

The LITIGATOR

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ISSUE 3

State Trial Court Funding

The Trial Court Funding item provides state funds for support of the state's local trial courts. The proposed total budget is \$2.2 billion for the state's trial courts.

This amount is a decrease of \$37.1 million, or 1.6 percent, from anticipated expenditures in the current year. The General Fund portion is proposed to increase by \$64 million, or 6.1

percent to \$1.1 billion. The General Fund increase is due to the restoration of various one-time reductions taken in the current year.

TRIAL COURT FUNDING — PROGRAM EXPENDITURES

Program	Expenditures (dollars in thousands)			Change	Percent
	2002-03	2003-04	2004-05		
Trial Court Operations	\$1,831,316	\$1,951,071	\$1,962,219	\$11,148	0.6%
Salaries of Superior Court Judges	213,423	216,447	226,601	10,154	4.7%
Assigned Judges Program	17,684	19,740	20,640	900	4.6%
Court Interpreters	59,674	68,036	67,735	-301	-0.4%
Unallocated Reduction			-59,000	-59,000	n/a
TOTALS – Trial Court Funding	\$2,122,097	\$2,255,294	\$2,218,195	-\$37,099	-1.6%

TRIAL COURT FUNDING – SUMMARY OF EXPENDITURES

Fund	Expenditures (dollars in thousands)			Change	Percent
	2002-03	2003-04	2004-05		Change
General Fund	\$1,092,413	\$1,051,654	\$1,115,678	\$64,024	6.1%
Trial Court Improvement Fund	101,290	132,148	106,660	-25,488	-19.3%
Judicial Administration Efficiency and Modernization Fund	43,742	29,822	34,122	4,300	14.4%
Less funding provided by the General Fund	-26,122	-29,822	-34,122	-4,300	14.4%
Trial Court Trust Fund	1,977,065	2,097,449	2,071,858	-25,591	-1.2%
Less funding provided by the General Fund	-1,066,291	-1,018,832	-1,076,000	57,168	5.6%
Judicial Branch Workers' Compensation Fund	0	-7,125	-1	-7,124	-100%
TOTALS – Trial Court Funding	\$2,122,097	\$2,255,294	\$2,218,195	-\$37,099	-1.6%

HIGHLIGHTS

- An unallocated reduction of \$59 million, or 2.6 percent of the total trial court funding budget.
- A loan of \$30 million from the State Court Facilities Construction Fund to the General Fund. The Administration has indicated that the State Court Facilities Construction Fund will have sufficient resources to begin transferring court facilities from the counties to the state in the budget year pursuant to Chapter 1082, Statutes of 2002.
- A General Fund increase of \$2.6 million to comply with a statutory requirement to reimburse trial courts for costs related to hearings or trials for crimes committed in a state prison. A corresponding reduction is

proposed for the budget of the Department of Corrections.

Projected Shortfall for the Trial Court Trust Fund in the Current Year. The Administrative Office of the Courts (AOC) estimates that the Trial Court Trust Fund (TCTF) will face a projected operational shortfall of \$39 million in fiscal year 2003-04. Much of this estimated shortfall (\$38.6 million) is due to a shortfall in new fee revenue (\$24.2 million), a shortfall related to a loan from the State Court Facilities Construction Fund (\$9.4 million), and a transfer to the Judges' Retirement System (\$4.3 million). Because the AOC estimates that the TCTF will

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State Trial Court Funding

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be fully depleted in the current year, to the extent that the revenue projections do not change and no additional funding is provided to backfill these shortfalls, reductions to trial court operations would need to be made.

Fee Revenue Shortfall. In order to minimize reductions to the budget for the trial courts last year, the Legislature increased certain court fees and dedicated the new revenue to the TCTF. The fee increases included increasing the trial motion fee, the filing fee for limited jurisdiction cases, the small claims filing fee for filers of over 12 cases per year, the summary judgment fee, certain court reporter fees, certain probate filing fees, establishing a complex litigation fee and a continuance fee, and transferring certain undesignated fees from counties to the courts. The budget assumes revenues of \$149.1 million in 2003-04 from these fees. As of December 29, 2003, the AOC projects actual revenues of \$124.2 million in 2003-04, or a shortfall of \$24.9 million. The AOC indicates that the projections are based on data from three months and that the projections may change with additional data.

