



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on January 11–12, 2018

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Title

Trial Court Budget: Workload-Based  
Allocation and Funding Methodology

Agenda Item Type

Action Required

Effective Date

July 1, 2018

Rules, Forms, Standards, or Statutes Affected  
N/A

Date of Report

December 8, 2017

Recommended by

Trial Court Budget Advisory Committee  
Hon. Jonathan B. Conklin, Chair

Contact

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### Executive Summary

With a sustained lack of adequate and stable funding of the trial courts, the Trial Court Budget Advisory Committee recommends adopting new policy parameters for the Workload-Based Allocation and Funding Methodology (WAFM) to go into effect in fiscal year 2018–19 to continue making progress towards equity of funding based on workload. WAFM became effective July 1, 2013, with a council-approved five-year implementation schedule incrementally shifting funds using a recalculation of historical base each year, concluding in 2017–18. WAFM needs new policy parameters, effective 2018–19 and beyond, to further the objectives of the judicial branch in reaching workload-based equitable funding.

### Recommendation

Based on actions taken at its December 4, 2017, meeting, the Trial Court Budget Advisory Committee (TCBAC)<sup>1</sup> recommends that the Judicial Council take the following actions related to the Workload-Based Allocation and Funding Methodology (WAFM), effective July 1, 2018:

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<sup>1</sup> See attachment A for the membership roster as of September 15, 2017.

1. Approve new policy parameters for WAFM for use in allocating trial court operations funds starting in 2018–19;
2. Direct TCBAC to propose to the Judicial Council changes or modifications to the model as needed; and
3. Delegate authority to Judicial Council staff to make technical adjustments to the methodology as needed.

### **Previous Council Action**

Allocation of trial court funds is one of the principal responsibilities of the Judicial Council, and the council has taken a considerable amount of action since the enactment of the Lockyer-Isenberg Trial Court Funding Act in 1997. The most significant actions are identified below, ending with the landmark policy decision of the council to approve WAFM on April 26, 2013.

### **Trial court allocations before 2013**

- In 1998–99, the Judicial Council directed the Trial Court Budget Commission to allocate \$3 million in ongoing funding to address courts with insufficient resources. Twelve courts qualified for this funding.<sup>2</sup>
- Between 1998–99 and 2004–05, augmentations to trial court funding were provided through budget change proposals to the Department of Finance. The courts applied for funds based on Judicial Council priorities, and working groups made decisions on which of the applications to approve.
- In 2005, the Judicial Council approved the use of a weighted caseload study, the Resource Assessment Study (RAS)<sup>3</sup> to assess the need for trial court staff based on workload measures. The RAS model was used for three successive fiscal years, 2005–06 through 2007–08, to allocate a portion of new State Appropriations Limit funding to courts that the model identified as historically underfunded. Over three years, a total of approximately \$32 million in new funding was redirected to the baseline budgets of those courts using the RAS model.<sup>4</sup>
- Between 2008 and 2013, most changes in trial court funding were reductions allocated based on courts' then-proportionate share of statewide allocations.

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<sup>2</sup> Judicial Council of Cal., *Allocation Recommendations from Trial Court Budget Commission* (Jan. 26, 2000).

<sup>3</sup> At that time, it was known as the Resource Allocation Study (RAS) model.

<sup>4</sup> See [www.courts.ca.gov/documents/0705item1.pdf](http://www.courts.ca.gov/documents/0705item1.pdf).

## Implementation of WAFM

At its April 2013 meeting, the Judicial Council affirmed a shift away from a funding model based on historical levels to one based on workload need when it adopted a recommendation from the Trial Court Budget Working Group, now TCBAC, for a new trial court budget development and allocation process.

WAFM quantifies the funding need for trial courts for nonjudicial filings-driven functions using RAS.<sup>5</sup> A five-year transition plan to move from historical allocations to workload-based allocations was implemented starting in 2013–14, with 10 percent of allocations to be based on WAFM in that year, increasing to 50 percent in 2017–18. In addition, any new money appropriated for general trial court operations was to be allocated using WAFM, and an amount of historical base funding equal to the new money amount would also be reallocated using WAFM. This was intended to accelerate the movement of courts towards greater equity in funding.

Following the action taken at the April 2013 meeting, the Judicial Council approved several subsequent modifications to WAFM. Effective:

- July 25, 2013, it exempted the Cluster 1<sup>6</sup> courts from any funding reallocation using WAFM; simplified the cost of labor adjustment calculation; employed a cluster-average salary for the court executive officer; determined that Bureau of Labor Statistics (BLS) Category 92: Local Government should be used as the comparator; and approved use of a blended local-state government BLS factor if the proportion of state employees in a jurisdiction is greater than 50 percent;<sup>7</sup>
- August 22, 2013, it approved an adjustment request process (ARP) through which trial courts could request adjustments to funding based on workload factors not yet accounted for in WAFM but deemed essential to the fundamental operation of a trial court;<sup>8</sup>
- February 20, 2014, it approved use of a three-year average BLS adjustment factor; adopted a per-full-time equivalent (FTE) dollar allotment floor for courts with fewer than 50 employees; established an absolute and graduated funding floor and cap on the size of the allocation adjustment for courts eligible for the graduated funding floor; and eliminated the Cluster 1 exemption put in place in July 2013;<sup>9</sup> and

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<sup>5</sup> Allocations from 2013–14 on were based on a 2009 update to RAS: [www.courts.ca.gov/documents/jc-20130226-itemM.pdf](http://www.courts.ca.gov/documents/jc-20130226-itemM.pdf).

<sup>6</sup> See attachment B for a list of courts and clusters.

<sup>7</sup> See [www.courts.ca.gov/documents/jc-20130725-itemC.pdf](http://www.courts.ca.gov/documents/jc-20130725-itemC.pdf).

<sup>8</sup> See [www.courts.ca.gov/documents/jc-20130823-item2.pdf](http://www.courts.ca.gov/documents/jc-20130823-item2.pdf).

<sup>9</sup> See [www.courts.ca.gov/documents/jc-20140220-itemK.pdf](http://www.courts.ca.gov/documents/jc-20140220-itemK.pdf).

- July 28, 2017, it changed deadlines and submission requirements for the ARP.<sup>10</sup>

In addition to these policy changes, annual allocations via WAFM were approved by the Judicial Council at its last four July meetings.<sup>11</sup> Table 1 summarizes the reallocation schedule; amount of new funding, if applicable, allocated to trial courts each year; and total WAFM-related allocations.

**Table 1: WAFM Five-Year Implementation**

Fiscal Year	Percentage Reallocation	New Funding Allocated (millions)	Total WAFM-Related Allocation
2013–14	10	\$60.0	\$1,498,220,199
2014–15	15	\$22.7 (shortfall); \$86.3 new	\$ 1,571,373,898
2015–16	30	\$67.9	\$ 1,704,344,724
2016–17	40	\$19.6	\$ 1,737,291,129
2017–18	50	\$0	\$ 1,745,544,822

### Rationale for Recommendation

In the spring of 2017 and with the end of the five-year transition plan approaching, TCBAC’s Funding Methodology Subcommittee (FMS)<sup>12</sup> revisited one of the items on its work plan<sup>13</sup>: to review WAFM for 2018–19 and beyond. To better formulate its approach, FMS undertook an evaluation of the first five years of WAFM at a two-day, in-person subcommittee meeting on August 8–9, 2017. The goal of this process was threefold: (1) to better understand the model’s impact on trial courts, (2) to assess whether WAFM achieved the goals that had been set when the model was first put into place in 2013, and (3) to inform any revisions to the funding methodology going forward. A report prepared by Judicial Council staff provides a summary of the progress made in the first five years of WAFM and was adopted by TCBAC on December 4, 2017 (see Attachment E).

Among other findings, the report detailed that funding equity has improved over time. This is seen most clearly in the following graphic from that report, which uses color to show the relative

<sup>10</sup> See <https://jcc.legistar.com/LegislationDetail.aspx?ID=3090107&GUID=7A0AB9F5-4767-424B-96F7-8D962B258BD5>.

<sup>11</sup> For 2014–15 allocations: [www.courts.ca.gov/documents/jc-20140729-itemC.pdf](http://www.courts.ca.gov/documents/jc-20140729-itemC.pdf).  
For 2015–16 allocations: [www.courts.ca.gov/documents/jc-20150728-itemH.pdf](http://www.courts.ca.gov/documents/jc-20150728-itemH.pdf).

For 2016–17 allocations: <https://jcc.legistar.com/LegislationDetail.aspx?ID=2779294&GUID=E3E058AA-27D3-443B-85B9-6FB255E1C344>.

For 2017–18 allocations: <https://jcc.legistar.com/LegislationDetail.aspx?ID=3109797&GUID=4F7132E6-3467-4458-B6D6-C7FEB0D4D6DD>.

<sup>12</sup> Attachment C shows the FMS roster as of September 15, 2017.

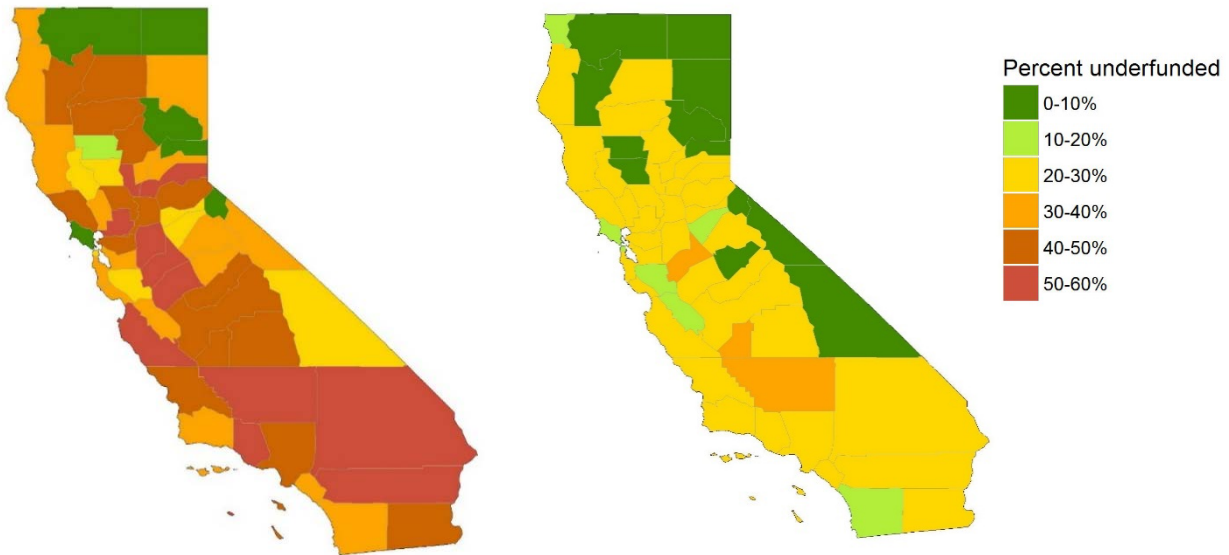
<sup>13</sup> Attachment D shows the FMS work plan as of November 14, 2017.

disparity in funding levels before WAFM and how that disparity has decreased after many successive years of reallocation and new investment in earlier years of funding.

### Graph 1: Equity Maps, Before and After WAFM

Before WAFM: Baseline

After WAFM: 2017-18



The allocation for trial court operations is still insufficient for the workload-based need, despite declines in filings over time that have reduced the branch's funding need. Table 2 reflects that, after five years of WAFM, the branch remains underfunded, at only 75 percent of its need.

**Table 2: Statewide WAFM Allocations Versus Need**

Fiscal Year	WAFM Need	Total WAFM-Related Allocation	Allocation as a Percentage of Need
2013–14	\$2,599,618,155	\$ 1,498,220,199	58%
2014–15	\$2,424,512,269	\$ 1,571,373,898	65%
2015–16	\$2,380,284,755	\$ 1,704,344,724	72%
2016–17	\$2,350,120,506	\$ 1,737,291,129	74%
2017–18	\$2,336,697,645 <sup>14</sup>	\$ 1,745,554,822	75%

<sup>14</sup> The new RAS caseweights and other model parameters approved by the Judicial Council in July 2017 will have an impact on the WAFM Need for 2018–19, in addition to movement resulting from changes in filings counts.

It was in this context that FMS proceeded with developing a proposal for modifying WAFM for 2018–19 and beyond. The subcommittee started by compiling a list of benefits and concerns with WAFM expressed by subcommittee members, shared with subcommittee members, or heard in other forums. The group believed it was important to put all issues on the table regarding how WAFM was perceived, to make sure these topics would be given due consideration in the subcommittee discussions.

Another outcome of this process was to help the group classify whether concerns expressed about WAFM were the direct result of a shortcoming of the WAFM methodology, a matter for another advisory committee to address, or a concern more appropriately attributed to a lack of sufficient funding for the trial courts. The benefits and concerns shared at the August 8–9 meeting are listed below in table 3; they appear in no particular order other than the order they were transcribed from the subcommittee discussion onto the meeting room whiteboards.

**Table 3: Benefits and Concerns Expressed/Heard Regarding WAFM**

Benefits	Concerns
<ul style="list-style-type: none"> <li>• Equitable allocation of available funding based on workload</li> <li>• Calculates the workload-driven need for trial courts</li> <li>• Predictability</li> <li>• Considers local costs</li> <li>• Courts agreed on an underlying model that was in the best interests of the branch (not local court)</li> <li>• Removes subjectivity</li> <li>• Transparency</li> </ul>	<ul style="list-style-type: none"> <li>• Volatility/Predictability</li> <li>• Lack of uniformity in reporting through JBSIS [Judicial Branch Statistical Information System]</li> <li>• No mechanism for ensuring courts are following uniform process (JBSIS)</li> <li>• Math difficult to follow (transitional)</li> <li>• Relies on base \$ [funding] from historical date</li> <li>• Allocation relies on taking from one court to fund another court</li> <li>• Difference of opinion; lack of uniformity of message from courts</li> <li>• Lack of understanding of WAFM</li> <li>• WAFM is missing pieces (all revenue/expenses) i.e., civil assessment</li> <li>• Health benefits calculation</li> <li>• No inflation calculator (affects funding floor)</li> <li>• Lack of tools</li> <li>• BLS</li> </ul>

These issues formed the basis of the subcommittee’s many vigorous discussions about the path forward.

### **Objectives, principles, and measures**

From those discussions, FMS articulated a set of objectives, principles, and measures that were later formally adopted as the basis for the modifications to WAFM moving forward. The key objective of WAFM for 2018–19 and beyond is to reach equity of available funding based on a model that uses workload and related factors to identify funding need. This is consistent with the underlying objectives of WAFM when it was first established.

Similarly, the principles established by the subcommittee for WAFM in future years echo many of the values stated by the branch when WAFM was first established in 2013, but have been modified to reflect concerns expressed more recently about the need for greater stability and predictability in funding. Whereas the first iteration of WAFM focused mainly on equity of funding, the lack of new investment in the judicial branch in more recent years has made stability and predictability of funding a higher priority (see table 4).

**Table 4: Principles of WAFM for 2018–19 and Beyond**

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|---|
| <ol style="list-style-type: none"><li>1. Minimize volatility, maximize stability and predictability to extent possible;</li><li>2. Committed to evaluating all submissions as submitted via the process (WAFM ARP);</li><li>3. Time for adjustment and adaptation;</li><li>4. Responsiveness to local circumstances;</li><li>5. Transparency and accountability;</li><li>6. Independent authority of the trial courts; and</li><li>7. Simplification of reporting while maintaining transparency.</li></ol> |
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Finally, the subcommittee established two measures against which the updated version of WAFM might be evaluated: (1) parity of funding, and (2) implementation of a data-driven funding methodology that supports branchwide advocacy efforts for trial court funding.

### **Proposed updated WAFM model parameters for 2018–19 and beyond**

FMS met multiple times between April and November 2017.<sup>15</sup> The deliberations of the subcommittee were extensive; as each component of the model was considered, it was reviewed in light of the recognized benefits and concerns of the first five years of WAFM as well as the established objectives and principles. The subcommittee approached the work from a policy-based rather than a results-based perspective to ensure that the numbers were not driving the decision making.

