



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on August 25–26, 2016

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Title	Agenda Item Type
Court Facilities: Court-Funded Facilities Request Policy	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 26, 2016
Recommended by	Date of Report
Trial Court Facility Modification Advisory Committee	August 15, 2016
Hon. Donald Cole Byrd, Chair	Contact
	Enrique Villasana, 415-865-4040 <a href="mailto:enrique.villasana@jud.ca.gov">enrique.villasana@jud.ca.gov</a>

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### Executive Summary

The Trial Court Facility Modification Advisory Committee (TCFMAC) recommends revising the Court-Funded Facilities Request (CFR) Procedure to increase the small project budget maximum value from its current threshold of \$15,000 per project and to allow Judicial Council staff to approve CFRs. These procedural changes will allow trial court leaders to better plan their facilities financial contributions and see urgent facilities projects come to fruition as much as 45 days sooner than the current standard allows.

### Recommendation

The Trial Court Facility Modification Advisory Committee recommends that the Judicial Council, effective August 26, 2016, revise the Court-Funded Facilities Request Procedure to:

1. Increase the small project budget maximum value from its current threshold of \$15,000 to \$50,000 per project; and
2. Permit the TCFMAC to delegate its CFR approval authority to the director of the Judicial Council's Real Estate and Facilities Management (REFM) office.

The revised policy is attached at pages 4–8.

### **Previous Council Action**

At its August 23, 2013, meeting, the Judicial Council adopted a new CFR Procedure based on input from court survey responses (see Attachment A). The new procedure also delegated to the TCFMAC the authority to review and approve requests and required the committee to provide quarterly reports to the council on all CFRs granted during the previous quarter.

### **Rationale for Recommendation**

Increasing the threshold for small projects will allow more trial court projects to move toward execution more efficiently, rather than being held up in the committee approval process, which can take up to 60 days between meetings. In addition, in the three years since approval authority has been delegated to the committee, the committee has seen that in general the courts are fiscally responsible with the projects they wish to execute and have consistently provided thorough justification and urgency for the projects. Hence, the committee recommends delegating its approval authority to the REFM director. Staff will report on approved CFRs at committee meetings.

In fiscal year (FY) 2013–2014, there were 29 facility modification requests funded by the courts, with a total estimated cost of \$4.7 million, and 28 lease-related requests funded by the courts, with a total estimated cost of \$2 million. In FY 2014–2015, there were 25 facility modification requests funded by the courts, with a total estimated cost of \$10 million, and 23 lease-related requests funded by the courts, with a total estimated cost of \$5.9 million. In FY 2015–2016, there were 30 facility modification requests funded by the courts, with a total estimated cost of \$13.8 million, and 22 lease-related requests funded by the courts, with a total estimated cost of \$7.1 million.

Table 1. Data on Facilities Requests Funded by the Courts, by Fiscal Year

Fiscal Year	Facility Modification Requests		Lease-Related Requests	
	Number	Total Est. Cost*	Number	Total Est. Cost*
2013–2014	29	\$4.7 million	28	\$2 million
2014–2015	25	\$10 million	23	\$5.9 million
2015–2016	30	\$13.8 million	22	\$7.1 million

\* Total estimated cost.

The year-end deadline has proven to be the biggest push for CFRs, with the bulk of the year’s requests coming in at that time. An increase in the budget threshold would help mitigate the strain placed on courts and staff to fulfill CFR encumbrance requirements within a tight deadline.

## **Comments, Alternatives Considered, and Policy Implications**

The committee and Judicial Council staff have heard concerns about the CFR procedure from the courts and have determined that this revision is the best solution to address the concerns of the trial courts. The committee supports this revision because it will more expediently serve court needs. Further, the committee holds that the funds are ultimately the courts', and although oversight is needed, the history of the CFR program has shown court leadership to be largely responsible with their requested projects and expenditures.

The committee considered two alternatives to the proposed revision. The first was to leave the procedure unchanged. Doing so would result in no impact to the CFR process aside from continuing the growth trend and delays seen in recent years. The other alternative was only to increase the upper small project budget threshold. Although this change would aid in reducing the number of CFRs heard by the committee, a significant number of requests would still be made, particularly as courts increasingly make their project scopes more thorough and seek to fund larger facilities projects with court finances.

In addition to the TCFMAC's review of the proposed policy on July 22, 2016, and July 29, 2016, the policy was presented to the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Committee business meeting on August 4, 2016. The policy was also circulated to trial court leadership for comment from August 1–12, 2016. Two comments were received by council staff affirming the revisions. No other comments were received by staff. Attachment 2 details these comments.

## **Implementation Requirements, Costs, and Operational Impacts**

Upon implementation of the revision, courts will be able to submit CFRs up to the \$50,000 threshold, provided they have a small project annual budget intra-branch agreement in place. Although the committee will no longer be required to approve the projects, there will still be accountability via the standard quarterly informational reports to the Judicial Council as stated in the procedure. No costs are associated with implementing this revision.

## **Attachments**

1. *Court-Funded Facilities Request Policy*, August 4, 2016, Draft, at pages 4–8
2. Chart of Comments on Draft *Court-Funded Facilities Request Policy*, at page 9
3. Attachment A: *Court Facilities: Court Financial Contributions and Court-Funded Facilities Request (CFR) Form*, adopted August 23, 2013



# Court-Funded Facilities Request Policy

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AUGUST 4, 2016



JUDICIAL COUNCIL  
OF CALIFORNIA

## **Purpose and Scope of the Policy**

This Court-Funded Facilities Request (CFR) Policy presents the procedure and requirements to allow trial courts to make a court-funded facilities request to assist with the funding of certain facilities costs (i.e., facility modifications and lease-related costs) by allowing trial courts to contribute funds toward urgent facilities costs, not including capital outlay expenses, through allocation reductions from the Trial Court Trust Fund (TCTF).

For purposes of the CFR Policy, allowable facilities costs that a trial court can fund through a Court-Funded Facilities Request include (a) Facility Modifications as defined in the *Trial Court Facility Modifications Policy*, as adopted by the Judicial Council on July 27, 2012, including any subsequent revisions; (b) allowable court operations costs under rule 10.810 of the California Rules of Court; and (c) lease-related costs as stated herein.