Loan from the State Court Facilities Construction Fund. The Budget Act of 2003 included an \$80 million loan from the State Court Facilities Construction Fund to the state General Fund. The loan was structured such that the \$80 million was taken from the TCTF, to be replenished by projected revenues going into the State Court Facilities Construction Fund. Those revenues are coming in below the levels projected last year by DOF. The budget proposes transferring only \$70 million to the TCTF, with the result is that the TCTF would have to absorb a \$10 million shortfall. The most recent projections reduce the shortfall to \$9.4 million.

Transfer to the Judges' Retirement Fund. For the 2003-04, General Fund expenditures for Judges' Retirement System (JRS) are anticipated to be \$88.6 million. Last year as part of the Governor's May Revise, the Legislature approved a reduction of \$10.3 million for the JRS, leaving a fund reserve equal to one month of expenditures. DOF now estimates that based on revised actuarial information, there will be a current year shortfall of \$4.3 million for the program. The DOF is funding this shortfall in JRS through a transfer of \$4.3 million from the TCTF.

Budget Year Fiscal Challenges. The trial courts will face a number of fiscal challenges in the budget year.

Budget Year Unallocated Reduction. The budget for 2004-05 proposes an ongoing unallocated reduction of \$59 million from the Trial Court Funding budget item. For 2003-04, the Trial Court Funding budget item took a one-time \$85 million unallocated reduction. The actual reduction to the trial courts' operating budgets amounted to \$59.8 million as a result of other reductions, including \$10 million from judicial salary savings, \$10 million from the Trial Court Improvement Fund, \$4.3 million from the Judicial Administration Efficiency and Modernization Fund, and \$900,000 from the Assigned Judges program.

Budget Year Fee Revenue Shortfall. The AOC currently estimates a shortfall of \$9.1 million in 2004-05 from fee revenues going into the TCTF. This amount includes AOC projections that the new fee revenues will be \$8.2 million lower than assumed in the 2004-05 governor's budget.

Proposed Transfer to the JRS. The budget proposes transfer of \$27.6 million from the TCTF to address a funding deficiency in the JRS. For 2004-05, the budget estimates total General Fund expenditures of \$116.2 million will be needed for the JRS program. Similar to the current year, this amount would leave a one-month reserve for the fund. Of the \$116.2 million, the Administration proposes maintaining the current year level of General Fund at \$88.6 and transferring \$27.6 million from the General Fund appropriation to the TCTF to make up the balance. This proposal would carry forward the current year action to fund the deficiency in the JRS program with operating funds for the trial courts.

Unfunded Budget Requests. On top of these reductions, the AOC notes that the courts will face a number of significant cost increases that are not currently funded in the budget, such as court staff salary, benefit, and retirement costs, workers' compensation costs, security cost increases, and increased county charges. The AOC, on behalf of the Judicial Council submitted budget requests totaling \$175 million for these types of cost increases that are not included in the current budget proposal.

What is the Impact of Reductions on Court Operations? In order to achieve any necessary reductions, the AOC indicates that the trial courts are likely to continue measures being used to meet reductions in the current year, such as hiring and promotion freezes, furloughs, reducing training and travel, reducing office expenses, and deferring equipment purchases.

The AOC reports that these types of reductions have resulted in case processing backlogs for all types of cases. The following is an overview of the information provided by the AOC related to the impact of the unallocated reductions on case processing backlog as reported by local trial courts.

- **Traffic** – Courts are experiencing backlogs of as much as 3 months in inputting traffic citations into the system. Courts have reported between 1,800 and 5,000 unprocessed citations. This causes problems because customers cannot pay the fines if the citation is not entered into the system, which interrupts the courts' revenue stream.
- **Hiring freeze** – Courts are experiencing high vacancy rates as a result of budget reductions. One court indicated a vacancy rate of 20 percent for both clerical and management classes. In addition, courts have redirected management staff to perform clerical duties, including processing documents, working at the public counter, assisting in courtrooms, pulling calendars, answering telephones, and data entry.
- **Hiring freeze** – Courts report that staff morale is low as a result of the increased workload, and that there has been an appreciable increase in workers' compensation claims related to stress, and repetitive motion injuries.
- **Reduced hours of operation** – Courts have reduced the hours the clerk's office is open to the public in order to allow staff to uninterrupted time to process their work.
- **Family Law** – There is an increased backlog for appointments with a child custody mediator. The length of time between the original filing and mediation appointments has increased. In addition, there is a backlog in putting the documents in the file in time for mediation appointments and court hearings.
- **Family Law** – Courts do not have staff to perform database searches in instances where a criminal protective order is issued, as mandated by California Rule of Court, to determine if there are other protective orders, or custody or visitation orders involving the same parties.
- **Juvenile** – Minute orders are increasingly backlogged. This impacts the implementation of family unification plans in dependency cases.
- **Juvenile** – Dispositions of cases by juvenile clerks has backlogged due to increased workload resulting from state mandated implementation of juvenile disposition reporting to the Department of Justice. (Dispositions must be reported to DOJ within 30 days.) This is related to the budget reductions because hiring freezes have diminished the number of staff available to process the dispositions.
- **Civil** – Backlog in indexing new cases, processing research requests and reviewing and entering register of action information on motion documents is increasing. This has resulted in documents not being in case files in time for consideration in court hearings.
 - **Criminal** – Increased local costs due to delays in preparing state prison commitments and other prisoner transportation orders.
 - **Criminal** – Post-sentence failures are backlogged.
 - **Criminal** – Delays in reporting case dispositions has resulted in inaccurate or incomplete records at DOJ or the Department of Motor Vehicles.