To provide adequate time for adjustment and adaptation regarding any policy changes, FMS worked toward a resolution that would allow for a policy decision by the Judicial Council in January 2018. Council approval in January will provide Judicial Council staff the ability to notify courts of their anticipated 2018–19 base operations allocations in a timely manner.

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<sup>15</sup> FMS met on April 12, May 8, May 25, August 8–9, October 2, October 26, and November 14, 2017.

TCBAC reviewed the recommendations of FMS on December 4, 2017, during which the committee acknowledged the comprehensive and thorough review that FMS had performed, resulting in a recommendation that continues to make progress toward equity, mitigates the negative impact on contributing courts, and provides for greater stability and predictability.

***Determining trial court funding need.*** FMS recommended, and TCBAC approved unanimously, the following parameters for determining funding need:

- **Reaffirm the workload model, RAS, as the basis for establishing funding need in the trial courts.** A workload model is an accepted method for assessing resource need for courts, with more than 30 states employing weighted caseload for workload measurement. A weighted caseload model, like RAS, measures the differences in workload need based on the resources required for different types of cases. RAS is responsive to workload changes that are a result of state policy change due to regular reviews of caseweights.
- **Report a workload need adjustment every fiscal year based on a three-year average of filings data, consistent with existing policy.** The model responds to local changes in workload due to an annual update of filings data based on a rolling three-year average.
- **Retain all existing small-court adjustments.** WAFM contains a number of adjustments that are made for the benefit of the smallest courts, many of which do not have the filings volume to be funded solely on the basis of workload.<sup>16</sup> In addition, smaller courts lack the economies of scale available to larger courts for things like operating expenses and equipment. Retaining these adjustments was evaluated in lieu of alternate ways of measuring small-court workload need, such as modifying the BLS calculation. This decision point is discussed in detail later in this report.
- **Make no changes to the current policies regarding application of BLS data, the base funding floor, and the computation for benefits and retirement funding.** The RAS model expresses workload need as FTEs, which must then be converted to dollars to determine the workload-based funding need. The existing policy parameters that were used for these calculations will be retained.
- **Establish a new statewide average funding ratio based on the workload need adjustment and new funding, if applicable.** To ensure that the policy parameters of WAFM are implemented in the most equitable manner possible, it is necessary to update the workload need annually before any allocation adjustments occur. A statewide average

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<sup>16</sup> RAS adjustments include rounding to next highest whole numbers to determine FTE need, differentiated ratios for management and administrative overhead, and higher infraction caseweights for courts with fewer than 100,000 filings. WAFM adjustments include allotment factors for benefits, funding floor calculations, and operating expense and equipment clustering all in recognition of the difficulties of achieving economies of scale in smaller courts.



funding ratio is then established each year to ascertain, based on the updated workload data, where courts' funding levels are relative to their need. The policy recommendations that underlie WAFM rely on this data to determine how available funds should be allocated.

- **Defer the review of the impact of civil assessments on the model to 2018–19.** More detail about the rationale for this decision is in the Alternatives Considered section.

***Building trial court allocations.*** FMS recommended, and TCBAC approved unanimously, the following parameters for building trial court allocations:

- **Beginning in 2018–19 and annually thereafter, trial court beginning base allocations will be established using applicable prior-year ending base allocations. The historical base will be eliminated.** In the original WAFM, the historical base<sup>17</sup> was implemented as a method for reallocating funds consistent with the five-year implementation plan approved by the council on April 26, 2013. The reallocation process and calculations originally developed by Judicial Council staff were complex and confusing and provided no substantive benefit. The subcommittee determined that, to improve transparency, accountability, predictability, and simplification of reporting, the historical base should be eliminated and beginning base allocations be established each year using applicable prior-year ending base allocations.
- **Retain the graduated funding floors until Cluster 1 courts reach 100 percent of funding need.** Although the subcommittee opted not to make any inflationary adjustments to the funding floors, described more fully in the Alternatives Considered section, it decided to retain the graduated funding floors until the Cluster 1 courts become fully funded based on workload. The graduated funding floors were established to assist courts whose funding needs were not fully based on workload but were unmet by the base-floor funding levels.
- **Define new money as any new ongoing allocation of general discretionary dollars to support costs of trial court workload, excluding funding for benefits and retirement increases.** In discussing future scenarios in which new money might be allocated to the trial courts, the subcommittee found it useful to specify a definition of new money.

***Allocations in fiscal years for which no new money is provided.*** To continue to make progress toward equity of trial court funding based on workload, while being mindful of the many years of budget reductions some courts have faced, the following parameters were recommended by FMS and approved by all TCBAC members save for one “no” vote:

- A band will be established that is 2 percent above and below the statewide average funding level, eliminating annual allocation fluctuations from minor changes in workload. Courts more than 2 percent above or below the statewide average funding ratio would be subject to

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<sup>17</sup> This is the courts' applicable funding in 2013–14 adjusted for the \$261 million reduction allocated that year and excluding any adjustments based on new money.

an allocation change, whereas courts within the band would not be. The size of the band identified may be subject to reevaluation in the future.

- No allocation adjustment will occur for those courts within the band or for Cluster 1 courts. The goal is to fully fund the Cluster 1 courts, and an allocation adjustment would be contrary to that outcome.
- Funds will be reallocated from courts above the band to courts below the band every other fiscal year for which no new money is provided regardless of years of increase or decrease in between. The first year of no new money will provide time to adjust for a second year of no new money in which an allocation change will occur.
- Up to 1 percent of allocations for courts above the band will be reallocated to courts below the band to provide an increased allocation of up to 1 percent. The allocation reductions are capped at 1 percent, regardless of the need of the courts below the band. Conversely, the allocation increases are capped at 1 percent, regardless of the available funding of the courts above the band. If adequate funds are available, some courts under the band may be able to penetrate into the band.

***Allocations in fiscal years for which a budget reduction must be implemented.*** Because future budget reductions cannot be predicted, FMS recommended and TCBAC unanimously approved that they will be addressed as needed, with special consideration toward those courts below the statewide average funding ratio.

***Allocations in fiscal years for which new money is provided.*** New money, for the purposes of this process, is defined above. FMS recommended, and TCBAC approved unanimously, that allocations of new money are to be made in the fiscal year for which the funding is intended in the following sequenced manner:

1. Bring all Cluster 1 courts up to at least 100 percent of funding need.
2. Allocate up to 50 percent of remaining funding to courts under the statewide average funding ratio. Allocated funds will bring courts up to but not over the statewide average funding ratio.
3. Allocate remaining funding to all courts based on WAFM.
4. Allow no court's allocation to exceed 100 percent of its need unless it is the result of a funding floor calculation.

Ongoing and one-time funds designated for nondiscretionary purposes will be addressed as needed. To better understand how to apply the methodology, a series of scenarios based on the application of the new policy recommendations were developed and shared with TCBAC members (see attachment F).

**Adjustments.** FMS extensively reviewed the model parameters and decision rules for the update to WAFM. Nevertheless, unanticipated policy issues may emerge and require remedy. Hence, the recommendation includes provisions to allow for TCBAC to return to the Judicial Council to make changes to the model as needed. Further, the recommendations include a provision to delegate authority to Judicial Council staff to make technical adjustments to the model parameters as necessary.

## Comments, Alternatives Considered, and Policy Implications

### Comments from interested parties

At its meetings, FMS carefully reviewed all court input that was received by letter through the formal WAFM ARP and via public comment regarding the model structure. The letters are provided in Attachment G and the comments are summarized below, in table 5, corresponding to the objectives and principles stated by the subcommittee.

**Table 5: Highlights of Court Submissions During the FMS Deliberation Process**

<b>Comments Related to Determining Need<sup>18</sup></b>	<b>Superior Court</b>
Do not tie funding to judgeships.	Riverside
Do not alter BLS formulas.	Riverside
Maintain the workload-based methodology of determining need.	San Bernardino
Explore other less volatile measures or adjustment factors.	Orange
<b>Comments Related to Reaching Equity of Funding</b>	<b>Superior Court</b>
Open conceptually to discuss sharing equally in overall cuts to the branch.	Riverside
Include funding goals (i.e., 75, 80 percent) in WAFM.	Riverside
Continue equity distribution among courts to equalize services.	Riverside
Do not implement “no changes in years without funding” but continue incremental adjustments, even if small (i.e., 5, 10, 15 percent).	Riverside
Fully implement WAFM within three years.	Riverside
In years with new funding, movement must continue to be made to equity.	San Bernardino
In years with cuts in funding, more underfunded courts take less of a cut in funding than the less underfunded courts.	San Bernardino

<sup>18</sup> A proposal regarding a population model was submitted by the Superior Court of Alameda County but was withdrawn by the court before Judicial Council staff had finalized the analysis of the proposal.

Allocate total appropriations for general trial court funding <i>less programmatic needs and NSIs</i> [Negotiated Salary Increases] ( <i>as defined by subcommittee</i> ); consider using cost-of-living adjustments rather than NSIs.	Orange
<b>Comments Related to FMS Principles of Minimizing Volatility and Maximizing Stability and Predictability to the Extent Possible</b>	<b>Superior Court</b>
Hold courts harmless from further reductions.	Orange
Abandon the “historical share.”	Alameda, Orange, Riverside
Freeze funding to trial courts at the 2017–18 allocation amounts in flat budget years.	Alameda
Consider a 1 percent cap on adjustments for zero funding years.	Orange
Allocate 50 percent of new funding to all courts, then the remainder to the most severely underfunded.	Orange
Allocate new funding in a way that would ensure that no court receives less funding than in the prior year, such as distributing half of any funding increase to the most severely underfunded courts and the other half to all courts using criteria adopted by FMS.	Alameda
Distribute any necessary cuts to trial court allocations on a flat (equal) basis.	Alameda
Stop further implementation of WAFM until small courts’ funding requirements can be more accurately identified and predicted.	Small Courts <sup>19</sup>
Consider equal funding to be band of 3 percent (1.5 percent variance), rather than 5 percent (10 percent variance).	Riverside
Set aside a reserve to cushion workload swings or to address unanticipated funding changes.	Orange
<b>Comments Related to the FMS Principle of Allowing Time for Adjustment and Adaptation</b>	<b>Superior Courts</b>
Provide allocation information to courts as early as possible for planning purposes, but no later than April.	Orange
In years with no new funding, movement to equity may pause temporarily but not for more than one year in any given cycle.	San Bernardino

<sup>19</sup> Known as the Small Court WAFM Methodology Review Group and consisting of the Presiding Judges of the Superior Courts of Amador, Colusa, Del Norte, Glenn, Inyo, Lake, Lassen, Mariposa, Modoc, Mono, Plumas, Sierra, Siskiyou, and Trinity counties; the Assistant Presiding Judges of Del Norte, Glenn, Lake, Modoc, Mono, Plumas, Sierra, Siskiyou, and Trinity counties; and the Court Executives of the Superior Courts of Amador, Del Norte, Glenn, Inyo, Lake, Lassen, Modoc, Mono, Plumas, Sierra, Siskiyou, and Trinity counties.

<b>Comments Related to the FMS Principle of Responsiveness to Local Circumstances</b>	<b>Superior Courts</b>
Increase the minimum BLS factor applied to small courts.	Glenn
More steps are needed to refine WAFM, particularly for courts with a BLS factor of less than 1.0.	Siskiyou
Reexamine the BLS factor, including addressing hidden or indirect costs and factors applicable to small courts and/or use a 1.0 BLS factor.	Small courts
Implement a minimum BLS factor to 0.9, additional study as to regional BLS impacts, and not limiting BLS adjustment factor to courts with fewer than 50 FTEs.	Lake
Stop further implementation of WAFM until small courts' funding requirements can be more accurately identified and predicted.	Small courts
<b>Comments Related to FMS Principles of Transparency and Accountability</b>	<b>Superior Courts</b>
Consider impacts to public service before reducing courts' funding further.	Orange
Continue equity distribution among courts to equalize services.	Riverside

In addition, the FMS cochairs met with and gave presentations to the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee (CEAC) to keep those groups informed of the process and to seek further input.

Throughout their discussions, FMS considered various approaches to modify WAFM for 2018–19 and beyond. These alternatives are discussed below:

#### **Alternative 1**

**Move all courts to the statewide average funding ratio.** Moving all courts to the statewide average funding ratio effective in 2018–19 would have resulted in significant budget reductions to many courts, which would have most likely led to chronic service level drops in those jurisdictions. Similarly, some courts would have received significant increases, which may also be challenging in their own way to implement. Implementation of this alternative would have severely harmed the branch as a whole and was contrary to the principles outlined by the subcommittee.

#### **Alternative 2**

**Make adjustments to BLS calculations.** The Judicial Branch uses the Quarterly Census of Employment and Wages data from the BLS<sup>20</sup> to develop an index used to adjust labor costs

<sup>20</sup> The BLS is a unit of the U.S. Department of Labor and is the principal federal agency responsible for measuring labor market activity, working conditions, and price changes in the economy. Its mission is to collect, analyze, and disseminate essential economic information to support public and private decisionmaking. BLS data must satisfy a number of criteria, including relevance to current social and economic issues, timeliness in reflecting today's rapidly

among the counties. The branch uses local government wages as the comparator for court employment costs under the premise that local government is the most similar employment type in a jurisdiction in terms of the classification of work and the labor market against which courts must compete to attract and retain workers.

FMS considered a number of alternatives, including using a minimum BLS threshold of 0.9 or 1.0, using a regional BLS approach, and changing the current parameters for using state, local, or blended state/local BLS. It determined that the existing application of the BLS data be maintained and that adjustments not be made to the data based on local circumstances. To adjust the data developed by the BLS could call into question the integrity and credibility of the BLS index used by the branch and, in turn, the WAFM model.

Because the BLS adjustments would primarily benefit the small courts, proposed changes to BLS were reviewed against adjustments in RAS and WAFM that are made for the benefit of the smallest courts. These adjustments provide increased allocations to the cluster one and two courts totaling almost \$4.8 million.<sup>21</sup> The subcommittee determined that the small-court adjustments already in place sufficiently address the unique circumstances of the Cluster 1 courts. However, this review suggested a need to evaluate the impact of the BLS and small-court adjustments on the Cluster 2 courts. This task has been added to the subcommittee's work plan for 2018–19.

### **Alternative 3**

**Make inflationary adjustments to the funding floors.** The base funding floor, currently set at \$750,000, was analyzed to determine if an inflationary adjustment was necessary. Because at least one court that is subject to the base funding floor is reverting dollars to the Trial Court Trust Fund each year under the provisions of Government Code sections 68502.5(c)(2)(A) and 77203, the committee determined that an inflationary adjustment was unnecessary in 2018–19 but that the amount should be reviewed annually. It also determined that the graduated funding floors did not require an adjustment in 2018–19 and would be subject to an annual review.

### **Alternative 4**

**Consider the impact of civil assessments and local revenue on the model.** FMS reviewed whether civil assessments and local revenues collected should be included in the WAFM model. State policy changes and declining filings in recent years have negatively affected civil assessment collections and have resulted in an inability for the judicial branch to predict the amount of civil assessment that will be available to support trial court operations in the future.

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changing economic conditions, accuracy, consistently high statistical quality, and impartiality in both subject matter and presentation. (Bureau of Labor Statistics, “BLS Guidelines for Informing Users of Information Quality and Methodology,” BLS Information, [www.bls.gov/bls/quality.htm](http://www.bls.gov/bls/quality.htm) (as of Dec. 8, 2017).)

<sup>21</sup> Even though some of the adjustments apply to all courts, they are referred to collectively as small -court adjustments because they generally provide greater benefit to the smaller courts. The adjustments are described in Attachment H.

