
- ²⁴ Legislative Analyst's Office, *Maximizing State Benefits from Public-Private Partnerships* (November 8, 2012) at 18. Available at http://www.lao.ca.gov/reports/2012/trns/partnerships/P3_110712.pdf
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- ²⁷ Strategic Evaluation Committee, *Report on the Administrative Office of the Courts* (May 2012) at 19.
- ²⁸ *Id.* at 5.
- ²⁹ *Id.* at 5.
- ³⁰ *Id.* at 6.
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- ³² *Id.* at 4, 6.
- ³³ *Id.* at 4.
- ³⁴ *Id.* at 69-70.
- ³⁵ *Id.* at 69.
- ³⁶ Senate Rules Committee, SB 1021 committee analysis (June 27, 2012).
- ³⁷ Judicial Council, *Trial Court Funding Workgroup—Charge, Composition and Activities*. Available at: <http://courts.ca.gov/partners/fundingworkgroup.htm>
- ³⁸ See Appendix 3, FY 2012-13 estimates.
- ³⁹ See Appendix 4.
- ⁴⁰ Governor's Budget Summary -- 2013-14. Available at http://www.dof.ca.gov/documents/FullBudgetSummary_web2013.pdf; Data on interpreters and appointed counsel supplied by the AOC.
- ⁴¹ *Id.*
- ⁴² *Id.*; data on the \$29 million augmentation supplied by the AOC.

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- ⁴³ AOC-Court Facilities Working Group, *Report to the Judicial Council* (January 17, 2013) at 3.
- ⁴⁴ See Appendix 5 for a summary of courthouse construction projects by court and current project status.
- ⁴⁵ Court responses are summarized in Appendix 6 and detailed on a court-by-court basis in Appendix 7.
- ⁴⁶ Judicial Council, *Court Closures: Evaluation of the Impacts of One-Day-per-Month Judicial Branch Closures* (2010), at 1.
- ⁴⁷ *Id.* at 13-15. For example, in Alameda County, “on the day after a court closure day, the average number of documents filed was 31 percent higher than the average Thursday of a typical five-day week.”
- ⁴⁸ *Id.*
- ⁴⁹ Amanda Bronstad, *L.A. Courts Move Forward with Cuts*, THE RECORDER, Mar. 18, 2010.
- ⁵⁰ *Id.*
- ⁵¹ San Francisco Superior Court, *News Release: San Francisco Reaches Agreement with AOC for Emergency Funding to Reduce Layoffs, Courtroom Closures*, August 31, 2011. Available at <http://www.sfsuperiorcourt.org/sites/default/files/pdfs/AOCAgreement.pdf>
- ⁵² *Hearings on California's Civil Justice Crisis*, Transcript of Dec. 7, 2011 hearing, at 25 (testimony of Justice Rivera). [hereafter “*Civil Justice Hearings*”] Available at <http://www.californiahearings.org>
- ⁵³ See Letter from San Joaquin County Presiding Judge Robin Appel and Court Executive Officer Rosa Junqueiro to the California Judicial Council.
- ⁵⁴ See *id.*
- ⁵⁵ William T. Robinson III, *Reduced Court Budgets Place Justice and Fair Play at Risk*, CAL. BAR J., Nov. 2011 (citing Judge Steve White).
- ⁵⁶ Cheryl Miller & Cynthia Foster, *Court Reporters Now a Luxury Item in S.F., Other Civil Courts*. The Recorder, Sept. 30, 2011.
- ⁵⁷ See, e.g., Superior Court of Cal., County of Napa, General Info, *Court Reporters*, available at <http://www.napa.courts.ca.gov/general-info/court-reporters>.
- ⁵⁸ Letter from Victoria B. Henley, Director-Chief Counsel of Commission on Judicial Performance, to Gov. Edmund Brown, Chief Justice Tani Cantil-Sakauye, Senator Darrell Steinberg, and Speaker John Perez (February 29, 2012). See Appendix 8.
- ⁵⁹ *Civil Justice Hearings*, Transcript of Nov. 15, 2011 hearing, at 98 (testimony of Diane Bras, Family Law Facilitator, Placer County Superior Court).
- ⁶⁰ *Id.* at 98 (testimony of Diane Bras, Family Law Facilitator, Placer County Superior Court).
- ⁶¹ AOC Executive Office memorandum, *How the Administrative Office of the Courts has Operationalized Budget Cuts Over the Last Four Years (2008-2009/2011-2012)*, May 24, 2012.
- ⁶² *Id.*
- ⁶³ *Id.*
- ⁶⁴ Chief Justice Ronald M. George, *In California, Justice Takes a Day Off*. Los Angeles Times, Sept. 14, 2009.
- ⁶⁵ Judicial Council of California, *Statewide Action Plan for Serving Self-Represented Litigants* (February 2004) at 11.
- ⁶⁶ Elkins Family Law Task Force, Final Report and Recommendations at 75 (AOC 2010).
- ⁶⁷ *Civil Justice Hearings*, Transcript of Dec. 7, 2011 Hearing, at 101 (testimony of Attorney Lauren Zorfias, former supervising attorney for the Family Law Facilitator and Self-Help Services at the San Mateo Superior Court).
- ⁶⁸ *Id.* at 102.
- ⁶⁹ *Id.* at 57 (testimony of Justice Laurie Zelon, Associate Justice, California Court of Appeal Second Appellate District).
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- ⁷¹ *Civil Justice Hearings*, Transcript of Dec. 7, 2011 Hearing, at 49 (testimony of Justice Laurie Zelon, Associate Justice, California Court of Appeal Second Appellate District).
- ⁷² *Civil Justice Hearings*, Transcript of Dec. 2, 2011 Hearing, at 100-104 (testimony of Erika Valencia).
- ⁷³ *Id.* at 99.
- ⁷⁴ *Id.* at 95.
- ⁷⁵ SEIU-California, *Trial Courts Held Harmless? Hardly*. See Appendix 9.
- ⁷⁶ Richard Zitrin, *Viewpoint: Lack of Court Funding Further Hampers Access*, The Recorder, April 13, 2012. Available at: http://www.ccplaw.com/attorneys/zitrin/TMC_2012-7-lack_of_court_funding_Hampers_access.pdf
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⁸⁴ Judicial Council, Transcript of Aug. 25, 2011 Meeting, at 18-30. Available at: http://www.courts.ca.gov/documents/082511_JCCA_transcript.pdf

⁸⁵ J.B. Powell (editor), *What Will It Take: Seven Perspectives on How to Solve California's Court Crisis*, California Lawyer (Nov. 2011) at 21-22, 26-28.