At its meeting on August 23, 2013, the Judicial Council adopted a new CFR procedure as well as related delegations and reporting requirements. This July 2016 CFR Policy supersedes the previously approved 2013 CFR procedure.

## **Trial Court Funded Request Procedure**

1. **Submittal of CFR Application.** A trial court may submit a CFR application as follows:
  - a. The trial court's presiding judge, court executive officer, or written designee may submit a CFR application to fund facilities costs using the CFR form that has been approved by the Trial Court Facility Modification Advisory Committee (TCFMAC). The CFR application must include a statement that the trial court has verified its ability to meet the financial commitments relating to the CFR.
  - b. The CFR application must be submitted to the CFR e-mail inbox (CFR@jud.ca.gov). The inbox is managed by the Judicial Council's Facilities Project Management unit (FPM). FPM will confirm receipt to the sender.
  - c. Trial courts shall submit CFR applications before the CFR submission deadline as stated in the time schedule for submitting CFR applications provided to the trial courts by Judicial Council staff each fiscal year.
  - d. The CFR application must be consistent with the following:
    - i. CFRs shall fund only the following trial court facility needs:
      - A. Lease-related costs (i.e., lease payments and operating costs, repairs, or modifications authorized by a lease); or
      - B. Costs that are allowable court operations expenditures under rule 10.810 of the California Rules of Court (i.e., equipment, furnishings, interior painting, flooring replacement or repair, furniture repair, or records storage), to the extent that the trial court prefers to have Judicial Council staff handle the matter on its behalf; or

- C. Other facility improvements that are not allowable court operations expenditures under rule 10.810 (i.e., facilities operations, maintenance, repairs, and modifications but not capital projects), if they either improve a trial court facility's functionality or improve court operations.
- ii. If a CFR is for lease-related costs, the following conditions must be met:
    - A. The Judicial Council is either the tenant (or subtenant) under the lease or has accepted assignment of the lease;
    - B. The original term of the lease will not exceed five years; and
    - C. Any lease renewal (including renewals under an option contained in an existing lease contract) must be considered as a new CFR.
  - iii. Trial courts that wish to contribute funding in a fiscal year for multiple small projects that are non-lease items may expedite the approval process by submitting a single CFR, under the following requirements and procedures:
    - A. The CFR will propose a maximum fiscal year budget (i.e., the trial court's cumulative total financial contribution) for small projects for that fiscal year and subsequent fiscal years;
    - B. Following approval of that amount, the trial court will submit individual service work order requests, to be charged against its authorized maximum fiscal year budget as follows:
      - I. Individual service work orders may not exceed \$50,000;
      - II. Each service work order will identify the type of service requested and state whether the work is either allowable or not allowable under rule 10.810;
      - III. If the work is not allowable under rule 10.810, the service work order will provide a brief explanation of how the requested work will either improve a trial court facility's functionality or improve court operations;
      - IV. Once a maximum fiscal year budget for small projects has been approved, FPM, in coordination with the trial court, may approve individual service work order requests; and
      - V. FPM staff will report at each meeting of the TCFMAC on disposition of all individual service work order requests received since the committee's preceding meeting; and
    - C. A trial court's cumulative amount of service work orders for any fiscal year may not exceed the maximum fiscal year budget established in the original CFR unless an Intra-branch Agreement (IBA) has been amended to authorize a new maximum fiscal year budget.

- iv. Reduction of allocation. Any trial court submitting a CFR application must agree that its Trial Court Trust Fund allocation will be reduced during the period specified in the application, if approved, to meet the full financial commitment, notwithstanding any other court financial needs that may arise, because other court facilities funding sources are fully committed and therefore unavailable to replace a trial court contribution.

## 2. Judicial Council Review of CFR Application.

- a. *Director approval/disapproval.* Upon receipt of a trial court's CFR application, the Judicial Council's director of Real Estate and Facilities Management may approve or disapprove a CFR application applying the criteria herein while considering whether the proposed budget for the project is accurate. However, if the project results in an increase to ongoing operational costs to the Judicial Council beyond the initial outlay for the project (e.g., additional utility or maintenance costs), the director shall direct Judicial Council staff to forward the CFR application to the TCFMAC for approval or disapproval in lieu of the director's approval or disapproval. Once the director either (a) approves or disapproves a CFR application, or (b) determines that the project will result in an increase to ongoing operational costs to the Judicial Council beyond the initial outlay for the project (e.g., additional utility or maintenance costs), the Judicial Council staff will immediately notify the trial court of the director's decision and send a follow-up letter confirming the decision.

If the director has approved a CFR application, the CFR application is not required to go to the TCFMAC.

- b. *TCFMAC review.* If the director has concerns about whether the proposed CFR meets the criteria herein or whether the proposed budget for the project is accurate, the director may present those concerns to the TCFMAC, and the TCFMAC shall consider whether the CFR application should be approved.

If the director disapproves a CFR application, the applicable trial court shall have the right, but not the obligation, to appeal the director's decision to the TCFMAC. In the event that a CFR application is presented or appealed to the TCFMAC, the trial court may provide a statement and any documents in support of its CFR application.

In addition, the TCFMAC shall either approve or disapprove, in its discretion, any CFR application for which the project results in an increase to ongoing operational costs to the Judicial Council beyond the initial outlay for the project (e.g., additional utility or maintenance costs).

Once the TCFMAC either approves or disapproves a CFR application, the Judicial Council staff will immediately notify the trial court of TCFMAC's decision and send a follow-up letter confirming the decision.

- ## 3. Execution of Intra-branch Agreement.
- After approval of the CFR application by either the director or the TCFMAC, as applicable, and barring any unresolved concerns with respect to

the CFR application, the trial court and the Judicial Council will execute an IBA that authorizes the council to either (a) provide the services and materials necessary to complete the project(s) listed in the CFR or (b) enter into the lease or lease extension described in the CFR; directly pay the costs covered by the trial court's CFR from the TCTF; and reduce the trial court's distribution from the TCTF in the manner specified in the IBA. The Judicial Council shall not proceed with any of the project(s) listed in the CFR application (including executing any lease documents) until an IBA is executed by the trial court.