The amnesty program implemented by Senate Bill 85 (Stats. 2015, ch. 26) eliminated the civil assessments for eligible cases, and a budget trailer bill passed on June 27, 2017, prohibited the trial courts from placing a hold on a driver's license as a result of failure to pay. The negative impact on branch revenues from the longer-term impacts of the amnesty program and the elimination of driver's license holds as collections tools is still unknown. Because of this uncertainty, the committee determined that the review of the impact of civil assessments on WAFM should be deferred until 2018–19, when the understanding of the impact of state policy changes on civil assessment revenues will be greater. In addition, the review to identify all funding sources and determine allocation models is included in the plan for 2018–19.

## **Alternative 5**

**Establish funding bands at 3 or 5 percent and allocation shifts at 2 or 3 percent.** The proposed methodology attempts to balance two competing goals: achieving greater equity while introducing greater stability and taking a more conservative approach to making funding adjustments. It establishes a statewide average funding ratio and then applies a percentage band to that amount, above or below which funding is reallocated. When the bands were first contemplated, the subcommittee reviewed scenarios where the bands were set at 2, 3, or 5 percent, and the allocation shifts were proposed at 1, 2, or 3 percent. Although the size of the band may be adjusted in the future, the 2 percent band and 1 percent allocation shift were selected as most appropriate for achieving these competing goals.

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

The operational impacts to trial courts are, in part, contingent on the funding allocated to trial courts by the state. However, the proposed structure of WAFM going forward should eliminate much of the last-minute uncertainty about funding allocations, which will help courts with resource planning.

Judicial Council Budget Services has the staff resources in place to manage the implementation of the new funding methodology. However, the courts may need to devote considerable time and resources to provide some of the attendant components needed to build funding allocations, such as the filings data that are used as the basis for the RAS workload estimate. Resource needs in this area have been particularly acute in recent years, because of funding shortfalls in many trial courts and because many courts are transitioning to new case management systems. Finally, work by CEAC's JBSIS Working Group to refresh the JBSIS data definitions will also create additional workload for courts, which must program the changes into their systems and test and verify them.

Also, to expedite the release of allocation information, courts will be asked to produce this data earlier in the year, which may create additional short-term resource burdens. Judicial Council staff have been providing some technical assistance to courts to manage these transitions, but the pace and number of these transitions exceeds the resources available at the Judicial Council to

oversee this work, and additional Judicial Council resources may be needed to ensure a smooth and timely transition to the new reporting requirements.

## **Attachments**

1. Attachment A: TCBAC roster
2. Attachment B: California Trial Courts by Cluster
3. Attachment C: FMS roster
4. Attachment D: FMS Work Plan
5. Attachment E: *Historical Review of WAFM*
6. Attachment F: Trial Court Allocation Scenarios
7. Attachment G: Summary of WAFM Letters and Public Comments
8. Attachment H: Small Court Adjustments (SCAs) to Workload Models (RAS/WAFM)  
Overview



**Trial Court Budget Advisory Committee**  
As of September 15, 2017

**Hon. Jonathan B. Conklin, Chair,**  
Superior Court of California, County of Fresno

**Hon. Jeffrey B. Barton,** Superior Court of  
California, County of San Diego

**Hon. Andrew S. Blum,** Superior Court of  
California, County of Lake

**Hon. Daniel J. Buckley,** Superior Court of  
California, County of Los Angeles

**Hon. Mark Ashton Cope,** Superior Court of  
California, County of Riverside

**Hon. James E. Herman,** Superior Court of  
California, County of Santa Barbara

**Hon. Joyce D. Hinrichs,** Superior Court of  
California, County of Humboldt

**Hon. Elizabeth W. Johnson,** Superior Court of  
California, County of Trinity

**Hon. Patricia M. Lucas,** Superior Court of  
California, County of Santa Clara

**Hon. Charles Margines,** Superior Court of  
California, County of Orange

**Hon. Paul M. Marigonda,** Superior Court of  
California, County of Santa Cruz

**Hon. Brian McCabe,** Superior Court of  
California, County of Merced

**Ms. Sherri R. Carter,** Superior Court of  
California, County of Los Angeles

**Ms. Nancy Eberhardt,** Superior Court of  
California, County of San Bernardino

**Mr. Chad Finke,** Superior Court of California,  
County of Alameda

**Ms. Rebecca Fleming,** Superior Court of  
California, County of Santa Clara

**Ms. Kimberly Flener,** Superior Court of  
California, County of Butte

**Mr. Kevin Harrigan,** Superior Court of  
California, County of Glenn

**Mr. Jeffrey E. Lewis,** Superior Court of  
California, County of Kings

**Mr. Michael D. Planet,** Superior Court of  
California, County of Ventura

**Mr. Michael M. Roddy,** Superior Court of  
California, County of San Diego

**Ms. Linda Romero Soles,** Superior Court of  
California, County of Merced

**Mr. Brian Taylor,** Superior Court of  
California, County of Solano

**Ms. Tania Ugrin-Capobianco,** Superior Court  
of California, County of El Dorado

**Mr. David H. Yamasaki,** Superior Court of  
California, County of Orange

**Judicial Council Staff to the Committee**

Ms. Jody Patel (Advisor)

Mr. John Wordlaw (Advisor)

Ms. Millicent Tidwell (Advisor)

Mr. Zlatko Theodorovic (Advisor)

Ms. Brandy Sanborn (Lead Staff)

## California Trial Courts by Cluster

Cluster 1			
Alpine	Amador	Calaveras	Colusa
Del Norte	Glenn	Inyo	Lassen
Mariposa	Modoc	Mono	Plumas
San Benito	Sierra	Trinity	
Cluster 2			
Butte	El Dorado	Humboldt	Imperial
Kings	Lake	Madera	Marin
Mendocino	Merced	Napa	Nevada
Placer	San Luis Obispo	Santa Cruz	Shasta
Siskiyou	Sutter	Tehama	Tuolumne
Yolo	Yuba		
Cluster 3			
Contra Costa	Fresno	Kern	Monterey
San Joaquin	San Mateo	Santa Barbara	Solano
Sonoma	Stanislaus	Tulare	Ventura
Cluster 4			
Alameda	Los Angeles	Orange	Riverside
Sacramento	San Bernardino	San Diego	San Francisco
Santa Clara			

**Funding Methodology Subcommittee  
of the Trial Court Budget Advisory Committee  
As of September 15, 2017**

**Hon. Jonathan B. Conklin, Co-Chair,**  
Superior Court of California, County of Fresno

**Ms. Rebecca Fleming, Co-Chair,** Superior  
Court of California, County of Santa Clara

**Hon. Mark Ashton Cope,** Superior Court of  
California, County of Riverside

**Hon. Joyce D. Hinrichs,** Superior Court of  
California, County of Humboldt

**Hon. Paul M. Marigonda,** Superior Court of  
California, County of Santa Cruz

**Ms. Sherri R. Carter,** Superior Court of  
California, County of Los Angeles

**Mr. Jake Chatters\*,** Superior Court of  
California, County of Placer

**Ms. Kimberly Flener,** Superior Court of  
California, County of Butte

**Mr. W. Samuel Hamrick, Jr.\*,** Superior Court  
of California, County of Riverside

**Mr. Jeffrey E. Lewis,** Superior Court of  
California, County of Kings

**Mr. Michael D. Planet,** Superior Court of  
California, County of Ventura

**Mr. Michael M. Roddy,** Superior Court of  
California, County of San Diego

**Ms. Tania Ugrin-Capobianco,** Superior Court  
of California, County of El Dorado

**Judicial Council Staff to the Committee**  
Ms. Lucy Fogarty (Lead Staff)

\*Member of Funding Methodology Subcommittee for prior appointment period through September 14, 2017

**FUNDING METHODOLOGY SUBCOMMITTEE (FMS) WORK PLAN**  
Updated on October 26 and November 14, 2017

**2017-18**

1. Plans for FY 2018–2019 and year 6 and beyond
  - a. Simplify display of worksheets for after year 5
  - b. Review and evaluate funding methodology

**2018-19**

2. Address new judgeship staffing complement funding when necessary.
3. Evaluate the impact of civil assessments as it relates to the Workload-based Allocation and Funding Methodology (WAFM).
4. Review TCTF and IMF self-help funding allocation.
5. Identify all funding sources and determine allocation models.
6. Evaluate special circumstances cases funding.
7. Evaluate impact of JCC and other provided services.
8. Evaluate the cluster 2 Bureau of Labor Statistics and small court adjustment contributions.

**2019-20**

9. Evaluate how to include unfunded costs – courthouse construction.

**Annual Updates**

10. Review the base and graduated funding floor amounts annually to determine whether an inflationary adjustment is needed.
11. Track technology funding streams (quarterly updates from JCTC and CITMF).
12. Track joint working group with Family and Juvenile Law Advisory Committee to evaluate the allocation methodology for Child Support Commissioner and Family Law Facilitator Program funding. Subsequent to receiving information from working group, FMS will continue to review AB 1058 revenue as an offset to WAFM funding need.

JUDICIAL COUNCIL OF CALIFORNIA  
BUDGET SERVICES  
Report to the Trial Court Budget Advisory Committee

**Title:** Historical Review of Workload-based Allocation and Funding Model  
**Date:** 12/4/2017  
**Contact:** Leah Rose-Goodwin, Manager, Budget Services  
415-865-7708 | [leah.rose-goodwin@jud.ca.gov](mailto:leah.rose-goodwin@jud.ca.gov)

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## Background

This report stems from a request of the Funding Methodology Subcommittee (FMS) co-chairs, Hon. Jonathan B. Conklin and Ms. Rebecca Fleming, that Judicial Council staff prepare an analysis of the first five years of implementation of the Workload-based Allocation and Funding Methodology (WAFM). Specifically, the subcommittee wished to explore whether WAFM achieved the objectives that were set forth when the model was first developed.

The Trial Court Budget Advisory Committee is asked to review and receive the report as an informational item.

## Previous Judicial Council Action

At its April 26, 2013 meeting, the Judicial Council adopted a recommendation from the Trial Court Budget Working Group (now the Trial Court Budget Advisory Committee) for a new trial court budget development and allocation process.<sup>1</sup> WAFM quantifies the workload-based funding need for trial courts for non-judicial, filings-driven functions. Under WAFM, trial courts are allocated funding based on workload instead of the historical basis under which they had been funded previously. A five-year transition plan to move from historical allocations to WAFM-based allocations was implemented starting in 2013-14, with 10% of allocations to be based on WAFM in that year, increasing to 50% in 2017-18 (see Table 1 below). In addition, any new money appropriated for general trial court operations was to be allocated using WAFM, and an amount of historical base funding equal to the new money amount would then also be reallocated using WAFM.

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<sup>1</sup> <http://www.courts.ca.gov/documents/jc-20130426-itemP.pdf>

**Table 1: WAFM Five-year Implementation Plan**

Fiscal Year	Reallocation %	Other Features
2013-14	10%	<ul style="list-style-type: none"> <li>Cluster 1 courts exempt from reallocation</li> <li>\$60m new funding allocated</li> </ul>
2014-15	15%	<ul style="list-style-type: none"> <li>Cluster 1 courts introduced into reallocation</li> <li>Funding floor introduced</li> <li>Local labor cost (BLS) methodology revised</li> <li>\$22.7m shortfall allocated</li> <li>\$86.3m new funding allocated</li> </ul>
2015-16	30%	<ul style="list-style-type: none"> <li>\$67.9m new funding allocated</li> </ul>
2016-17	40%	<ul style="list-style-type: none"> <li>\$19.6m new funding allocated</li> </ul>
2017-18	50%	<ul style="list-style-type: none"> <li>\$0 new funding allocated</li> </ul>

Following the action taken at the April 2013 meeting, the Judicial Council approved several subsequent modifications to the WAFM methodology (see Table 2):

**Table 2: WAFM Policies Adopted by the Judicial Council**

Date of Council Meeting	Modification to WAFM
July 25, 2013 <sup>2</sup>	Exempted the cluster 1 courts from any funding reallocation using WAFM; simplified the cost of labor adjustment calculation; employed a cluster-average salary for the court executive officer; determined that Bureau of Labor Statistics (BLS) Category 92: local government should be used as the comparator; approved use of a blended local-state government BLS factor if the proportion of state employees in a jurisdiction is greater than 50%.
August 22, 2013 <sup>3</sup>	Approved an Adjustment Request Process (ARP) through which trial courts could request adjustments to WAFM funding based on workload factors not yet accounted for in WAFM, but deemed essential to the fundamental operation of a trial court.
February 20, 2014 <sup>4</sup>	Approved use of a three-year average BLS adjustment factor; adopt a per-Full Time Equivalent (FTE) dollar allotment floor for courts with fewer than 50 employees; established an absolute and graduated funding floor and cap on the size of the allocation adjustment for courts eligible for the graduated funding floor; eliminated cluster 1 exemption put in place in July 2013.
July 28, 2017 <sup>5</sup>	Changed deadlines and submission requirements for the ARP.

<sup>2</sup> <http://www.courts.ca.gov/documents/jc-20130725-itemC.pdf>

<sup>3</sup> <http://www.courts.ca.gov/documents/jc-20130823-item2.pdf>

<sup>4</sup> <http://www.courts.ca.gov/documents/jc-20140220-itemK.pdf>

<sup>5</sup> <https://jcc.legistar.com/LegislationDetail.aspx?ID=3090107&GUID=7A0AB9F5-4767-424B-96F7-8D962B258BD5>

In addition to these changes, annual allocations via WAFM have been approved by the Judicial Council at its July meeting.<sup>6</sup>

In the spring of 2017 and with the fifth year of WAFM implementation approaching, FMS determined that it would be timely for the subcommittee to consider changes to the funding model for years 2018-19 and beyond. To better formulate its approach, the subcommittee started with an evaluation of the first five years of WAFM to order to better understand the model's impact on the trial courts and to inform any revisions to the funding methodology going forward.

## Summary of Findings

The April 26, 2013 report to the Judicial Council summarizes the rationale for the WAFM approach, specifically, this excerpt from pages 5-6:

*“The WAFM involves a step-by-step budget development and allocation process building on accepted measures of trial court workload and creating formulas to allocate funding in a more equitable manner. At the same time the WAFM implementation schedule recognizes the need to move deliberately, to allow courts the time to adjust and to take into account local circumstances that may not be captured in the formula-based funding methodology.*

*The proposed method provides the transparency necessary to ensure the accountability of the branch and individual courts to the public and sister branches of government while preserving the independent authority and local autonomy of trial court leaders to meet the needs of their communities and assure equitable access to justice in each of California's 58 trial courts.”*

Based on the above, the two principal objectives of WAFM appeared to be: equitable allocation of funding and equitable access to justice. Derived from the same excerpt, supporting principles include:

- Time for adjustment and adaptation;
- Responsiveness to local circumstances;
- Transparency and accountability; and
- Independent authority of trial courts

These objectives and principles were shared with FMS members at its August 8-9, 2017 meeting. FMS members who had been part of the development of WAFM indicated that equity of funding

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<sup>6</sup> For 2014-15 allocations: <http://www.courts.ca.gov/documents/jc-20140729-itemC.pdf>

For 2015-16 allocations: <http://www.courts.ca.gov/documents/jc-20150728-itemH.pdf>

For 2016-17 allocations: <https://jcc.legistar.com/LegislationDetail.aspx?ID=2779294&GUID=E3E058AA-27D3-443B-85B9-6FB255E1C344>

For 2017-18 allocations: <https://jcc.legistar.com/LegislationDetail.aspx?ID=3109797&GUID=4F7132E6-3467-4458-B6D6-C7FEB0D4D6DD>

was the guiding objective for the new funding model, with access to justice more aptly characterized as a secondary objective. It was their belief that the policy decisions made concerning the funding methodology were not done explicitly to increase or change access to justice – the hope was that equalizing funding would in turn improve access to justice.

### **Measuring Funding Equity**

At the August 8-9 meeting, FMS members reviewed three measures of funding equity: a review of courts' relative funding ratios; a comparison of relative underfunding levels; and comparison of relative funding ratios over time amongst similarly-sized courts.