*The 2004 SCA Officers and Board
cordially invite you to the
2nd Annual
Spring Reception & Silent Auction*

Date: Thursday, May 20, 2004

Time: 5:30 p.m. to 7:30 p.m.

*Place: At the Home of Allan J. Owen & Linda K. Whitney
2515 Capitol Avenue · Sacramento*

*This reception is free to honored guests,
SCA members, and one guest per invitee.*

Hosted beverages and hors d'oeuvres will be provided.

Reservations should be made no later than

Friday, May 14, 2004

by contacting Debbie Keller at the SCA office at 916/451-2366.

We hope to see you there!

Margaret Doyle, President, & the Officers and Board of SCA

*All silent auction items have been donated and all proceeds will go to
Sacramento Food Bank Services.*

SCA RECEPTION AUCTION DONATION • SIGN-UP SHEET

SCA is holding its 2nd Annual Spring Reception scheduled for
Thursday, May 20, 2004 @ 5:30 p.m. @ Allan Owen's home.

A silent auction will be held which will benefit Sacramento Food Bank Services. The committee is seeking donated items for the auction. Examples of items are: 1) Event tickets (basketball, baseball, theater, etc.); 2) Golf at a private country club; 3) Lessons (ski (water or snow), sailing, hunting lessons, etc.); 4) Vacation home or timeshare; 5) Artwork; 6) Services.

If you are able to donate an item for the silent auction, please provide the following information:

Name: _____ Donated Item: _____

Details Re: Donated Item

1, 2, 3... hour _____ lesson, tickets for _____ game, _____ theater tickets, etc): _____

Minimum Bid Amount: \$ _____

Thank you! MARGARET DOYLE, SCA President • Please return by facsimile to Debbie Keller @ 916/451-2206.

Erisa Lien Alert!

BY GLENN H. EHLERS, ESQ.

At our Tahoe seminar in early March, Don De Camara gave us a great argument for defeating ERISA liens in their entirety. On March 24, 2004, the Ninth Circuit filed its Opinion in *Providence Health Plan v. Gary McDowell* 2004 D.J.D.A.R. 3663 which may render moot Don's argument. Essentially, the Ninth Circuit said that a health plan could go into State court to enforce a contractual lien notwithstanding lack of remedy under ERISA. The court did not find that there was total federal preemption and that a state contract claim could be brought. The court stated that its decision is consistent with the Supreme Court's ruling in *Great-West v. Knudson* 534 U.S. 204 and the previous Ninth Circuit decisions in *Cement Masons v. Stone* 197 F.3d 1003 and *FMC v. Owens* 122 F.3d 1258.

Don De Camara believes that the decision is wrong and should be reversed on Petition for Rehearing.

It appears that our choices at this point are to hold off resolution of ERISA liens pending a rehearing in *Providence* or attempting resolution by applying whatever arguments that have been working including applying Civil Code § 3040, which gives reductions for contractual liens, if applicable.



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We've Got Your Back!

BY JACK VETTER, SCA BOARD MEMBER

All of us get pressed and stressed at times. New challenges arise and we need some guidance, some reassurance, or some muscle. Setting up for trial or a mediation or a big deposition or a new case in a slightly new field can be daunting. Sometimes all we need is a fresh look at what we have and are doing.

One mission SCA takes very seriously is to provide service to its members so all of us are better prepared, more knowledgeable, and more effective in representing our clients. One of the ways that SCA has made that happen is to create a Mentor Program. Experienced attorneys have volunteered to provide tips and assistance one-on-one with members in need. The concept is to share ideas with another attorney on a more extensive and personal level than is available even at the monthly Q&A sessions. Of course, the earlier the call, the better.