4. **Reporting.** The Judicial Council's Facilities Management Unit must report to the TCFMAC at each scheduled TCFMAC meeting regarding all CFRs approved since the last scheduled TCFMAC meeting. In addition, FPM must report to the council quarterly regarding all CFRs approved during the previous quarter. Those reports must specify the nature of the costs covered by each trial court's contribution, key terms for any leases (e.g., start and end dates of term, options to renew, early termination provisions, covered improvements, and total cost), and the total amount of the expenditure and allocation reduction for each CFR.
5. **CFR Application Form Revisions.** The council delegates to the TCFMAC the authority to approve revisions to the CFR application form as needed; however, the CFR application form must include a statement that the trial court has verified its ability to meet the financial commitments relating to the CFR. Trial court input will be sought before any revisions are made to the form.



## Comments Summary: Court-Funded Facilities Request (CFR) Policy

All comments are verbatim

	Commentator	Position	Comments	Responses from TCFMAC
1.	Hon. Liz Johnson Presiding Judge	A	<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF TRINITY</b> I gave this a brief review and think it's great. I expect my CEO will have additional thoughts. The only thing that made me think twice was paragraph 1.d.iv, concerning reduction of allocation. Is it possible to phrase this in a conditional way, so that it's not conceded that a court's allocation will be reduced unless the facilities funding sources are/remain fully committed? I just hate to give up the hope that this situation might turn around, and in that case, it would be good not to be locked in. Of course, this may be a naïve hope for the foreseeable future. Otherwise, thumbs up.	Recommended keeping the language as is in order for courts to understand the implications of the commitment they are requesting. Ideally the courts would consult with JCC staff to determine the project scope and determine what the JCC can fund. A CFR submittal would come after this consultation with the court if the JCC cannot fund the project and the court would be aware of cost.
2.	Bryan Borys, Ph.D. Senior Advisor	A	<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES</b> The Los Angeles Superior Court supports the proposed CFR request policy as distributed in your August 1, 2016, email.	N/A

### Response Totals

	Agreement	Do Not Agree	Position Not Specified	Total Respondents
<b>Totals</b>	2			2

#### Positions:

**A** = Agree with recommendations.

**D** = Do not agree with recommendations.

**N** = Position not specified.



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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 23, 2013

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Title	Agenda Item Type
Court Facilities: Court Financial Contributions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 23, 2013
Recommended by	Date of Report
Administrative Office of the Courts	July 23, 2013
Steven Jahr, Administrative Director of the Courts	Contact
	Judicial Branch Capital Program Office
	Gisele Corrie, Financial Manager
	916-263-1687
	<a href="mailto:gisele.corrie@jud.ca.gov">gisele.corrie@jud.ca.gov</a>

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### Executive Summary

The Administrative Office of the Courts (AOC) recommends that the Judicial Council adopt a new Court-Funded Facilities Request (CFR) Procedure enabling superior courts to contribute to certain future facilities costs via allocation reduction in specified circumstances, with previously approved court contributions continuing through the end of the approved project or current lease term. The AOC also recommends that the council make related delegations and require related reporting. Although legislation enacted in fiscal year 2012–2013 further reduced trial court funding and significantly restricted the courts' ability to carry fund balances, the AOC recommends adoption of a new CFR Procedure to provide courts an additional method of meeting their facilities needs where contributions remain feasible.

### Recommendation

The AOC recommends that the Judicial Council, effective August 23, 2013:

1. Adopt a new Court-Funded Facilities Request (CFR) Procedure for new superior court requests to contribute to urgent court facilities needs, not including capital outlay expenses, via allocation reduction, consistent with the guidelines and procedures specified below:
  - a. The court contribution will be used exclusively to pay for the following urgent court facilities needs:
    - i. Lease-related costs (i.e., lease payments and operating costs, repairs, or modifications required by a lease);
    - ii. Costs that are allowable court operations expenditures under rule 10.810 of the California Rules of Court (i.e., equipment, furnishings, interior painting, flooring replacement or repair, furniture repair, or records storage), if the court prefers to have the AOC handle the matter on its behalf; or
    - iii. Other facility improvements that are not allowable court operations expenditures under rule 10.810 (i.e., facilities operations, maintenance, repairs, and modifications but not capital projects), if they would improve a court's functioning or reduce ongoing court operating costs.
  - b. If the court financial contribution will pay lease-related costs:
    - i. The AOC holds or has accepted assignment of the lease;
    - ii. The lease term will not exceed five years; and
    - iii. Any lease renewal (including renewals pursuant to an option contained in an existing lease contract) must be considered as a new CFR.
  - c. Courts wishing to contribute funding for multiple small projects that are non-lease items in a fiscal year may expedite the approval process by submitting a single CFR, under the following procedure:
    - i. The CFR proposes a maximum fiscal year budget (i.e., the court's cumulative total financial contribution) for small projects that year;
    - ii. Following approval of that amount, the court will submit individual service work order requests, to be charged against its authorized maximum annual fiscal year budget as follows:
      - A. Individual service work orders may not exceed \$15,000.
      - B. Each service work order will identify the type of service requested and state whether the work is rule 10.810 allowable or unallowable.
      - C. If the work is rule 10.810 allowable, the service work order will provide a brief explanation of the reason that the court prefers to have the AOC handle the matter on its behalf.
      - D. If the work is not allowable under rule 10.810, the service work order will provide a brief explanation of how the requested work will improve the court's functioning or reduce ongoing court operating costs.
      - E. Once a maximum fiscal year budget for small projects has been approved, a regional manager for the AOC's Facilities Management Unit may approve individual service work order requests.
      - F. The AOC's Facilities Management Unit must report at each meeting of the Trial Court Facility Modification Advisory Committee on disposition of all individual service work order requests received since the committee's last meeting.