### **Relative Funding Ratios**

To reiterate the methodology, WAFM measures each court's workload-based funding need and then allocates funding using a formula that gradually shifts the basis of funding allocations towards workload and away from historical-based allocations. Equity of funding may be assessed by comparing each court's relative level of funding as shown in the formula below:

$$\text{Relative funding ratio} = \frac{\text{WAFM allocation (\$)}}{\text{WAFM need (\$)}}$$

In a fully-funded system, each court would receive 100% of its funding need, for a relative funding ratio of 1.0. However, over the five years of WAFM, the trial courts have never been fully funded, and the relative funding ratios for the courts have been considerably lower for some courts. To assess whether progress has been made towards achieving equity over the five years of WAFM, a statistical method called median absolute deviation was used to determine whether variability in relative funding ratios has decreased over time. This method allows for comparison of trends across the trial courts using a single metric by comparing each court's funding ratio to the median relative funding ratio and then calculating the median of these 'distances' for all courts. The resulting statistic is a measure of how far the typical court is from the typical relative funding ratio.

Funding floor courts have been excluded from this analysis because their funding allocations are not entirely based on workload need, but on operational minimum levels of service. This makes their ratios non-comparable to those of courts that are entirely workload-funded.

Using this technique, variability in funding ratios moves gradually towards zero over time, indicating progress towards complete equity (see Table 3). The biggest jumps appear in the earliest years; however, to some extent this is an artifice of how WAFM policies evolved. The funding floor was not policy in baseline and 2012-13, so the courts that would subsequently become funding floor courts slightly skew the comparison because some of these had very high relative funding ratios in the early years of WAFM. By focusing on just the years when the funding floor was in place, it is possible to be able to evaluate courts consistently. In that time period, (2013-14 to 2017-18) the typical court moves from being about 6% (.059) from the



median funding ratio to 1% from the typical funding ratio. These findings indicate that variability in funding has decreased over time, increasing relative equity.

**Table 3: Variability in Funding Ratios Over Time**

Fiscal Year	Variability
Baseline	.096
2013-14	.080
2014-15	.059
2015-16	.050
2016-17	.045
2017-18	.040

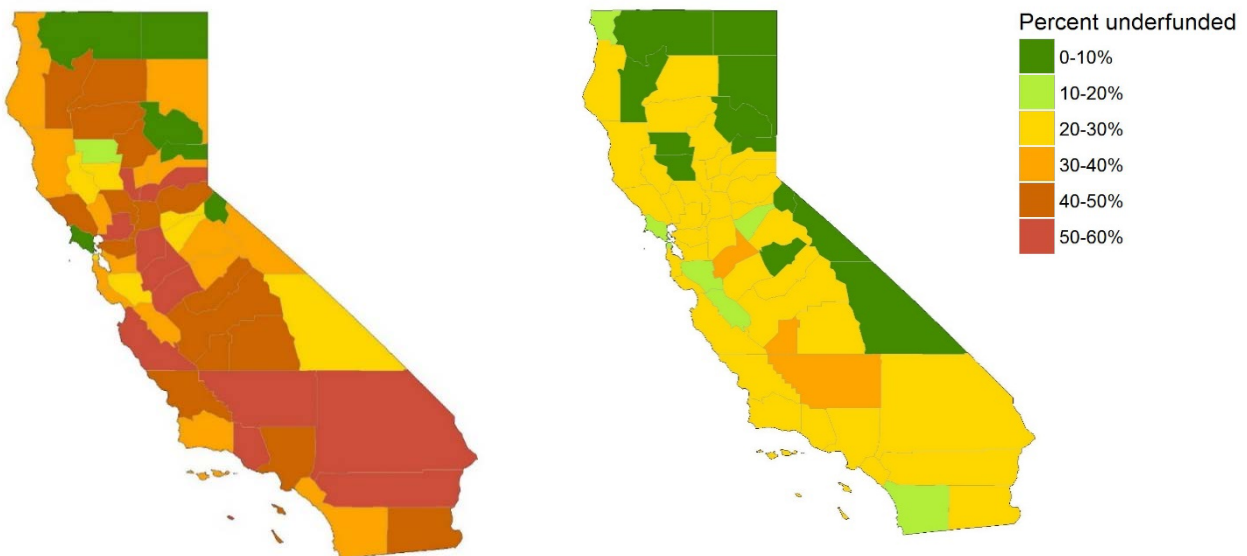
### Relative Underfunding of Courts Before and After WAFM

Another way to assess equity is to compare relative *underfunding* of courts before and after the implementation of WAFM. The following maps show the percent underfunded in color-coded categories each with a range of 10% (see Graph 1).

**Graph 1: Equity Maps, Before and After WAFM**

**Before WAFM: Baseline**

**After WAFM: 2017-18**



For example, the Superior Court of Del Norte County, in the upper left-hand corner of the map, is colored light orange, indicating that its percent underfunded is in the 30-40% range. In 2017-18, the court is shaded light green, indicating a shift to the 10-20% range. Courts with funding higher than their WAFM need are shown in the 0-10% category; this could include courts that received floor funding.

These maps show that relative funding has increased (moved away from red) and that the color gradient has become less diverse. Most courts are now in the 20-30% range, suggesting that relative underfunding has become more equalized.

### **Comparison of Relative Funding Ratios, by Court Size, Over Time**

Finally, FMS reviewed a series of line charts (Appendix A) showing relative funding ratios over time for groupings of similarly-sized courts. The purpose of the charts was to determine whether like-sized courts' funding ratios (shown on the vertical axes) converged or diverged over time (the horizontal axes). If WAFM were to be determined to be successful at increasing relative equity, this analysis should show the lines, representing the trajectory of each of the courts, converging over time.

The charts show that, generally, courts gain in relative funding from baseline. The WAFM methodology, combined with new infusions of general funds in the first several years of WAFM implementation, have improved the funding ratios for most courts. Another causal factor contributing to the improved funding ratios is that workload need has generally declined over time due to lower filings.

Additionally, the line graphs show that relative funding ratios amongst courts have converged over time, meaning that funding disparity is decreasing. This is seen on the charts by assessing the distance between the lines (representing each of the courts) moving from left (onset of WAFM) to right (after four years of WAFM implementation). Over time, the distance between the lines has decreased, suggesting that funding has become more equalized.

The equity trends become more difficult to interpret for groups 1-3, which are the groups made up of the smallest courts. The volatility shown on the maps can be attributed to several factors. One is that some courts have received floor funding in some of the years, and that funding makes the lines move more erratically. Also, WAFM and the underlying RAS models provide a series of small court adjustments used to compute the funding need which can result in some volatility in the workload need calculation when combined with fluctuations due to filings trends.

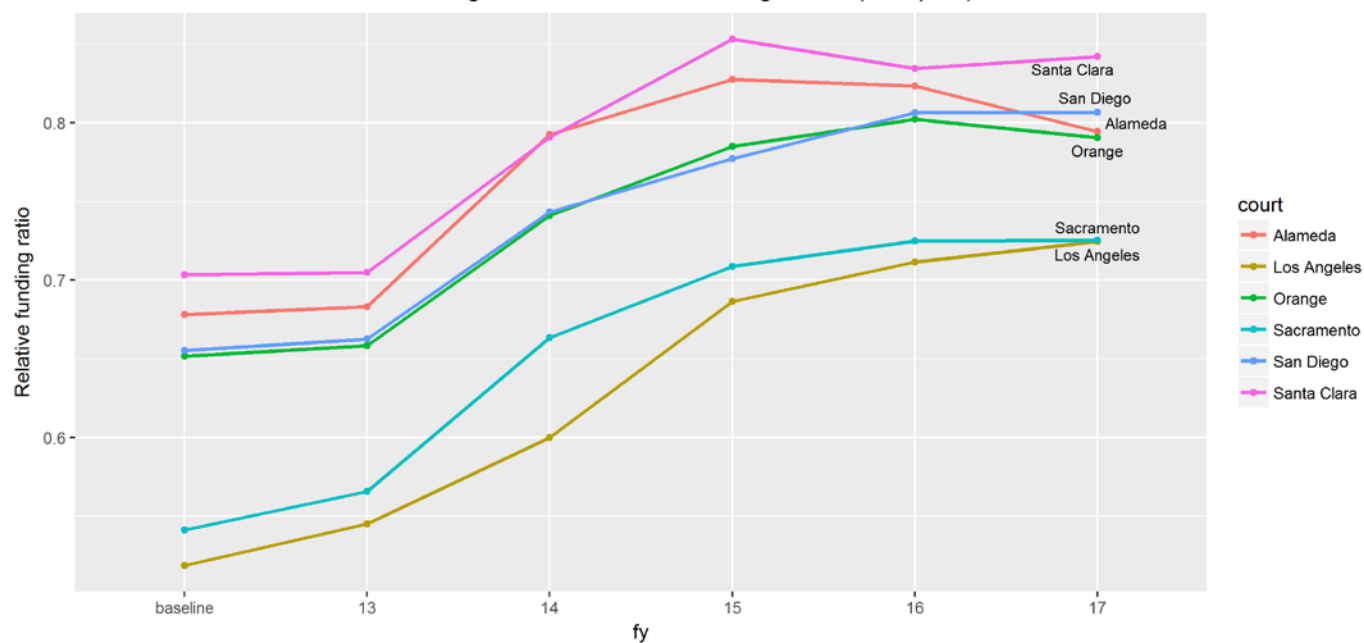
### **Conclusions**

The following conclusions can be drawn from the analysis provided:

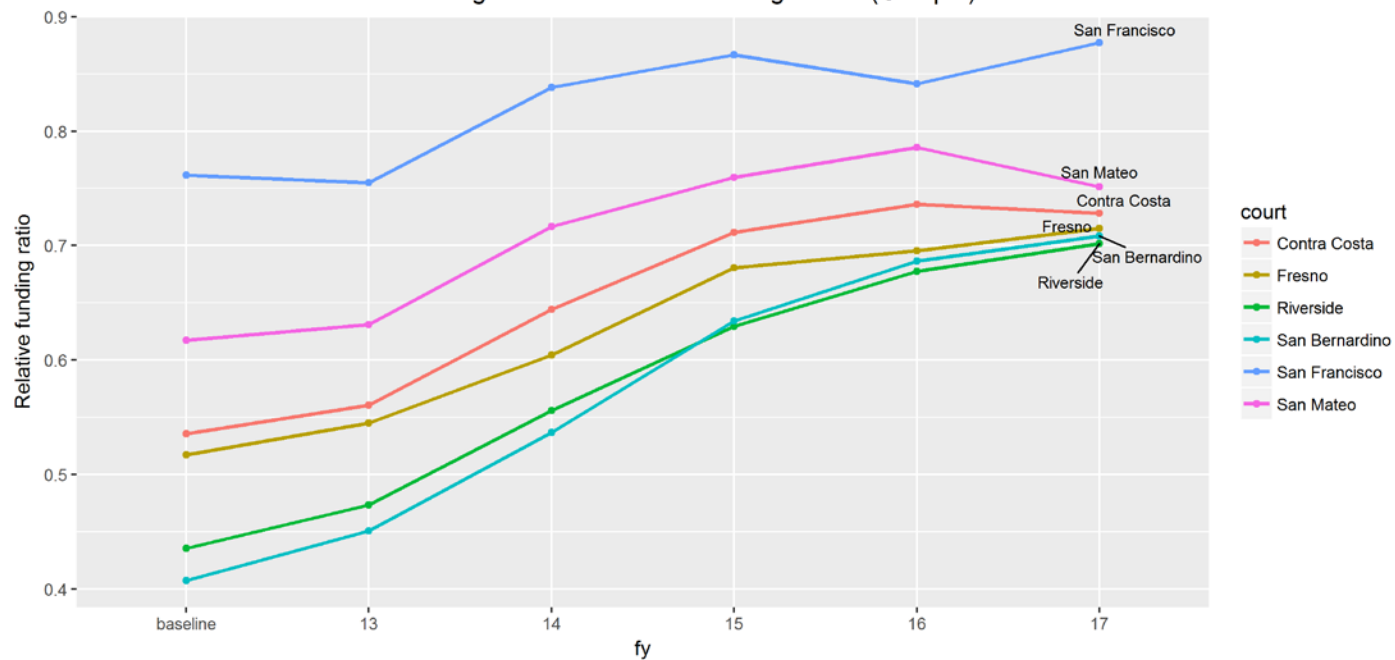
- WAFM has achieved progress on equity
- Relative funding ratios are more similar after WAFM than before WAFM
- Both increases and decreases in relative funding have contributed to progress on equity
- An equity gap remains because the relative funding ratios remain variable across the courts
- We lack data to understand the net impact of WAFM on access to justice across the state

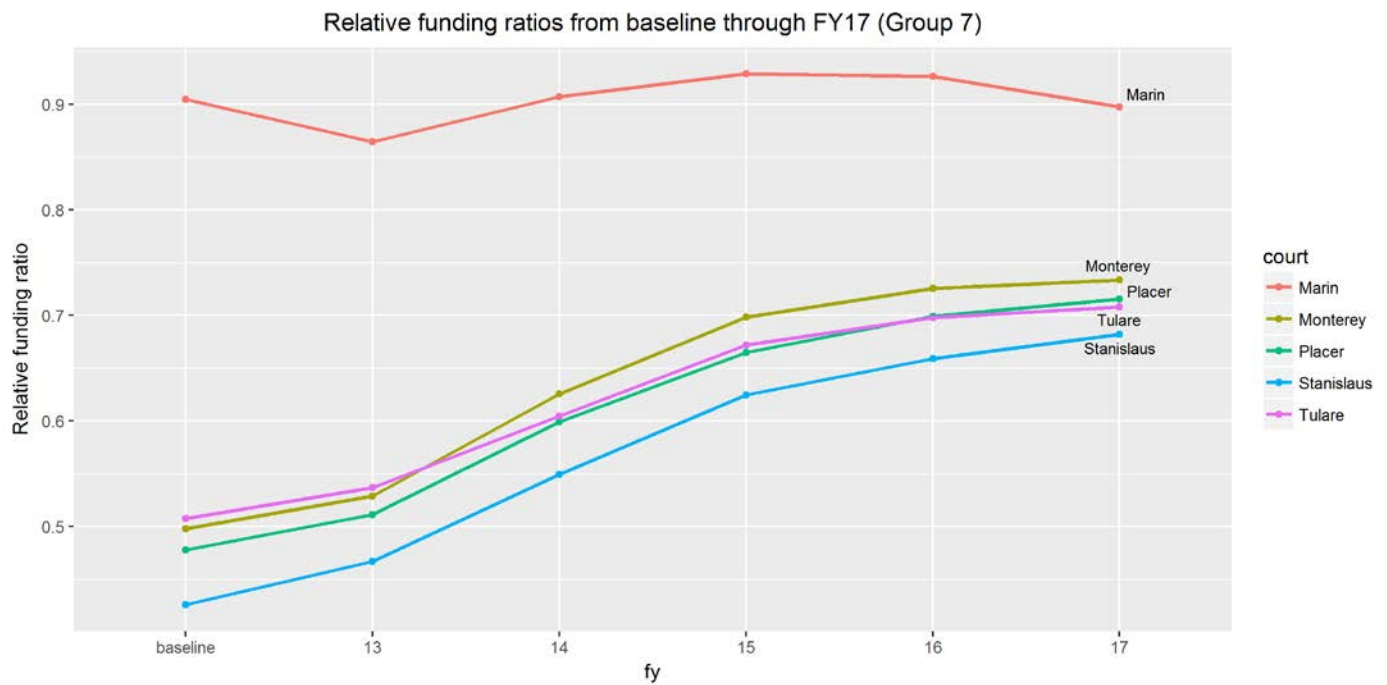
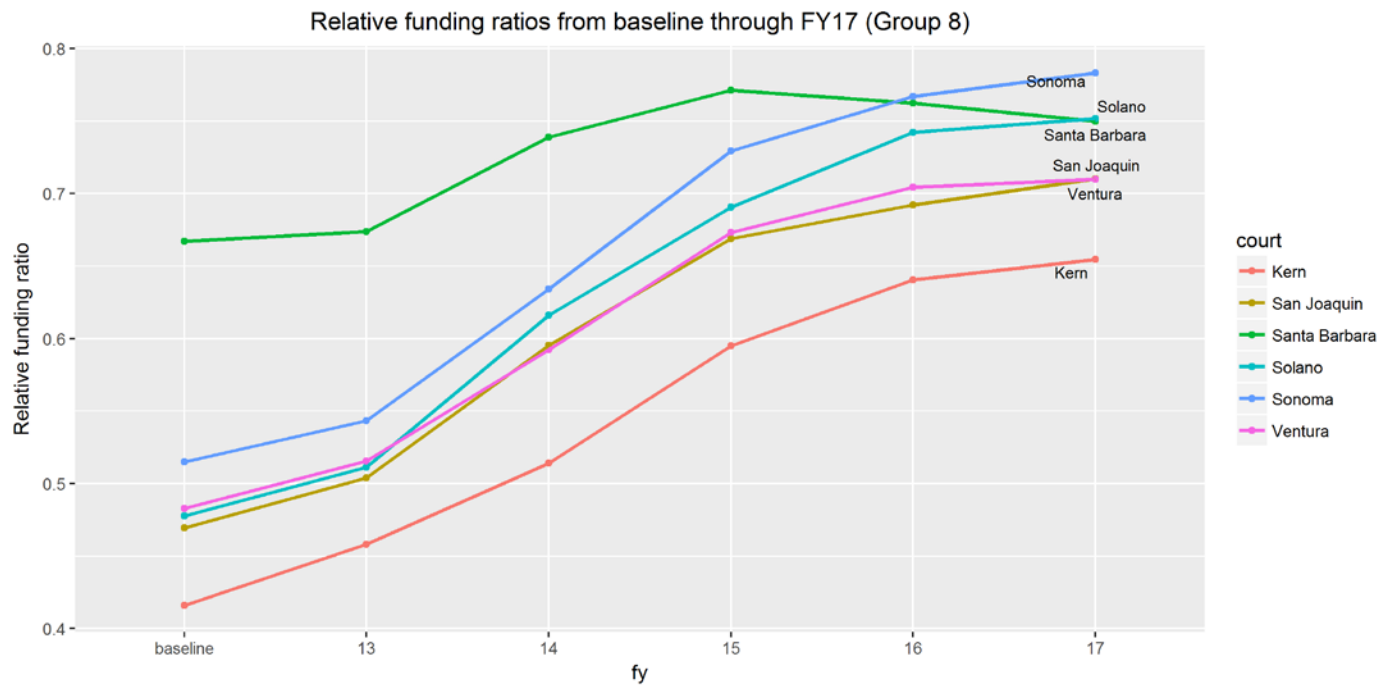
This analysis and findings were used as part of the basis for FMS to determine how best to proceed with any revisions or updates to WAFM for 2018-19 and beyond.