Recently a case resulted in a verdict of approximately four times specials for an attorney who hadn't tried a case in the last six years and was swamped with ideas, problems, analysis, witness mechanics, and

expert timing issues just before trial. Wisely, a call to SCA President Margaret Doyle was passed to an able mentor, Allan Owen. With a little redirection, reassurance and some ideas about how to deal with the court, opposing counsel and the witnesses when an expert is reluctant to testify at trial, the insurance company was forced to pay considerably more by verdict than they had offered before trial. An excellent result was obtained by confident, able, and extra-prepared trial counsel.

It is an advantage to be part of an organization that supports you. The Mentor Program is a tool available only to SCA members. Like the email listserve, it makes us more powerful individually and as a group. We are more successful advocates... and more successful at our businesses. Why reinvent the wheel when that second opinion is readily available? Call our President, Margaret Doyle at 922-9301, our Executive Director Debbie Keller at 451-2366, Allan Owen at 444-0321 or me, Jack Vetter at 441-4441.



Calendar of Events ...

(Sacramento Consumer Attorneys' Upcoming Activities)

THURSDAY, MAY 20, 2004

2nd Annual Spring Reception & Silent Auction

Time: 5:30 p.m. to 7:30 p.m. Noon

Location: The home of Allan J. Owen & Linda K. Whitney

SCA Members & Special Guests

THURSDAY, MAY 27, 2004

SCA Problem Solving Clinic • "How To Get a Great Arbitration Award"

Speaker: *Allan J. Owen, Esq.*

Time: 5:30 to 7 p.m. • Location: Sacramento Courthouse

TUESDAY, JUNE 8, 2004

Q&A Luncheon • Time: 12 Noon

Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

THURSDAY, JUNE 24, 2004

SCA Problem Solving Clinic • "Premis Liability"

Speaker: *TBD*

Time: 5:30 to 7 p.m. • Location: Sacramento Courthouse

TUESDAY, JULY 13, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

TUESDAY, AUGUST 10, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

TUESDAY, SEPTEMBER 14, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

SATURDAY TBA, 2004

SCA Clinic • "Experts"

Speaker: *TBD*

Time: 9:00 a.m. to 12:30 p.m. • TBD

SATURDAY, OCTOBER TBA, 2004

SCA Problem Solving Clinic • "Liens Update"

Speaker: *TBD*

Time: 5:30 to 7 p.m. • TBD

TUESDAY, OCTOBER 12, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

TUESDAY, NOVEMBER 9, 2004

Q&A Luncheon

Time: 12 Noon • Location: Mexico 70 (6601 Folsom Blvd.)

SCA Members Only

For reservations or more information on any of these events, contact Debbie at 451-2366

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Tahoe Ski Seminar ...



*Bruce Brusavich
and Glenn Ehlers*



*Jill Tellfer and
SCA President
Margaret
Doyle*



*Don
Dacamera
and Dan
Wilcoxon*



*Curt Namba
(center) and John
Demas (right)
enjoy visiting with
another seminar
attendee*

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President's Message

By Margaret Doyle



The Tahoe Seminar was a huge success! For those of you who were fortunate enough to attend, you can certainly attest to the quality of the programs that were presented to the attendees. Many of our local Sacramento Consumer Attorneys volunteered their time and expertise on the educational panels at the seminar. I would like to thank Chris Kreeger and Jill Telfer for their efforts in assisting me as Seminar Co-Chairs. In addition, I am grateful to Board Members, John Demas, Glenn Ehlers, Craig Sheffer and Dan Wilcoxon who served as Seminar Committee Members. I would also like to give my special thanks to Lori Sarracino & Wendy Murphy of CAOC who

made my job easy. And, thank you to all of you who supported SCA by attending the seminar.

Our 2nd Annual Spring Reception & Silent Auction is scheduled to take place on Thursday, May 20th. Once again, this will be held at the home of Allan Owen & Linda Whitney, 2515 Capitol Avenue. Mark your calendar now! This is one event you do not want to miss. This year all proceeds from our Silent Auction will benefit the Sacramento Food Bank Services. Reservations should be made by contacting Debbie Keller at the SCA office at 451-2366. Also, if you have any items you can donate, please contact us at once. We are looking for any and all donations and thank you for your help!

See you on the 20th!



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