- iii. A court's cumulative financial contribution via service work orders may not exceed the maximum fiscal year budget established under the original CFR. Work requiring expenditures beyond that established budget will require a new CFR.
  - d. The court's presiding judge or court executive officer submits a CFR application demonstrating the court's ability to meet the financial commitment.
  - e. The AOC's Fiscal Services Office (FSO) will review the court's application and any other relevant information, may request further information from the court as needed, and will advise if it has concerns about the court's ability to meet the proposed financial commitment.
  - f. If there are no unresolved FSO concerns, the court will execute an intra-branch agreement with the AOC, authorizing the AOC to directly pay the costs covered by the court's CFR from the Trial Court Trust Fund (TCTF), making a corresponding reduction to the court's TCTF allocation.
  - g. Any court submitting a CFR application must agree that its TCTF allocation will be reduced, during the period specified in the application, if approved, to meet the full financial commitment, notwithstanding any other court financial needs that may arise, as other court facilities funding sources are fully committed and therefore not available to replace a court contribution.
2. Delegate to the Trial Court Facility Modification Advisory Committee the authority to approve CFRs under the new procedure applying the above criteria, with the AOC then making related payments from the Trial Court Trust Fund (TCTF) and corresponding reductions to courts' TCTF allocations. If the AOC's FSO has concerns about a court's ability to meet a proposed financial commitment, it may present those concerns to the Trial Court Facility Modification Advisory Committee, and the court may present a response.
  3. Instruct the Trial Court Facility Modification Advisory Committee to provide an informational report to the Judicial Council on a quarterly basis about all CFRs granted during the previous quarter, with reports to specify the nature of the cost covered by each court's contribution, the reason each request was considered urgent, and key terms for any leases (e.g., start and end date of term, options to renew, early termination provisions, total cost, covered improvements).
  4. Approve the revised CFR form, attached to this report, for courts' use.
  5. Instruct the AOC to pursue approval of the state Department of Finance (DOF) to transfer money in the TCTF to the Court Facilities Architectural Revolving Fund (Revolving Fund), under the new CFR Procedure, to cover rule 10.810 allowable costs associated with relocating to and/or equipping a different court facility associated with a move, and authorize the AOC to make such transfers with DOF approval.

### **Previous Council Action**

In October 2006, the Judicial Council, among other things, delegated to the AOC the authority, under Government Code section 68085(a)(2)(A), to (1) approve the direct payment or reimbursement of allowable costs from the TCTF to fund the costs of operating one or more trial courts upon the consent of the participating courts, and (2) make corresponding reductions to

courts' TCTF allocations.<sup>1</sup> Consistent with this delegation, the AOC adopted the original CFR Procedure, to assist courts by enabling their contribution to short-term facilities maintenance needs while the Judicial Council and the counties were negotiating the transfer of responsibility for court facilities.

As the CFR Procedure had been an interim measure, the transfer process had been completed, and new legislation had further reduced superior court budgets, imposing new limits on their ability to carry fund balances,<sup>2</sup> the Judicial Council discontinued the original CFR Procedure for all new requests on December 14, 2012, with a limited six-month exception, pending review. Under the exception, the council delegated to the Administrative Director of the Courts the authority to approve new CFRs in specified instances to avoid other greater costs between December 2012 and the date of the council's June 2013 meeting.

The council directed the Administrative Director to return at its June 2013 meeting with a report on (1) courts' outstanding financial commitments under the CFR Procedure, (2) the impact of recent legislation restricting courts' fund balances, and (3) the advisability of the council's approving a new policy permitting courts to make limited financial contributions to meet urgent facilities needs, consistent with guidelines and reporting obligations that the council might approve. Finally, the council delegated to the Trial Court Facility Modification Working Group (now an advisory committee) the responsibility for receiving regular reports about all court facilities leases and forwarding information related to those leases for council consideration and action as appropriate, and also approved a revised CFR form for courts' use until June 2013.

At its June 2013 meeting, however, the Judicial Council agreed to delay considering the CFR issue for two months, extending the delegation to the Administrative Director to approve new CFRs in the interim. The council approved this action so that the Court Executives Advisory Committee (CEAC) might review the Administrative Director's draft report and provide input. At the council's direction, the item was moved to the agenda for its August 2013 meeting.

## **Rationale for Recommendation**

### **Recommendation 1: Adopt a new CFR Procedure**

The Judicial Council discontinued the prior CFR Procedure for new requests in December 2012, pending review. As directed, the AOC surveyed the courts in the intervening period, seeking their input about whether they remain able to contribute to facilities costs via allocation reduction, whether the option should be preserved, and, if so, whether changes in procedure are recommended. The survey responses support adopting a new procedure with modest changes to improve the timeliness of CFR decision-making and the courts' receipt of information about related allocation reductions and distribution amounts.

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<sup>1</sup> See Judicial Council of Cal., mins. (Oct. 20, 2006), item G, numbered para. 13, at p. 38, available at [www.courts.ca.gov/documents/min102006.pdf](http://www.courts.ca.gov/documents/min102006.pdf).

<sup>2</sup> See Gov. Code, § 77203(b) ("Commencing June 30, 2014, a trial court may carry over unexpended funds in an amount not to exceed 1 percent of the court's operating budget from the prior fiscal year").

Although the significant reductions to superior court budgets have presented challenges, restrictions on the courts' ability to carry fund balances will not commence until June 30, 2014. With few exceptions noted below, courts generally report they remain able to meet existing CFR commitments and would like to preserve the option of contributing to future facilities costs, via allocation reduction, if they consider it necessary. Ongoing reductions to superior court budgets have not eliminated the need for many court leases, and new leases may be needed if existing facilities prove inadequate or insufficient. Court contributions to the costs of repairs and other needed facilities maintenance or modification, via allocation reduction, also assist in avoiding accelerated deterioration and increased expenses for the future. To the extent they remain feasible, court contributions assist in bridging the gap created by inadequate state funding for court facilities and the repeated redirection and borrowing from state court construction funds.

Although not every court will be financially able to take advantage of the CFR Procedure,<sup>3</sup> most courts responding to the AOC survey expressed the preference to preserve the flexibility that it affords. Given the few choices available, and the inadequacy of alternative funding sources, the AOC recommends adopting a new CFR Procedure with criteria described in the recommendations.

***Survey of superior courts about their current CFR financial commitments.*** Pursuant to the Judicial Council's direction at its December 2012 meeting, the AOC has surveyed superior courts, to gather all necessary information about the nature and extent of their outstanding financial commitments under previous CFRs and about their interest in the adoption of a new CFR Procedure, enabling them to contribute to facilities costs via allocation reduction going forward. The survey questionnaire sent to each court included information about the council's December 2012 decision, with a hyperlink to the council report, a summary of each individual court's outstanding CFR commitments, and a request for additional information to permit the council's informed consideration of the issue.