Relative funding ratios from baseline through FY17 (Group 10)

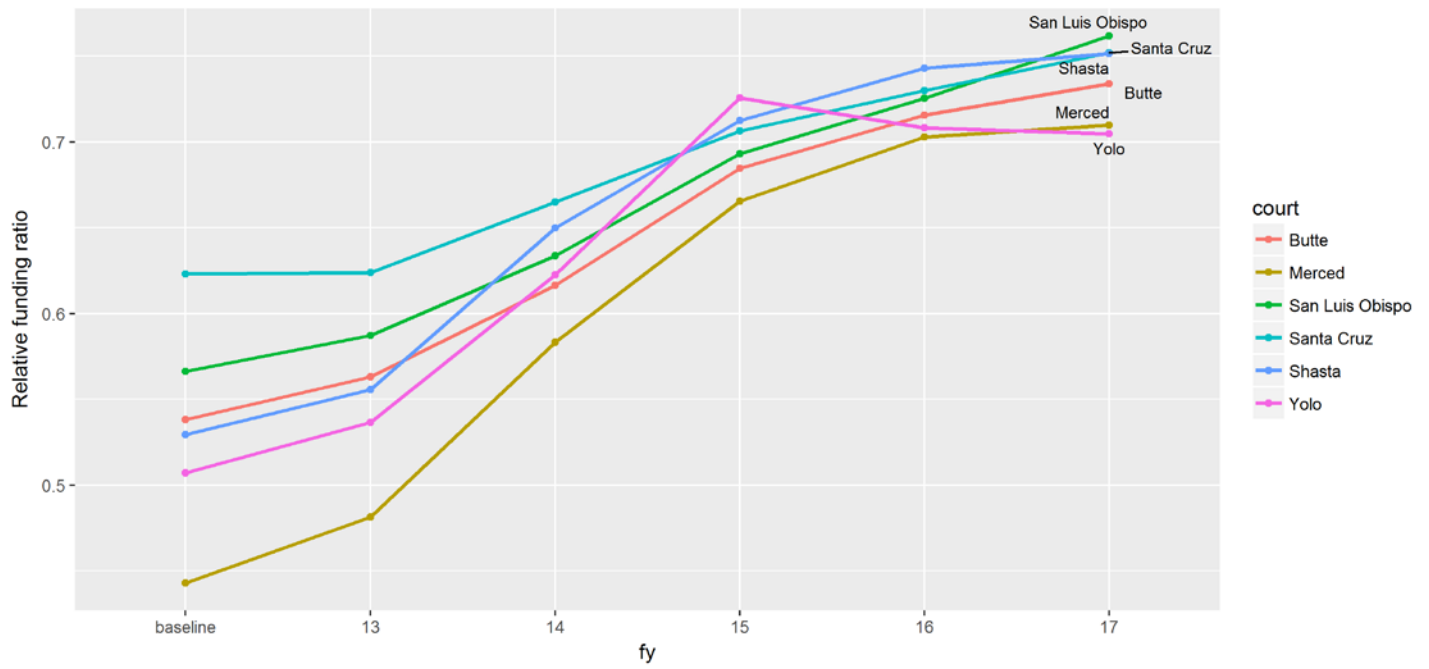


Relative funding ratios from baseline through FY17 (Group 9)

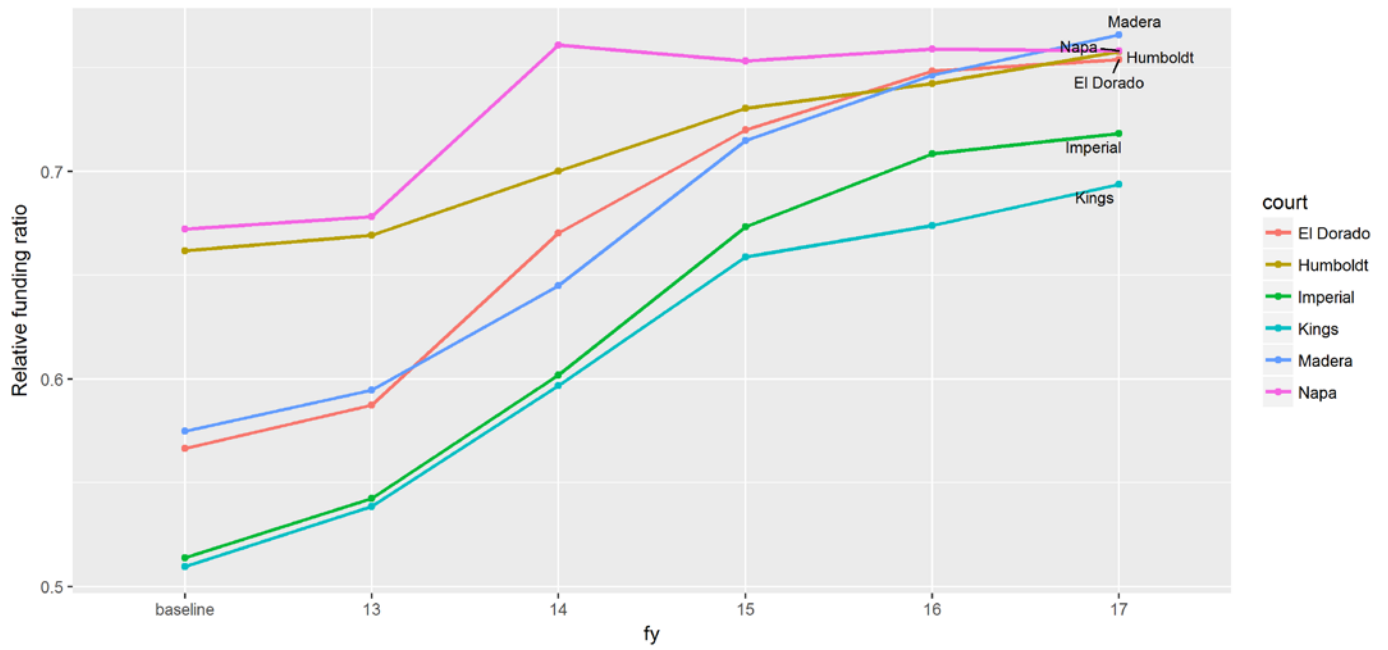


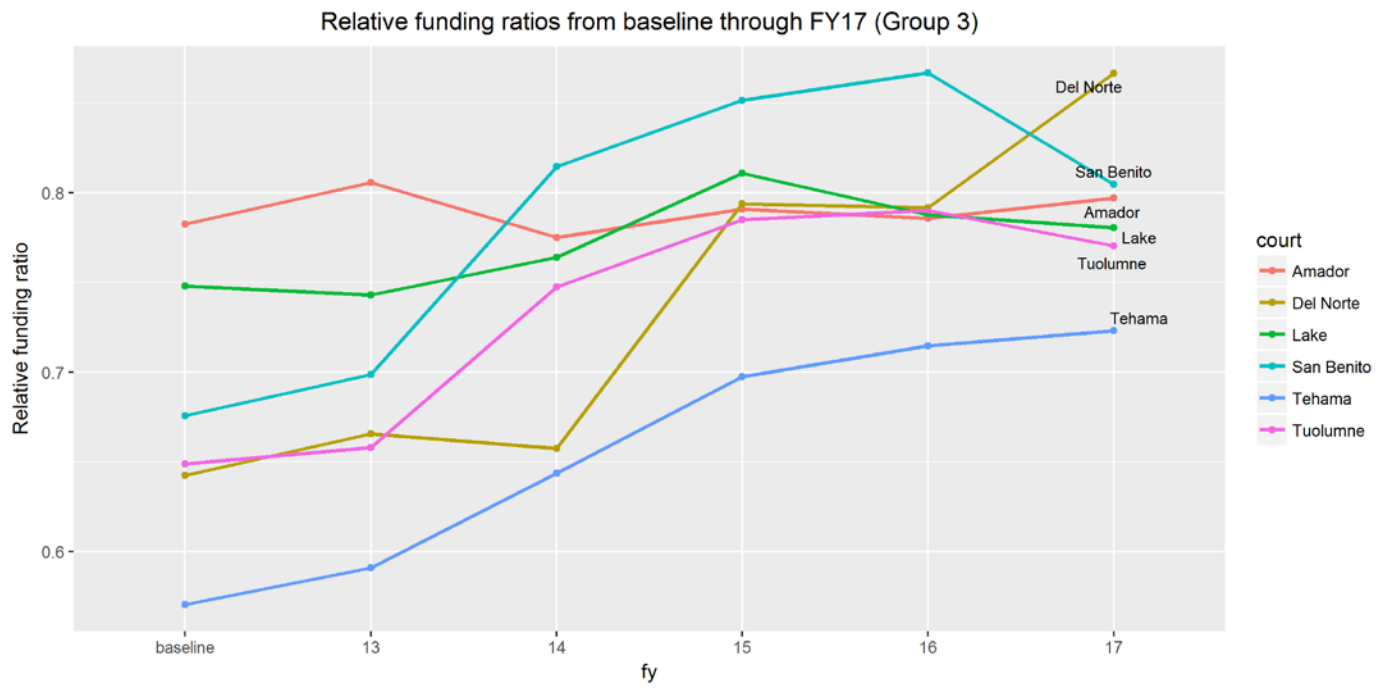
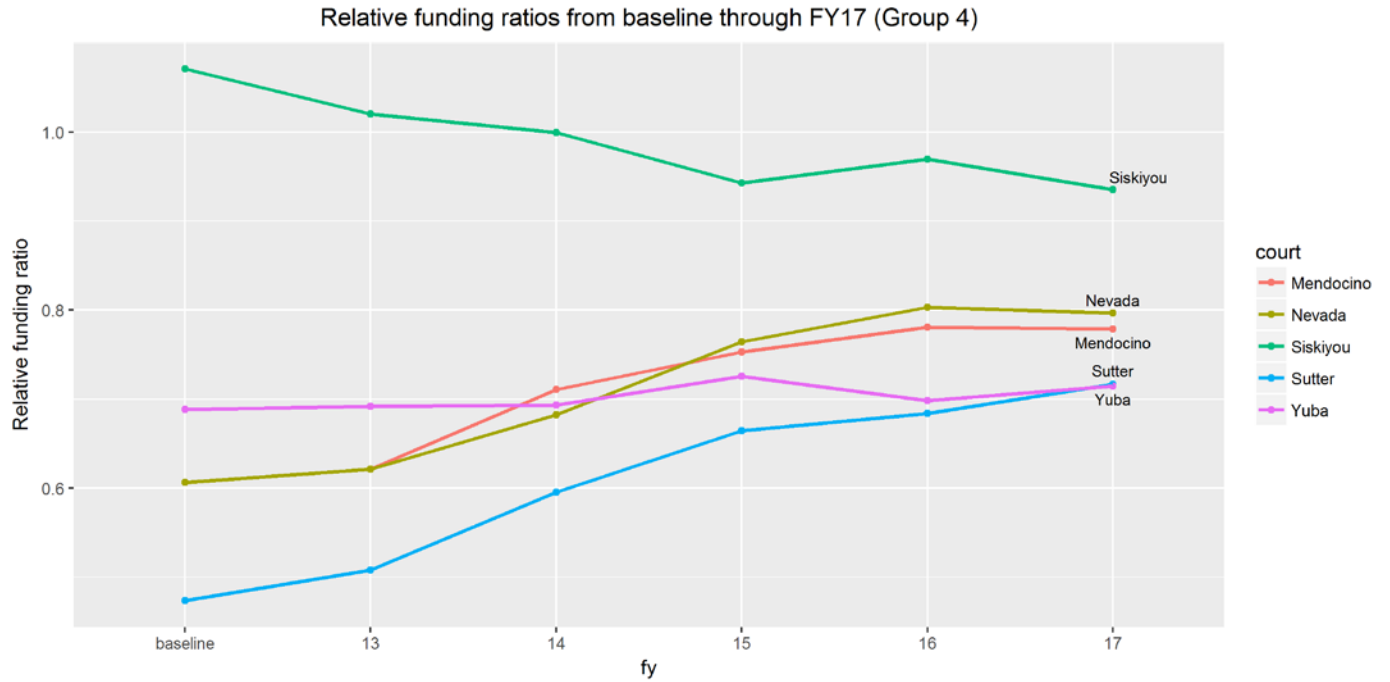