The survey asked each court to provide information, including:

- *For each lease assigned to the AOC (i.e., AOC is the named tenant):*
  - The purpose or use of the facility (e.g., courtrooms, offices, records storage, other court storage, or collections), with indication whether space is vacant;
  - Occupancy levels (e.g., the number of staff, full-time and part-time, headquartered at the facility);
  - Court expectations about when each lease might be terminated, given budget and other factors; and

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<sup>3</sup> Courts retain the option of making rule 10.810 allowable expenditures on their own, without resorting to the new CFR Procedure or an allocation reduction.

- Funding source for lease costs (e.g., the TCTF or Assembly Bill 1058 funding).<sup>4</sup>
- *For outstanding minor facilities improvements qualifying as allowable court operations costs* under rule 10.810 (i.e., equipment, furnishings, interior painting, flooring replacement or repair, furniture repair, or records storage):
  - The confirmed budget; and
  - The court's preference about continuing or modifying the terms of its existing agreement with the AOC.
- *For outstanding facilities work that does not qualify as allowable court operations costs* (e.g., maintenance or repairs, building modifications, and capital projects), the survey also noted each court's outstanding financial commitments.<sup>5</sup>

The following chart provides an estimated summary of current court financial commitments under the CFR program, for FYs 2012–2013 and 2013–2014.<sup>6</sup> Many of the commitments are one-time in nature, while others entail extended commitments (e.g., for leases and capital projects). Overall, 42 superior courts (72% of all superior courts) have agreed to contribute to their facilities costs, via allocation reduction in both fiscal years. Of that number, 31 courts (53% of all superior courts) are contributing to the cost of their facilities leases (71 leases) and anticipate having the same space needs for approximately 46 (65%) of those leases for the foreseeable future. The remaining courts reportedly do not intend to renew their leases.

Court-Funded Expense Type	Ongoing Expense	# of Courts Participating	# of Leases	Rule 10-810 Allowable	Reported Occupancy	FY 12-13 Budget	FY 13-14 Budget
AOC-Held Leases:							
Lease: Office/Courtroom/Miscellaneous Storage	X	26	41		520.3	5,669,000	5,298,000
Lease: New Judgeship	X	4	4		209.0	719,000	1,071,000
Lease: Parking	X	4	4		0.0	269,000	275,000
Lease: Court only funds specific cost (e.g., janitorial, maintenance, utilities)	X	5	6		298.0	156,000	158,000
Lease: Records Storage	X	10	15	X	25.5	1,161,000	1,410,000
Subtotal: All AOC Held Leases		31	70		1,052.8	7,974,000	8,212,000
Allowable court-operations costs, <i>not</i> including records storage (e.g., equipment, interior painting, flooring repair)	X	29		X		1,330,000	899,000
Unallowable court-operations costs, <i>not</i> including capital projects (e.g., facilities maintenance, repair, and modifications)		5				31,000	
Capital Projects	X	3				18,150,000	6,000,000
<b>Total Courts' Contributions/Commitments</b>		<b>42</b>	<b>70</b>		<b>1,052.8</b>	<b>27,485,000</b>	<b>15,111,000</b>

<sup>4</sup> AB 1058 (Stats. 1996, ch. 957) established a statewide Child Support Commissioner and Family Law Facilitator Program, which is grant funded.

<sup>5</sup> The survey did not ask the three courts contributing to capital projects or the four courts contributing to unallowable facilities work about ability to meet outstanding financial commitments. Two of the three courts with capital projects recently had covered the same topic for the Court Facilities Advisory Committee. The third does not currently rely on the CFR Procedure in making its contributions. For the four courts contributing, via allocation reduction, to costs of other unallowable facilities work costs, the cumulative outstanding financial commitment is small (\$31,000).

<sup>6</sup> The budget amounts noted in the chart are rounded to the nearest thousand.

The chart below provides further detail about AOC-held leases.<sup>7</sup> As shown below, 53 of the existing 70 court-funded leases (76% of the total) will expire in the next three years if not renewed. Of those leases, 30 have options to renew as part of the existing lease terms, although renewal may entail greater costs. Seven of the 70 leases (10% of the total) have terms extending five to eleven years, and most of those lack a lease provision permitting early termination, signifying that the AOC may have difficulty ending the leases and may have to pay penalties (or pay all rent due under the full term of the lease) if early termination were to become necessary.<sup>8</sup>

Overview of Current Lease Terms (AOC-Held Leases)	# of Courts Participating	# of Leases	# of Leases with Early Termination Provisions	# of Leases with Options for Renewal	Occupancy	FY 13-14 Budget
All Leases with terms ending within three years:	25	53	18	30	529.8	3,353,000
All Leases with terms ending between three and five years :	9	10	6	8	229.0	2,575,000
All Leases with terms ending between five and eleven years :	7	7	2	6	294.0	2,284,000
<b>Total AOC-Held Leases</b>	<b>31</b>	<b>70</b>	<b>26</b>	<b>44</b>	<b>1,052.8</b>	<b>8,212,000</b>

Only two courts reported concerns about their ability to meet existing financial commitments for leases. In one case, the court's lease extends six more years, through March 2019, with no provision permitting early termination. That court requested the AOC's assistance in reviewing options regarding the lease. Together, the AOC and the court identified the following options: (1) seek one or more entities to sublet the space; (2) terminate the lease and negotiate a termination penalty; or (3) retain the space and continue lease payments for six more years. The court is pursuing the first option at present. At the court's request, the AOC has engaged a real estate agent to seek entities interested in subletting the space. If that effort does not yield results, the court will remain in the space through the end of the term, and then consolidate operations into its remaining facilities. The second court is evaluating all existing leases and will make necessary adjustments after the FY 2013–2014 Budget Act is signed and the Judicial Council has determined its allocation.

***Superior court survey responses regarding adoption of a new CFR Procedure.*** The AOC's survey also asked courts whether they favored adoption of a new CFR Procedure and how such a procedure might be improved. In general, their responses on the first topic were affirmative. Some suggested that quicker decision-making and more timely information about related financial impacts would be helpful. Below is a summary of court responses on these issues.

- ***Adoption of a new CFR Procedure:*** Forty-five of the 58 superior courts (78%) responded to the question about adopting a new CFR Procedure. Of those, 33 favored the action, 3 were undecided, and 9 did not oppose ending the CFR Procedure. The courts that favored retaining it noted that the procedure (1) enables them to secure timely repairs and modifications, addressing health and safety concerns (e.g., permitting prompt repairs

<sup>7</sup> The budget amounts noted in the chart are rounded to the nearest thousand.

<sup>8</sup> Another court has a small annual financial commitment (about \$15,000 per year), which is to continue indefinitely, so long as the court continues use of certain secure parking for judicial officers and a Sally port.



following a fire or flood); (2) strikes a balance between state and local priorities, allowing courts to contribute to costs that are a local priority even if not sufficiently urgent to warrant priority in the competition for scarce statewide funding; and (3) enables them to draw upon AOC expertise in an area (facilities) with which courts have had little opportunity to become familiar. In addition, when questioned about equity issues raised by the CFR Procedure (e.g., better-funded courts having greater ability to address their own urgent facilities needs), some courts responded the concerns are mitigated by steps the Judicial Council and the Trial Court Budget Working Group (now an advisory committee) are taking to improve funding equity between courts.

For the three courts that reportedly were undecided about retaining a CFR Procedure, the primary issue was leases. Those courts wish to preserve an alternative method for funding leases to ensure their space needs are met, given scarce statewide court facilities funding. If the CFR Procedure is eliminated, some thought legislation might be proposed along with amendments to rule 10.810, together authorizing court spending in this area.

Of the nine courts that reportedly did not oppose eliminating the CFR Procedure, only one provided comments. That court indicated that it planned to terminate an existing lease. Given this fact and the state of its current budget, the court did not see a continued need for the procedure.

- *Improving the CFR Procedure:* Forty-three of the 58 superior courts (74%) responded to the question about improving the CFR Procedure. Of those, 28 expressed no concerns, while 15 recommended improvements. The latter group requested quicker notification about CFR decisions and a reasonable opportunity to review in advance both the specific costs covered by their contributions and the corresponding amount of proposed reductions to their TCTF allocations and monthly distributions. The AOC recommends that the Judicial Council delegate to the Trial Court Facility Modification Advisory Committee the authority to approve CFRs, because the committee meets at regular intervals, permitting predictability of decision-making and quicker reporting to courts. The AOC also has begun sending courts statements the month after requested facilities costs are paid, describing the covered costs and giving the amounts of the proposed corresponding allocation and distribution reductions *before* reductions are made.

**Recommendations 2–3: Delegate to the Trial Court Facility Modification Advisory Committee the authority to approve CFRs, with reporting requirements**

The Trial Court Facility Modification Advisory Committee oversees the judicial branch program that manages renovations, facilities operations, maintenance, and real estate for trial courts throughout the state. In December 2012, the council delegated to it the responsibility for

overseeing court facilities leases and forwarding related information to the council for information and action, as appropriate.<sup>9</sup>

As the proposed CFR Procedure would permit court contributions, via allocation reduction, to precisely the sorts of facilities costs (maintenance, repairs, renovations, and leases) that the committee oversees, it is best positioned to assist the Judicial Council by reviewing and approving requests. The committee meets at least eight times annually, generally every six to seven weeks. The frequency of its meetings would allow the committee to review CFRs in a timely manner. If this recommendation is approved, the AOC would post the committee's schedule on Serranus, with information about submission deadlines. It would then work with court requestors to ensure the committee has all necessary information about requests, preparing analyses to consider whether proposed expenses may be funded under the CFR Procedure if approved, courts' ability to meet proposed funding obligations, and the likely financial impact if a CFR is granted.

To ensure that the Judicial Council is informed and able to meet its statutory responsibility for overseeing superior court facilities,<sup>10</sup> the AOC further recommends that the Trial Court Facility Modification Advisory Committee report to the council quarterly about all CFRs granted in the previous quarter.

#### **Recommendation 4: Approve the proposed CFR Form**

The proposed revised CFR Form, attached, will assist courts by ensuring requirements are clearly stated and will assist the Trial Court Facility Modification Advisory Committee and the Judicial Council by ensuring both have all needed information to properly decide CFRs and oversee the CFR Procedure. The earlier version of the form was tailored for use during the six-month extension of the original CFR Procedure (December 2012 to June 2013),<sup>11</sup> and the Judicial Council had prescribed narrower limits for the procedure than those currently proposed. New lease costs could be funded, for example, only if the court contribution was necessary to avoid greater costs and courts could not contribute to other facilities costs that were not allowable under rule 10.810.<sup>12</sup> The revised form requests all information necessary to make an informed judgment about the CFR, applying the criteria described in Recommendation 1, above. It also provides contact information for AOC subject matter experts who can assist the courts in completing their requests.

#### **Recommendation 5: Seek approval to use the Revolving Fund and, if approved, authorize transfers**

<sup>9</sup> Judicial Council of Cal., mins. (Dec. 13–14, 2012), item V., numbered para. 4, at pp. 21–22, available at [www.courts.ca.gov/documents/jc-20121214-minutes.pdf](http://www.courts.ca.gov/documents/jc-20121214-minutes.pdf).

<sup>10</sup> See Gov. Code, § 70391 (The Judicial Council shall exercise full control over superior court facilities, establish policies and procedures to ensure courts have adequate and sufficient facilities, and manage court facilities).

<sup>11</sup> As noted above, the Judicial Council granted a further extension until August 2013.

<sup>12</sup> See Judicial Council of Cal., Rep., *Court Facilities: Court Financial Contributions and Judicial Council Oversight* (Nov. 29, 2012), at pp. 11–12, available at [www.courts.ca.gov/documents/jc-20121214-itemV.pdf](http://www.courts.ca.gov/documents/jc-20121214-itemV.pdf).

DOF approval of the AOC's transfer of money in the TCTF to the Revolving Fund, under the new CFR Procedure, would cover rule 10.810 allowable costs associated with relocating to and/or equipping a different court facility associated with a move. Appellate courts currently use this approach, as they do not have their own bank accounts and thus cannot carry forward fund balances from year to year. The trial courts are also interested in use of the Revolving Fund for this purpose as evidenced by responses to the survey.

The survey questionnaire sent to each court asked courts with active capital projects whether they would be interested in using a new CFR Procedure to transfer funds from the TCTF to the Revolving Fund, with corresponding allocation reduction, if DOF concurred, so that the money would be available to cover one-time costs of relocating to and/or equipping a facility associated with a move. Although the question was posed for those with active capital projects, a greater number of courts (45 of 58) responded. In the responses received, 23 courts expressed an interest in having the option, while 9 did not consider it necessary, and 13 did not think the option applicable to their current needs.