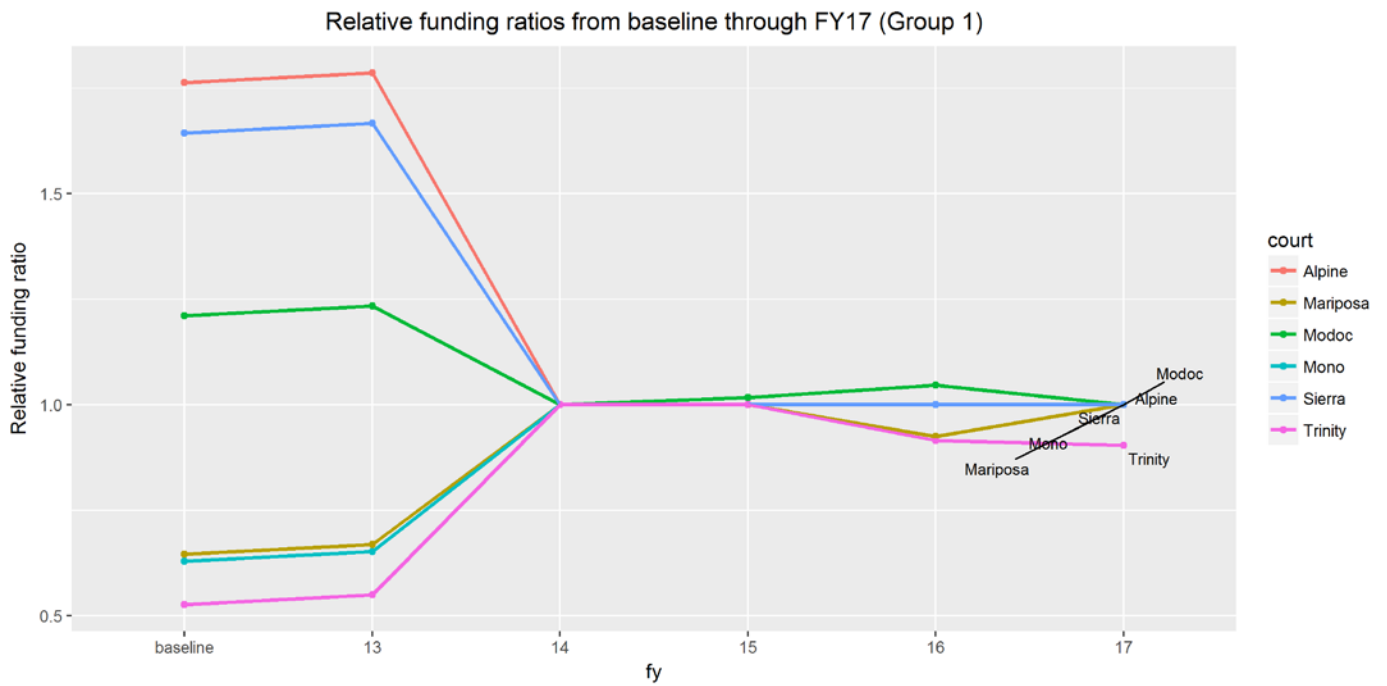
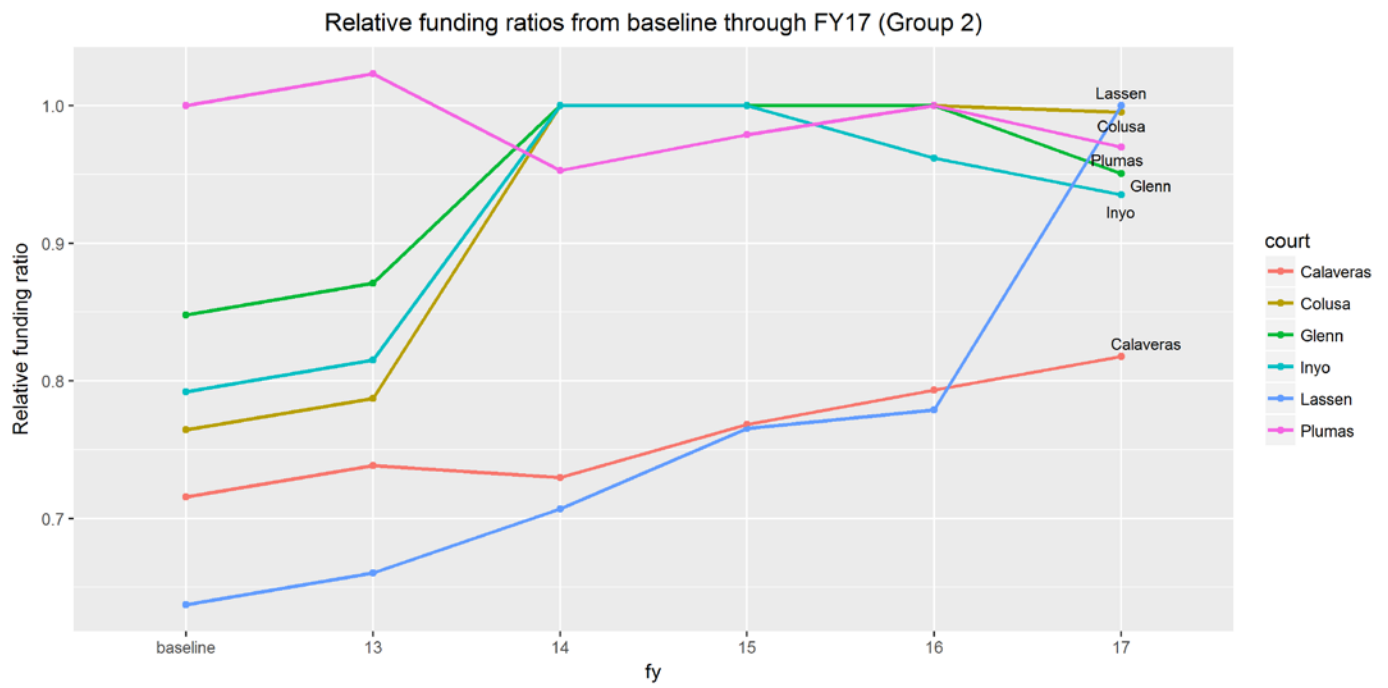
Relative funding ratios from baseline through FY17 (Group 6)



Relative funding ratios from baseline through FY17 (Group 5)







## Trial Court Allocation Scenarios Based on New Policy Recommendations

**Scenario 1:** No New Money for 3 Years

**Scenario 2:** No New Money in Years 1 and 3; New Money in Year 2

**Scenario 3:** 5-Year Blend of New Money / No New Money

**Scenario 4:** Reduction

**Scenario 5:** New Non-Discretionary Money

<b>Scenario 1: No New Money<sup>1</sup> for 3 Years</b>		
<b>2018-19 – No New Money</b>	<b>2019-20 – No New Money</b>	<b>2020-21 – No New Money</b>
Adjustment year, no allocation changes made unless the result of a floor adjustment.	No allocation change will occur for those courts within the band 2% above and 2% below the statewide average funding level, or for cluster one courts.	Adjustment year, no allocation changes made unless the result of a floor adjustment.
Workload measures updated, but no change to allocation. <sup>2</sup>	Up to 1% of allocations for courts above the band will be reallocated to courts below band to provide an increased allocation of up to 1%, allowing courts to penetrate the band if adequate funds are available.	Workload measures updated, but no change to allocation.
	This would fall into every other year no money, so not an adjustment year.	

<b>Scenario 2: No New Money in Years 1 and 3; New Money in Year 2</b>		
<b>2018-19 – No New Money</b>	<b>2019-20 – New Money</b>	<b>2020-21 – No New Money</b>
Adjustment year, no allocation changes made unless the result of a floor adjustment.	Bring all Cluster 1 courts up to at least 100% of funding need.	No allocation change will occur for those courts within the band 2% above and 2% below the statewide average funding level, or for cluster one courts.
Workload measures updated, but no change to allocation.	Allocate up to 50% of remaining funding to courts under the statewide average based on WAFM, bringing courts up to (but not over) the statewide average.	Up to 1% of allocations for courts above the band will be reallocated to courts below band to provide an increased allocation of up to 1%, allowing courts to penetrate the band if adequate funds are available.
	Allocate remaining funds to <i>all courts</i> based on WAFM.	This would fall into every other year no money, so not an adjustment year.

<sup>1</sup> New money is defined as any new, ongoing allocation of general discretionary dollars to support cost of trial court workload, excluding funding for benefits and retirement increases.

<sup>2</sup> Workload will be run every year, but will not be used for allocation purposes on every other year of no new money until such time as all courts are within the band.



## Trial Court Allocation Scenarios Based on New Policy Recommendations

Scenario 3: 5-Year Blend of New Money / No New Money				
2018-19 – No New Money	2019-20 – New Money	2020-21 – No New Money	2021-22 – No New Money	2022-23 – New Money
Adjustment year, no allocation changes made unless the result of a floor adjustment.	Bring all Cluster 1 courts up to at least 100% of funding need.	No allocation change will occur for those courts within the band 2% above and 2% below the statewide average funding level, or for cluster one courts.	Adjustment year, no allocation changes made unless the result of a floor adjustment.	Bring all Cluster 1 courts up to at least 100% of funding need.
Workload measures updated, but no change to allocation.	Allocate up to 50% of remaining funding to courts under the statewide average based on WAFM, bringing courts up to (but not over) the statewide average.	Up to 1% of allocations for courts above the band will be reallocated to courts below band to provide an increased allocation of up to 1%, allowing courts to penetrate the band if adequate funds are available.	Workload measures updated, but no change to allocation.	Allocate up to 50% of remaining funding to courts under the statewide average based on WAFM, bringing courts up to (but not over) the statewide average.
	Allocate remaining funds to <i>all courts</i> based on WAFM.	This would fall into every other year no money, so not an adjustment year.		Allocate remaining funds to <i>all courts</i> based on WAFM.

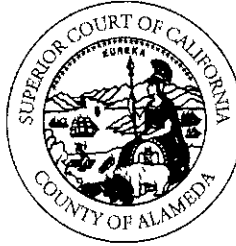
Scenario 4: Reduction
No policy direction save will be considered and recommended in the fiscal year it occurs with special consideration for those courts below the statewide average.
Recommendation to include a determination if these years will be considered “New Money” vs. “No New Money” years.

Scenario 5: New Non-Discretionary Money
No policy direction save will be addressed as needed.
Recommendation to include a determination if these years will be considered “New Money” vs. “No New Money” years.

## WAFM Letters and Public Comments

<b>WAFM Adjustment Request Process</b>		
Superior Court of California, County of Alameda	September 21, 2017	<a href="#">Attachment G1</a>
Superior Court of California, County of Alameda	September 27, 2017	<a href="#">Attachment G2</a>
<b>Written Letters and Public Comment</b>		
Small Court WAFM Methodology Review Group	March 22, 2017	<a href="#">Attachment G3</a>
Superior Court of California, County of Lake	April 11, 2017	<a href="#">Attachment G4</a>
Superior Court of California, County of Glenn	May 5, 2017	<a href="#">Attachment G5</a>
Superior Court of California, County of Siskiyou	May 23, 2017	<a href="#">Attachment G6</a>
Superior Court of California, County of Lake	May 24, 2017	<a href="#">Attachment G7</a>
Superior Court of California, County of Riverside	September 19, 2017	<a href="#">Attachment G8</a>
Superior Court of California, County of Alameda	September 23, 2017	<a href="#">Attachment G9</a>
Superior Court of California, County of Lake	September 29, 2017	<a href="#">Attachment G10</a>
Superior Court of California, County of San Bernardino	October 5, 2017	<a href="#">Attachment G11</a>
Superior Court of California, County of Orange	October 16, 2017	<a href="#">Attachment G12</a>
Superior Court of California, County of Siskiyou	October 23, 2017	<a href="#">Attachment G13</a>
Superior Court of California, County of Alameda	October 24, 2017	<a href="#">Attachment G14</a>
Superior Court of California, County of Orange	October 24, 2017	<a href="#">Attachment G15</a>
Superior Court of California, County of Alameda	November 15, 2017	<a href="#">Attachment G16</a>
<b>In-Person Public Comment</b>		
Hon. Morris Jacobson, Presiding Judge Superior Court of California, County of Alameda	April 12, 2017	
Mr. Chad Finke, Court Executive Officer Superior Court of California, County of Alameda	April 12, 2017	
Hon. Morris Jacobson, Presiding Judge Superior Court of California, County of Alameda	May 25, 2017 <sup>1</sup>	
Mr. Chad Finke, Court Executive Officer Superior Court of California, County of Alameda	May 25, 2017	
Hon. Wynne Carvill, Assistant Presiding Judge Superior Court of California, County of Alameda	October 2, 2017	
Mr. Chad Finke, Court Executive Officer Superior Court of California, County of Alameda	October 2, 2017	
Mr. David Yamasaki, Court Executive Officer Superior Court of California, County of Orange	October 26, 2017	

<sup>1</sup> This was an item on the Funding Methodology Subcommittee agenda rather than in-person public comment.



## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Executive Office

René C. Davidson Courthouse • 1225 Fallon Street, Oakland, CA 94612

Telephone: (510) 891-6012

MORRIS D. JACOBSON  
*Presiding Judge*

CHAD FINKE  
*Executive Officer*

September 21, 2017

Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee, and Co-Chair, Funding Methodology Subcommittee

Ms. Rebecca Fleming, Co-Chair, Funding Methodology Subcommittee

VIA E-MAIL

Dear Judge Conklin and Ms. Fleming,

This letter is intended to be a formal request by the Superior Court of Alameda County for adjustments to WAFM. This request is made pursuant to the revised process adopted by the Judicial Council of California on July 28, 2017. While the revised process contemplates the request being made on an application form to be developed by Judicial Council staff, we are not aware that any such form yet exists. As such, we are presenting our request in letter format and we trust that that will be acceptable.

In making this request, we are addressing the eight informational points set forth in the revised process adopted by the Judicial Council of California on July 28, 2017. Because that process appears to contemplate that requests will be limited to the addition of new WAFM "factors," some of the informational points are not directly applicable to our request. Nonetheless, we have done our best to respond to each informational point. And we are happy to provide any additional information as may be requested by the Judicial Council, the Trial Court Budget Advisory Committee, the Funding Methodology Subcommittee, or any other body.

### 1. Description of how the factor is not currently accounted for in WAFM

Our request is that WAFM be amended as follows:

- Eliminate all reference to, or use of, the "historic share" in calculating annual allocations to the trial courts.
- Adopt the trial courts' FY 17-18 allocations as their new respective "base" funding levels.
- Modify the WAFM formula such that, where the overall allocation to the trial courts for a fiscal year (not including one-time or specially designated funds such as dependency funding or

Hon. Jonathan B. Conklin and Ms. Rebecca Fleming  
 September 21, 2017  
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innovation grant funding) is the same as the allocation for the prior fiscal year, then the courts' respective allocations likewise remain the same for the two years. In other words, make WAFM a "no cuts" model in flat budget years. To illustrate: If the FY 17-18 allocation to the trial courts is \$1.4B, and the allocation in FY 18-19 is also \$1.4B, then each court should, in FY 18-19, get the same allocation it received in FY 17-18.

- Modify the WAFM formula such that, in a year where the overall allocation to the trial courts for a fiscal year increases over the allocation for the prior fiscal year, each trial court's starting base budget allocation will be the same as in the prior fiscal year. Then, modify the formula such that a percentage of the increased overall allocation (which percentage shall be determined by FMS) is allocated only to the most severely underfunded courts. Lastly, modify the formula such that the remainder of the increased overall allocation is allocated to all courts, subject to criteria to be determined by FMS. To illustrate: If the trial courts overall receive \$100M more in FY 18-19 than in FY 17-18, then, e.g., \$50M of that new funding should go solely to the most underfunded courts, while the remaining \$50M should be distributed among all 58 courts.
- Modify the WAFM formula such that, in a year where the overall allocation to the trial courts for a fiscal year decreases over the allocation for the prior fiscal year, each trial court's starting base budget allocation will be reduced by a percentage equal to the value of the overall percentage reduction to the trial courts overall. To illustrate: If the trial courts overall receive 5% less funding via the State Budget in FY 18-19 than in FY 17-18, then each court's allocation in FY 18-19 should be reduced by 5%. Note that FMS would likely need to adopt a funding floor for the smallest courts in connection with this modification to ensure that they do not suffer reductions that effectively render them unable to function.

The "factors" embodied by the above-multi-part request are not currently accounted for in WAFM. That is, WAFM continues to rely on the "historic share" to some extent. Further, WAFM reallocates funding each year without regard to the overall level of funding to the trial courts respective to the prior fiscal year. And in years where funding to the trial courts overall is increased, it is still theoretically possible for a court not only to not share in the new funding, but to actually see a cut to its budget. Thus, our overall proposal represents an approach to funding allocation that is not currently accounted for under WAFM.

## **2. Identification and description of the basis for which the adjustment is requested**

This informational point does not appear to be applicable to our request.

## **3. Detailed analysis of why the adjustment is necessary**

While WAFM has resulted in a redistribution of currently available funding amongst the trial courts, it has done so at the cost of major disruptions to the operations of many of the "donor" courts, as well as a significant decrease in access to justice for the public served by those courts. The changes proposed in this request will make WAFM more transparent, stable, and predictable. This will, in turn, ensure that access to justice for the citizens of the "recipient" counties does not come at the cost of a reduction in

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access by citizens in the “donor” counties. We discuss the access implications further in connection with informational point 6 below.

As to transparency, both FMS and TCBAC have acknowledged, in public meetings, that WAFM in its current incarnation is difficult both to explain and understand. In particular, the calculations involved in determining the phase-in of the “historic share” over time make the WAFM formula complex to the point of opacity. Eliminating the historic share as proposed will make the formula much easier to explain and thus significantly more transparent, particularly to those outside of the branch.

As to stability and predictability, WAFM as it stands is flawed in a number of regards. First, WAFM is overly sensitive to changes in filing trends. By recalculating each court’s share on an annual basis, with reference to the immediate past three years of filings data, WAFM leads to unpredictable, sometimes extreme swings in funding “need” from year-to-year. This is not speculative; historical WAFM data demonstrate that there are a number of courts that have oscillated between “donor” and “recipient” status since the model’s inception, sometimes seeing year-to-year swings in excess of \$1M.

Exacerbating the issue, courts do not receive their WAFM allocation information until mid-June, just weeks before those allocations go into effect. Moreover, because WAFM is reliant on data from all 58 courts, there is no way for any single court to predict accurately whether it will in fact be a donor or recipient, nor to what extent. Thus, a court may find itself approaching July 1 expecting to receive an increase in its allocation over the prior year, only to learn at the last minute that it will instead be facing a reduction, perhaps even at a catastrophic level. Conversely, a court may find itself an unexpected recipient, without any clear, fiscally prudent plan for how to spend its excess funding.

These sorts of last-minute, unpredictable, and often dramatic changes in funding make it nearly impossible for any court other than the most under-resourced (which can at least assume that they will be “recipients” to some extent, and thus plan accordingly) to engage in sound budget management, including entering into multi-year contracts (which often provide fiscal savings over contracts of shorter duration) or agreeing to multi-year COLAs for staff (which then causes the court and the JCC to expend resources annually on wage reopeners).

Our proposal cures these issues. As stated above, the fundamental principle underlying the proposal is stated simply as “no more cuts,” i.e., no court will suffer any cut in its allocation over the prior year unless the trial courts as a whole are cut. That fact—whether the trial courts overall are likely to see a budget reduction—is generally telegraphed by the Governor in January. Thus, under our proposal all courts would know approximately 6 months in advance if there was a need to prepare for a budget reduction. Otherwise, each court would know that its budget for the upcoming year would be at least the same as the current year, which would begin to restore our ability to engage in long-range planning and expenditure plans.

As an added benefit, adopting a “no cuts unless all are cut” model would eliminate the current unfortunate situation in which courts are divided by WAFM into two warring camps. Because WAFM is, in essence, a zero-sum game; some advance only at the expense of others. By adhering to a model that is, at its heart, divisive, the branch has weakened the ability of the trial courts to harmonize our message

Hon. Jonathan B. Conklin and Ms. Rebecca Fleming  
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to the other branches. If, however, our proposal is accepted, it will instantly align the trial courts around a single goal: vigorous advocacy for much-needed new funding, to be disproportionately allocated to those courts most in need.

**4. Description of whether the unaccounted for factor is unique to the applicant court or has broader applications**

This request has a statewide application, and would affect all 58 trial courts.

**5. Detailed description of staffing needs and/or costs required to support the factor that is unaccounted for by WAFM**

In our view, the elimination of the "historic share" and the calculations surrounding its application will greatly reduce the workload on Judicial Council staff tasked with implementing WAFM. That workload reduction should easily offset any one-time workload involved in creating the new calculations necessary to implement the recommendations above.

**6. Description of the consequence to the public and access to justice without the funding**

As noted above, one presumably unintended consequence of WAFM in its current form has been that it has significantly reduced access to justice for the citizens in some counties, particularly those in which the trial courts have been repeated "donors." Among other things, the public in perennial "donor" counties have seen the following:

- Reductions in clerk's office hours;
- Court closures on days that would otherwise be business days, to accommodate voluntary and mandatory furloughs;
- Longer lines and increases in various response times as a result of decreased staffing levels; and
- A loss of certain grant-funded programs due to unavailability of sufficient matching funds at the local level.

These access restrictions are particularly harmful to our most vulnerable populations, e.g., the indigent, the elderly, and others whose life situations already limit their options in terms of available time for traveling to, and interacting with, the court.

We understand and acknowledge that many of these outcomes may have been present in the most severely underfunded courts for years. And yet we cannot accept that it is now "the turn" of courts that were historically less underfunded to have to suffer those same access reductions. That position is, in our view, simply a restatement of the principal that somehow "two wrongs DO make a right." In our view, the solution that is best for the public as a whole across the state is to adopt a "hold harmless" model like we have proposed, ensuring that those with the most dire need grow the fastest while at the same time not forcing some citizens to endure increased access restrictions to mitigate historical access restrictions faced by others.

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To be clear, however, without the changes we have proposed—i.e., if WAFM continues as it has—there is no doubt that we will continue to see access eroding in the “donor” counties. Clerk’s hours will continue to be reduced, services will be curtailed, staff reductions will continue, and the public will suffer for it.

**7. Description of the consequences to the requesting court of not receiving the funding**

As a court that has been a major “donor” for most of the lifespan of WAFM, it is tempting to say that, if our request is not granted, Alameda will suffer the additional reductions in staff, services, and access described above. And yet, because of the unpredictability and volatility of WAFM, there is no way, in September 2017, to predict with any certainty what the specific fiscal consequences will be for our court if our proposal is rejected. It may be that the filings of the other 57 courts will decline more than ours, and we will reap a windfall as a “recipient” next year. Or the converse may happen and we may take a significant cut and have to revive the layoff plan that we had prepared to put into place in FY 17-18.

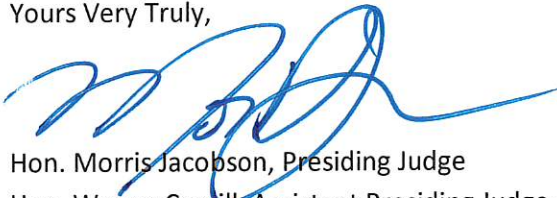
The fact is that we don’t know, and in fact no court other than the most underfunded can know either. Thus, if our proposal or some other “no more cuts” proposal is not approved, then we will all do our best to manage the money we received this year, without ability to plan confidently for next year. We will continue to pass up multi-year contracts that offer good rates, for fear of not being able to afford them in the out years. We will continue to try to get our labor unions to agree to meager COLAs with annual reopeners, in hopes of fending off strikes. We will continue to assure the public that we regret the loss of services, and that we would like to restore them if only we could predict accurately whether we can truly afford to hire more staff.

If, however, our proposal were adopted, we could in fact begin to address these issues. We would have assurances as to at least our minimum funding level for next year, which would allow for some planning to begin.

**8. Any additional information requested by the JCC, et al., deemed necessary to fully evaluate the request**

We are happy to provide any additional information that may be needed, and we thank FMS and TCBC in advance for their consideration of our request.

Yours Very Truly,



Hon. Morris Jacobson, Presiding Judge

Hon. Wynne Carvill, Assistant Presiding Judge and Presiding Judge Elect

Chad Finke, Executive Officer

cc: Martin Hoshino, Administrative Director of the Courts, Judicial Council of California  
 Zlatko Theodorovic, Director and Chief Financial Officer, Judicial Council of California

**From:** "Carvill, Judge Wynne, Superior Court" <[wcarvill@alameda.courts.ca.gov](mailto:wcarvill@alameda.courts.ca.gov)>  
**Date:** September 23, 2017 at 2:45:56 PM PDT  
**To:** "'Conklin, Jon B.'" <[jconklin@fresno.courts.ca.gov](mailto:jconklin@fresno.courts.ca.gov)>  
**Cc:** "Jacobson, Judge Morris, Superior Court" <[mjacobson@alameda.courts.ca.gov](mailto:mjacobson@alameda.courts.ca.gov)>, "Finke, Chad, Superior Court" <[cfinke@alameda.courts.ca.gov](mailto:cfinke@alameda.courts.ca.gov)>  
**Subject:** RE: touching base

Jon,

Morris and I are on the same page here, but I want to make a point that is relevant given the last FMS discussion I observed.

One of the ideas floated was a "band" around the 75% funding level such that courts above the band would be cut to fund those below the band.

For example, if the band was +/- 3%, then those over 78% would be cut to 78% and the money used to provide extra money to those below 72%.

I suspect that is where the committee will come out; the debate will be the width of the band: 1%? 3%? 5%? or what?

There are 2 problems with this:

First, if the band is too tight, lots of courts will be donors and it will lead to the disunity Morris mentions.

Second and perhaps even more importantly, as long as this is all based on filings, it is much too volatile. At best a court can guess where it will be based on their filing trends, but no court can be sure because you don't know until late June what impact the changes in the filings in other courts may be. Thus we might be at 78% this year but we could drop to 71% or jump up to 83% or whatever. These fluctuations don't really matter if there is a hold harmless rule but without such a rule no court other than those at the extremes has a clue what will happen to their funding until the very last moment.

The population model would remove that uncertainty but WAFM could also be modified to do the same thing. I agree with Morris that the population model may be dropped if you like, but that is only because fighting over that obscures the real issue: the impact of cuts compounded by the volatility of filing data.

Wynne



## Small Court WAFM Methodology Review Group

March 22, 2017

Honorable Tani G. Cantil-Sakauye  
Chief Justice of the Supreme Court  
Martin Hoshino  
Administrative Director  
Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102

Dear Chief Justice and Martin Hoshino:

The undersigned Presiding Judges, Assistant Presiding Judges and Court Executive Officers strongly urge the Judicial Council to direct and commission an evaluation of the Workload Allocation Funding Model (WAFM), before the end of its five-year implementation plan. WAFM was approved in 2013, to be implemented gradually over a five-year transition period. Because of its various unintended consequences, set forth in part below, WAFM needs refinement and should not be used for trial court funding allocations in its current form beyond that five-year term. Among other things, the current WAFM model has adversely impacted the smaller and rural trial courts. Such a disparate system was never intended by the 1988 Constitutional Amendment, which provided for a unified court system, or by the companion law known as the Trial Court Funding Act, which established a requirement for equitable statewide funding. Under these reform measures, old historical inequities were to be eliminated, and replaced with a statewide formula that would fairly fund trial courts in all 58 counties, thus maintaining more equal access to, and quality of, justice throughout the state.

### *Background*

Some background lends perspective to why WAFM needs further review and refinement.

First, WAFM was adopted in a short time frame and was never completed. WAFM was born of an effort to respond to Governor Brown's (and the Department of Finance's) insistence that the judicial branch take immediate steps to correct the historical inequities of trial court funding allocations that persisted. Because it was clear to the leadership in the judicial branch that the funding swept from branch reserves, and cuts to branch funding in the state budget, would not be restored unless the branch leadership took a significant step to correct the historical funding methods that had persisted for ten years after the Trial Court Funding Act was adopted (Gov. Code §§ 77001, 77200, et seq.), WAFM was developed. This work was managed primarily through Judicial Council staff, working with the Trial Court Budget Working Group (now Advisory Committee) and various subcommittees. The rush to prepare

an allocation formula was absolutely necessary, but in hindsight, and even at the time (cf. numerous "parking lot issues" that remain unresolved), the need for further refinement is obvious.

Second, WAFM is based primarily on the Resource Allocation Study (RAS), a model using JBSIS data that attempts to determine each court's workload, based on number of filings annually, as apportioned based on weighted case types within that number of filings. The RAS helps to focus, but does not fully identify needs of each court. It does not recognize costs that vary widely county-by-county, such as standard or cost of living differences, the number of judges, geographical challenges, necessary security, economies of scale and a limited qualified workforce.

Third, WAFM includes a multiplier that is tied to labor costs reported in the Bureau of Labor Statistics database (BLS factor) for each county. The effect of using the BLS as a key variable is that an individual court's funding becomes tied to the local economy, which necessarily reflects the level of wealth or poverty within each county. The result is, a poor county's court stays poor, and rich county's court stays rich.<sup>1</sup> This is aggravated by the fact that in wealthier counties, high value labor earns more than the courts pay, so that the BLS ratio is favorable and these courts receive more money through WAFM. In poor counties, by contrast, the courts are often the highest paying employers, meaning that the BLS ratio is unfavorable and funding for their labor costs is restricted.

Fourth, at the time WAFM was implemented, the smallest 15, the two-judge courts, were exempted for the first year because the committee that developed it recognized even then how drastic the impact of the methodology would be on these courts. It was decided that if WAFM were to be implemented these courts would need to receive a basic level of funding apart from workload measures, representing the "floor" cost of opening the doors and being available to the public. This floor may exceed the basic identified workload need in some cases; in that situation, the excess rolls over and the resulting excess is subtracted from the floor allocation in the following year. But for those courts whose funding need under WAFM exceeds the floor amount, WAFM alone becomes the basis for funding. This has resulted in those smaller courts having reduced funding (or losing out on new funding) in the years since WAFM has been in place. So, another factor, "less than 50 FTE," was added to the WAFM, together with the floor, to mitigate the disparate impact of WAFM on the smallest 18 trial courts.

<sup>1</sup> Exhibit A, attached, is an excerpt from the 2015 Court Statistics Report and Trial Court Allocations for 2015-2016. Exhibit B, from the same source, shows that the Cluster 4 courts having 59 percent of the state's workload receive 64 percent of the funding allocation. As indicated in the statistical data the <50FTE courts have 1.9 percent workload and 1.6 of funding allocation.

Finally, all new money<sup>2</sup> is being distributed using WAFM, as a means of transitioning to this workload allocation model. Then, for each new dollar received, a dollar of historical base funding is then reallocated using WAFM. The effect of this on the smallest 18 trial courts is that they do not receive any portion of new funding. Moreover, the small donor courts, actually lose money through the reallocation of the historical base funding. This "floor deduction," coupled with the adverse BLS ratio, doubly undercuts the smallest counties. And, for some courts, the minimum floor has become a ceiling.

It is time for a pause to reflect. Based on the foregoing background and perspective of the smaller courts, the undersigned respectfully request the Judicial Council to stop further implementation of WAFM until the small courts funding requirements can be more accurately identified and predicted. These courts do the same job as courts in the larger metropolitan areas: deciding facts and resolving disputes, handling trials and rendering judgments and sentences, directing responsibility and care for lost children and wayward adults, assigning programs to meet the needs of the homeless, mentally ill and addicts, and so on. These courts must interpret and uphold the same laws, know the same rules and follow the same procedures in every case, if the promise of evenhanded justice is to be real. This holds regardless whether the court is rich or poor, urban or rural. Funding must enable this effort, not impair it.

The BLS factor, in particular, should be re-examined. This assigns a value to the personnel in a court which is extrapolated from the pool of similar jobs in the community. When there are no similar jobs, the extrapolation is invalid and obviously inaccurate. Further, the BLS alone does not consider the added costs of recruiting, encouraging longevity, training and cross-training, which are absolutely essential in a community lacking a wide pool of qualified replacement employees to draw from. Trial court employees in smaller courts have to be trained to handle any and all types of cases and court duties. Once trained, the trial court then struggles to maintain these employees, often losing them to the higher paying positions with state or federal government or to neighboring courts or employers in wealthier communities. While it may eventually be possible to develop a mathematical factor that would represent these hidden or indirect costs and factors applicable to the courts in those counties facing such challenges, as a variation of the BLS or substitute factor, the time and work required to do so make it unlikely that this could be accomplished within the transition period for WAFM. Instead, it may be preferable to use a neutral [1.0] factor for BLS in the case of these counties. In any case, we strongly believe this set of issues should be studied further.