If the DOF approves use of the Revolving Fund as described, the AOC also will seek confirmation about whether money held in the Revolving Fund under the new procedure would be included when calculating the amount that a court may carry over to a new fiscal year. As noted, above, effective July 1, 2014, courts may only carry over unexpended funds amounting to one percent of their operating budgets.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

As noted, the AOC has surveyed all superior courts, requesting their input about the extent of their facility-related financial commitments, the advisability of the Judicial Council's adopting a new CFR Procedure, and potential improvements on the prior procedure. Of the 58 courts, 54 responded (93%). Those responses are summarized, above, in the rationale for Recommendation 1. The AOC also presented its proposed report to an ad hoc group of CEAC members on July 9, 2013, for review and comment and to the Trial Court Facility Modification Advisory Committee at its July 12, 2013, meeting. Both advisory committees approved the recommendations presented above.

### **Alternatives**

In preparing the recommendations, the AOC considered, but ultimately rejected, alternative proposals that the Judicial Council (1) decline to adopt a new CFR Procedure enabling courts to contribute funding, via allocation reduction, to cover the costs of their urgent facilities needs; (2) delegate authority to approve CFRs to another advisory body, such as the Court Facilities Advisory Committee; or (3) require more or less frequent reporting from the Trial Court Facility Modification Advisory Committee.

**No new CFR Procedure.** The AOC considered recommending against adoption of a new CFR Procedure for new requests. It does not present such a recommendation, however, because a

strong majority of the courts that responded to the survey favor adoption of the procedure (73% of those who responded, or 57% of all superior courts) to maximize the alternatives available for meeting court facilities needs going forward. The AOC concurs that the alternative is needed to avoid greater problems absent a legislative change permitting broader court spending on facilities,<sup>13</sup> which we understand to be unlikely in the near future.

Because alternative state funding sources are fully committed, if courts are not able to contribute funding for lease renewals, some will have to consolidate into inadequate remaining space, with attendant moving costs, branch closures, and reduced public services. Enabling courts to contribute, via allocation reduction, to unallowable rule 10.810 costs also makes it possible to address facilities needs that are a court priority and otherwise would be unmet due to inadequate state funding for court facilities. Enabling courts to contribute, via allocation reduction, to allowable rule 10.810 costs that they otherwise might pay themselves (e.g., interior painting or flooring repair) means savings for courts, as the AOC handles related work for them.

***Delegate CFR approval authority to another Judicial Council committee.*** The AOC considered recommending that the Judicial Council delegate authority to approve CFRs to another committee, rather than to the Trial Court Facility Modification Advisory Committee. It considered, for example, recommending that the delegation be to the Court Facilities Advisory Committee, which also provides oversight for facilities matters. The Court Facilities Advisory Committee is charged with overseeing new court construction, however, so it does not deal with ongoing leases or maintenance and modifications of existing facilities. As those topics are within the purview of the Trial Court Facility Modification Advisory Committee, it is the best equipped to oversee the proposed new CFR Procedure. Accordingly, the AOC recommends the delegation be to the latter committee.

***More or less frequent reporting regarding the CFR Procedure.*** The AOC considered recommending that the Trial Court Facility Modification Advisory Committee provide, at each Judicial Council meeting, an informational report about CFRs that the committee had granted since the previous council meeting. Given recent budget cuts and related AOC staffing reductions, however, the reporting requirements would be difficult to meet. The AOC also considered recommending that the committee report to the Judicial Council once, at the start of each fiscal year, about CFRs that it granted the previous fiscal year. Reporting only once annually, however, would not seem to ensure the council sufficient information about court facilities needs and financial contributions to meet statutory oversight responsibilities in these

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<sup>13</sup> See Gov. Code, § 77009; Cal. Rules of Court, rule 10.810; *Trial Court Financial Policies and Procedures Manual*, FIN 3.01, 6.3, para. 5 (collectively imposing limits on court facilities spending).

areas.<sup>14</sup> It also would not seem to provide the council adequate information about committee decision-making under the recommended delegation.<sup>15</sup>

### **Implementation Requirements, Costs, and Operational Impacts**

To implement the above recommendations, if approved, the AOC would have to gather, analyze, and report to the Trial Court Facility Modification Advisory Committee regarding all CFRs; purchase, provide, and manage facilities-related goods and services and leases; report to courts on the resulting costs and the corresponding proposed allocation and distribution reductions; direct and record those reductions; support the advisory committee in reporting to the council on a quarterly basis about all CFRs that are granted; and report to the advisory committee on service work order requests received since the committee's last meeting. The actions are recommended to ensure that the advisory committee and the council have sufficient information to fully oversee the proposed new CFR Procedure.

If the recommendation is approved, all courts will be able to rely on the AOC for purchase and management of facilities-related goods and services allowable under rule 10.810, thereby conserving their administrative resources, reducing overhead costs, and possibly increasing efficiency. Courts that have the financial resources may choose to address local facility-related priorities and contribute to other facilities costs (i.e., costs not allowable under rule 10.810, such as utilities, repairs, modification, and certain leases) that otherwise would not be possible, or would require significantly longer waits, if the only recourse were to existing state facilities funding, which is both inadequate and fully committed to projects deemed a higher statewide priority.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The recommended council actions support Goal III (Modernization of Management and Administration) and Goal VI (Branchwide Infrastructure for Service Excellence).

### **Attachments**

1. Court-Funded Request Form (revised)

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<sup>14</sup> See, e.g., Gov. Code, § 70391(e) (The Judicial Council must “[e]stablish policies, procedures, and guidelines for ensuring that the courts have adequate and sufficient facilities”); *id.*, § 68502.5(c)(1) (“The Judicial Council shall retain ultimate responsibility to adopt a budget and allocate funding for the trial courts” and shall perform other activities to assure courts can carry out their functions, and promote implementation of statewide policies).

<sup>15</sup> See, e.g., *County of Los Angeles v. Nesvig* (1965) 231 Cal.App.2d 603, 616 (In delegating authority, a public entity must retain sufficient control to “safeguard the public interest”).

# Judicial Council – Administrative Office of the Courts Court-Funded Facilities Request (CFR) Form

Superior Court of California, County of \_\_\_\_\_  
 AOC Building ID: \_\_\_\_\_ Building Name: \_\_\_\_\_  
 Court Contact Name and Title: \_\_\_\_\_  
 E-mail: \_\_\_\_\_ Telephone: \_\_\_\_\_

**Before completing this form, please contact AOC staff to discuss the court's facilities-related request and anticipated costs.** The following AOC staff can assist the court in developing cost estimates and securing related services:

- For lease-related costs: Eunice Calvert-Banks, 415-865-4048, eunice.calvert-banks@jud.ca.gov
- For other facilities-related services or work: please contact your AOC regional facility representative.

Please submit this completed form—via e-mail, fax, or regular mail—to:

Sarah Sanchez  
 Office of Real Estate and Facilities Management  
 Judicial and Court Administrative Services Division  
 Administrative Office of the Courts  
 455 Golden Gate Avenue  
 San Francisco, CA 94102-3688  
 Tel: 415-865-4021; Fax: 415-865-8885  
 E-mail: sarah.sanchez@jud.ca.gov

The Judicial Council has delegated to the Trial Court Facility Modification Advisory Committee the authority to approve new Court-Funded Facilities Requests (CFRs) if all of the following are true:

1. The court contribution will be used exclusively to pay for the following urgent court facilities needs:
  - i. Lease-related costs (i.e., lease payments and operating costs, repairs, or modifications required by a lease);
  - ii. Costs that are allowable court operations expenditures under rule 10.810 of the California Rules of Court (i.e., equipment, furnishings, interior painting, flooring replacement or repair, furniture repair, or records storage), if the court prefers to have the AOC handle the matter on its behalf;<sup>1</sup> or
  - iii. Other facility improvements that are not allowable court operations expenditures under rule 10.810 (i.e., facilities operations, maintenance, repairs, and modifications but not capital projects), if they would improve a court's functioning or reduce ongoing court operating costs.

<sup>1</sup> Courts retain the option of making rule 10.810 allowable expenditures on their own, without resorting to the new CFR Procedure or an allocation reduction.

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2. If the court financial contribution will pay lease-related costs:
  - i. The AOC holds or has accepted assignment of the lease;
  - ii. The lease term will not exceed five years; and
  - iii. Any lease renewal (including renewals pursuant to an option contained in an existing lease contract) must be considered as a new CFR.
3. Courts wishing to contribute funding for multiple small projects that are non-lease items in a fiscal year may expedite the approval process by submitting a single CFR, under the following procedure:
  - i. The CFR proposes a maximum fiscal year budget (i.e., the court's cumulative total financial contribution) for small projects that year;
  - ii. Following approval of that amount, the court will submit individual service work order requests, to be charged against its authorized maximum annual fiscal year budget as follows:
    - a. Individual service work orders may not exceed \$15,000.
    - b. Each service work order will identify the type of service requested, and state whether the work is rule 10.810 allowable or unallowable.
    - c. If the work is rule 10.810 allowable, the service work order will provide a brief explanation of the reason that the court prefers to have the AOC handle the matter on its behalf.
    - d. If the work is not allowable under rule 10.810, the service work order will provide a brief explanation of how the requested work will improve the court's functioning or reduce ongoing court operating costs.
    - e. Once a maximum fiscal year budget for small projects has been approved, a regional manager for the AOC's Facilities Management Unit may approve individual service work order requests.
    - f. The AOC's Facilities Management Unit must report at each meeting of the Trial Court Facility Modification Advisory Committee on disposition of all individual service work order requests received since the committee's last meeting.
  - iii. A court's cumulative financial contribution via service work orders may not exceed the maximum fiscal year budget established under the original CFR. Work requiring expenditures beyond that established budget will require a new CFR.
4. The court's presiding judge or court executive officer submits a CFR application demonstrating the court's ability to meet the financial commitment.
5. The AOC's Fiscal Services Office (FSO) will review the court's application and any other relevant information, may request further information from the court as needed, and will advise if it has concerns about the court's ability to meet the proposed financial commitment.
6. If there are no unresolved FSO concerns, the court will execute an intra-branch agreement (IBA) with the AOC, authorizing the AOC to directly pay the costs covered by the court's CFR from the Trial Court Trust Fund (TCTF), making a corresponding reduction to the court's TCTF allocation.

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7. Any court submitting a CFR application must agree that its TCTF allocation will be reduced, during the period specified in the application, if approved, to meet the full financial commitment, notwithstanding any other court financial needs that may arise, as other court facilities funding sources are fully committed and therefore not available to replace a court contribution.
8. If the AOC's FSO has concerns about a court's ability to meet a proposed financial commitment, it may present those concerns to the Trial Court Facility Modification Advisory Committee, and the court may present a response.

The Trial Court Facility Modification Advisory Committee will provide, on a quarterly basis, an informational report to the Judicial Council about all CFRs granted during the previous quarter, with reports to specify the nature of the cost covered by each court's contribution, the reason each request was considered urgent, and key terms for any leases (e.g., start and end date of term, options to renew, early termination provisions, total cost, and covered improvements).



**1. Indicate nature of urgent request (*check one*):**

- 2. Provide cost estimate, identify funding source, and attach documentation reflecting court's ability to meet financial commitment:**

Please identify the amount to be committed from each of the funding sources, which, when totaled, should equal the Estimated Cost.

☐ Attach documentation supporting the court's ability to meet its financial commitment through term of request (include cost-estimate calculations in Excel format).

- 3. Describe the costs that the court's proposed funding contribution would cover (attach additional pages if necessary):**

- Describe the planned use of the space (e.g., records storage, courtroom, offices); multi-use space should be separated by use with percentage of occupancy provided for each;
- State the start and ending dates of the lease term and any options for renewal;
- State the scope and cost of all Tenant Improvements to be performed on facility if lease is approved; and

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- State the number of court officers and staff to be located in the space. Note: For space to be designated as records storage, the duties of the staff in the building need to support records storage.
5. If the request would fund a rule 10.810 allowable cost, explain why the court prefers to have the AOC perform the required work on its behalf.
  6. Describe why the court deems the request urgent as well as the manner in which operations would be improved or costs reduced if the request is granted:
  7. Describe the court operations that this project will serve and any special considerations or features of the desired services that the court's contribution would fund:

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Signature of Presiding Judge or Court Executive Officer

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Date