Looking forward, we believe that a critical evaluation of WAFM is even more compelling given the effort to utilize WAFM methodology as the basis for other trial court funding allocations, such as dependency counsel, AB 1058 grant allocations, and so on. An incomplete methodology should

<sup>2</sup> That is, any funding that has been "restored" or "reinvested" in the branch not assigned to a specific purpose by the Legislature.

not become the prototype for all funding allocations. However, we also acknowledge that this critique of WAFM is distinct from the Judicial Council's call for full and equitable funding of the entire judicial branch.

In conclusion, the judicial branch as a whole must continue to seek reinvestment in the branch as a whole. But it must also strive to fund every trial court fairly, insuring equal access to justice, and ending perpetuation of the historically inequitable funding flaws of the past. Our branch must do more to assist the individual trial courts in funding their needs appropriately, consonant with the needs of the community as well as statewide standards. It must do its part to carry out the express intention of the Legislature in the Trial Court Funding Act, to provide "uniform standards and procedures, economies of scale and . . . improve access to justice for the citizens of the State of California . . . [while] giv[ing] strong preference to the need for local flexibility in the management of court financial affairs." (Lockyer-Isenberg Trial Court Funding Act of 1997 (ch. 850, Stats. 1997) §§ 2(b), (c), and (3)(1).)

As always, we stand ready to assist the Judicial Council in this critical evaluation.

Very truly yours,

Elizabeth W. Johnson, PJ  
Michael B. Harper, APJ  
Staci Holliday, CEO  
Trinity Superior Court

William J. Davis, PJ  
Laura Masunaga, APJ  
Renee McCanna Crane, CEO  
Siskiyou Superior Court

Janet Hilde, PJ  
Ira Kaufman, APJ  
Deborah Norrie, CEO  
Plumas Superior Court

Michele Verderosa, PJ  
Andi Barone, CEO  
Lassen Superior Court

Andrew S. Blum, PJ  
Michael Lunas, APJ  
Krista LaVier, CEO  
Lake Superior Court

William H. Follett, PJ  
D. Darren McElfresh, APJ  
Sandra Linderman, CEO  
Del Norte Superior Court

F. Dana Walton, PJ  
Mariposa Superior Court

Francis W. Barclay, PJ  
David A. Mason, APJ  
Ronda Gysin  
Modoc Superior Court

Donald Cole Byrd, PJ  
Peter Twede, APJ  
Kevin Harrigan, CEO  
Glenn Superior Court

Dean T. Stout, PJ  
Pamela Foster, CEO  
Inyo Superior Court

Steve Hermanson, PJ  
Rob Klotz, CEO  
Amador Superior Court

Charles Ervin, PJ  
Yvette Durant, APJ  
Lee Kirby, CEO  
Sierra Superior Court

Mark G. Magit, PJ  
Stan Eller, APJ  
Hector Gonzalez, CEO  
Mono Superior Court

Jeffrey A. Thompson, PJ  
Colusa Superior Court

Cc: Chief of Staff Jody Patel



## Superior Court of California

COUNTY OF LAKE  
255 NORTH FORBES STREET  
LAKEPORT, CALIFORNIA 95453

STEPHEN O. HEDSTROM  
SUPERIOR COURT JUDGE

(707) 263-2374 EXT 2231  
FAX (707) 262-1327

April 11, 2017

Trial Court Budget Advisory Committee

Re: Item 4 Recommendation of the Small Court Dependency Workload Working  
Group Methodology

Dear Committee Members:

We are writing to express our strong support for the recommendations made by the Small Court Dependency Workload Working Group. We ask that you approve these recommendations and submit to the Judicial Council for final approval.

If these recommendations are not approved, Lake's dependency counsel funding will be reduced by a staggering 60%. At this reduced funding, it will be very difficult to retain the experienced attorneys we have in our juvenile court today. As a small rural court, it is already difficult to recruit and retain experienced, qualified attorneys. This problem is exacerbated because dependency attorneys funded at this reduced level will need to secure other sources of income that will reduce their dependency caseload attention. In addition, it is not worth an attorney's time to maintain training and keep current in complex dependency law for a caseload that provides a very limited portion of their income. If we are able to recruit any attorneys at this significantly reduced rate, it is likely that they will be less experienced and capable.

The recommendations before you today will prevent these devastating consequences in Lake County and many other small courts statewide at a minimal statewide cost.

Thank you for your time.

Sincerely,

A handwritten signature in blue ink that reads "Stephen O. Hedstrom".

Stephen O. Hedstrom  
Presiding Juvenile Judge

A handwritten signature in blue ink that reads "Krista LeVier".

Krista LeVier  
Court Executive Officer



# Superior Court of California, County of Glenn

Kevin Harrigan  
Court Executive Officer • Jury Commissioner

May 5, 2017

Trial Court Budget Advisory Committee  
Funding Methodology Subcommittee

Re: Item 3-Impact of Adjusting Bureau of Labor Statistic (BLS) on WAFM calculations

Dear Committee Members,

Thank you for your interest and time spent to review the impact of the BLS factor on small courts in California. With a BLS factor of .68, this topic is of particular interest to Glenn Superior Court in the pursuit of fair and adequate funding.

Similar to public comments made by Lake Superior Court in an April 11, 2017 letter, we too compete with neighboring courts to recruit and retain competent staff. In fact, over the course of several years now, our labor contract necessitates that consideration be given to wages paid to court employees in the seven surrounding counties of Butte, Colusa, Shasta, Sutter, Tehama, Yolo, and Yuba. The average BLS of these counties is .92. When just Colusa County with a BLS of .72 is removed from this calculation, the average BLS for these counties is .96.

Please accept this as both a letter of gratitude for your work on this topic as well as strong support for an increase in the minimum BLS factor applied to small courts when calculating WAFM need.

Thank you for the opportunity to comment and for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Kevin Harrigan".

Kevin Harrigan



**Superior Court of California**  
**County of Siskiyou**  
311 Fourth St., Rm. 206,  
Yreka, CA 96097

---

May 23, 2017

Trial Court Budget Advisory Committee  
Funding Methodology Subcommittee  
May 25, 2017

Re: Items 1 & 2

I had previously submitted a written comment for the meeting on May 8, 2017, but apparently it did not reach the Sub-Committee for that meeting. Therefore, I am sending another written comment for this Funding Methodology Sub-Committee Meeting set for May 25, 2017.

First and foremost, Siskiyou appreciates the work efforts of this committee. It is pretty clear however, that there are further steps to go in refining WAFM, to avert what are cumulating unintended consequences which appear to be disparate to smaller courts. Unaddressed, some of these unintended consequences will create or have created regression for courts with less than a 1 BLS and will eventually compromise access to justice and put us on a course from which growth or recovery is unlikely.

The different scenarios provided to this committee for consideration at its' May 8, 2017 meeting were prompted by a letter that was sent to the Chief Justice, Martin Hoshino, and Jody Patel from the smaller/rural courts. The intention of that letter was to emphasize some of the parking lot issues that have been dormant since implementation of WAFM and for this committee as well as the full Trial Court Budget Advisory Committee to seriously consider refining WAFM going forward.

Sincerely,

*Reneé McCanna Crane*

Reneé McCanna Crane  
Court Executive Officer





*Superior Court*  
State of California  
County of Lake  
255 N. Forbes Street  
Lakeport, California 95453  
707-263-2374

ANDREW S. BLUM

\_\_\_\_\_  
PRESIDING JUDGE

\_\_\_\_\_  
KRISTA D. LeVIER

\_\_\_\_\_  
COURT EXECUTIVE/CLERK  
JURY COMMISSIONER

May 24, 2017

Funding Methodology SubCommittee  
Hon. Jonathan B. Conklin, Co-Chair  
Rebecca Fleming, Co-Chair

Re: Item 2 Bureau of Labor Statistics (BLS) on WAFM Calculations

Dear Co-Chairs and Committee Members:

It is unclear based on the posted materials why this topic is on the Funding Methodology Subcommittee(FMS) agenda again instead of on the full Trial Court Budget Advisory Committee Agenda(TCBAC). The only indication is found in the minutes from the May 8, 2017 FMS meeting, there is a staff note that reads action was taken "based on an understanding that such action was part of the 2016-2017 work plan." Perhaps there is some concern that the action was not within the scope of the 2016-2017 work plan? The idea to adjust the BLS factor was raised in discussions related to adjustments to the funding floor calculation, which is listed on the FMS 2016/2017 work plan. Additionally, the TCBAC 2017 Annual Agenda states that "review and refinement" of WAFM is the purpose of the Funding Methodology Sub-committee.

I urge the Funding Methodology Subcommittee to confirm the unanimous action taken by your committee on May 8, 2017 to implement a minimum BLS factor of .9 effective Fiscal Year 2017/18, with additional study as to the regional BLS impacts.

I will reiterate here in an effort to be thorough, that the impact of the current BLS factor for a small, rural court like Lake is extremely detrimental. Using the BLS factor assumes that the court is competing with the local public sector for employees. That is not accurate. In my 12+ years of employment with the court, I do not recall a single instance when the court has lost an employee to the County of Lake (the largest public employer in the County). We do, however; often lose employees to

neighboring courts such as Sonoma. Due to the extremely low BLS factor in Lake County (.75 in FY16/17), we are unable to compete with neighboring courts. Our employees can drive just over an hour to neighboring Sonoma (BLS of 1.13) or Napa (BLS of 1.22) and earn significantly more. We are a training ground for nearby courts who can offer more lucrative pay and benefits. The WAFM already recognizes that the labor pool can be something other than the local government, i.e. in counties where the competing labor pool is state government an adjustment is made accordingly.

The need for the model to recognize and account for a more broad comparable labor pool by comparing salaries to other trial courts in a region was recognized when the WAFM model was initially implemented in 2013 (see materials for JCC Meeting April 26, 2013 <http://www.courts.ca.gov/documents/jc-20130426-itemP-presentation.pdf>). However, the issue has not been addressed to date.

Your action is consistent with the Judicial Council's April 2013 direction, the Annual TCBAC Agenda, and the FMS work plan. These technical adjustments improve the accuracy/validity of the model, are exactly what was envisioned by the Judicial Council.

Sincerely,



Krista LeVier  
Court Executive Officer

Attachment: Previous public comment letter submitted to April 12<sup>th</sup> and May 8<sup>th</sup> meetings.



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 State of California  
 County of Lake  
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 Lakeport, California 95453  
 707-263-2374

ANDREW S. BLUM

\_\_\_\_\_  
 PRESIDING JUDGE

KRISTA D. LeVIER

\_\_\_\_\_  
 COURT EXECUTIVE/CLERK  
 JURY COMMISSIONER

April 11, 2017

Trial Court Budget Advisory Committee  
 Funding Methodology Subcommittee

Re: Item 4 Impact of Bureau of Labor Statistics (BLS) on Small Courts

Dear Committee Members:

First, thank you for taking the time to review the impact of the BLS factor on small courts. The impact for a small, rural court like Lake is extremely detrimental. Using the BLS factor assumes that the court is competing with local public sector employers for employees. That is not accurate. In my 12+ years of employment with the court, I do not recall a single instance when the court has lost an employee to the County of Lake (the largest public employer in the County). Although, we often lose employees to neighboring courts such as Sonoma. Due to the extremely low BLS factor in Lake County (.75 in FY16/17), we are unable to compete with neighboring courts. Our employees can drive just over an hour to neighboring Sonoma (BLS of 1.13) or Napa (BLS of 1.22) and earn significantly more. We are a training ground for nearby courts who can offer more lucrative pay and benefits. The WAFM already recognizes that the labor pool can be something other than the local government, i.e. in counties where the competing labor pool is state government an adjustment is made accordingly.

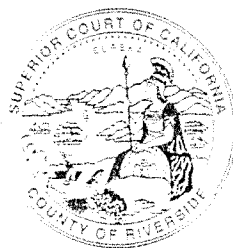
The need for the model to recognize and account for a more broad comparable labor pool by comparing salaries to other trial courts in a region was recognized when the WAFM model was initially implemented in 2013 (see materials for JCC Meeting April 26, 2013). However, the issue has not been addressed to date. I recognize the complexities of attempting to regionalize the BLS factor when appropriate; therefore, I ask that your committee recommend to the full Trial Court Budget Advisory Committee a **minimum BLS factor for all courts**. That minimum BLS factor could be .9, .95 or 1.0. I urge you to take the steps necessary to make this adjustment for the FY17/18 WAFM allocations.

One last note, the materials show an option of a minimum BLS factor for courts with less than 50 full-time equivalent positions. I have not seen any data to support this as a logical breaking point. All of the recruitment and retention challenges that are outlined above exist whether a court's FTE need is 49 or 51.

Sincerely,

A handwritten signature in black ink, appearing to read 'Krista LeVier', with a stylized flourish at the end.

Krista LeVier  
Court Executive Officer



Chambers of  
**BECKY L. DUGAN**  
Presiding Judge

4050 Main Street  
Riverside, CA 92501

**Superior Court of California**  
County of Riverside

**W. SAMUEL HAMRICK, JR.**  
Court Executive Officer

September 19, 2017

Hon. Jonathan B. Conklin  
Chair, Trial Court Budget Advisory Committee (TCBAC)  
1100 Van Ness Avenue, Department 72  
Fresno, CA 93724-0002

Dear Judge Conklin,

The Superior Court of California, County of Riverside thanks you and the TCBAC for the opportunity to offer input as the branch considers how to move forward now that the five-year Workload Allocation Funding Methodology (WAFM) phase-in that was approved back in 2013 is concluding.

As one of the state's most historically underfunded courts relative to others in the state, WAFM has been particularly beneficial to this court. It has allowed the court to: open and staff the new Banning Justice Center and the Southwest Juvenile Courthouse; continue to provide self-help services to those who need the most help in navigating the court system; maintain operating hours and keep courthouses open throughout the 7,200 square mile county; provide court reporter services where they are not mandated; and maintain staffing levels so that those who need court services in this county have access and can receive them.

While WAFM funding has been beneficial, our work is not done. The court is not in compliance in completing probate investigation reports in a timely manner or in correcting Department of Justice records and sealing cases as required by Propositions 47 and 64. Riverside's courtrooms hearing felony matters have over 100 cases on calendar each day. These problems and others can be corrected by staying the course with WAFM and continuing to provide equitable funding.

In short, WAFM has worked to help equalize funding gaps across trial courts. The map on the California Courts Newsroom web page showing court underfunding by county before and after the implementation of WAFM speaks volumes. The before map is

Hon. Jonathan B. Conklin  
September 19, 2017  
Page 2

littered with courts that were 50 – 60% underfunded. The after map shows how dramatically that situation has changed, and we think for the better.

We are acutely aware that the chronic underfunding of California's judicial branch has complicated the implementation of WAFM and courts throughout the state are suffering. We recognize the failure of the Governor and the Legislature to adequately fund the branch. We agree that it is time to abandon the "historical share" as a part of the branch's funding model and are open conceptually to discussion of sharing equally in overall cuts to the branch. Of course, we want to see each court fully funded and the branch as a whole should continue to strive for a 100% funding level. Thus, WAFM could be modified to include funding goals such as 75%, 80%, and so on. Without new money for the branch, which we cannot depend upon at all, we must come up with a solution to continue the equity distribution among the courts so that services statewide are equalized as best they can be. While there have been suggestions that there be no changes to baseline budgets in years without additional funding, we do not believe this approach is in the best interest of the citizens of this state. Indeed, we are persuaded that the 2016 recommendation of TCBAC to the Judicial Council for a 10% per year with a three-year goal of full implementation of WAFM was a perfectly good solution. We do not object to altering the percentages. Perhaps a 5%, 10%, 15% incremental approach would be more palatable. The main goal of our recommendation to the Judicial Council is that we continue with WAFM and achieve full implementation within the next few years.

We are inalterably opposed to any methodology that ties funding to judgeships in a way that insures courts who are overjudged remain overfunded and courts that are chronically underjudged, such as Riverside, remain underfunded. This would institutionalize inequity in funding and would be a retreat from commitments made by the branch for equal funding of trial courts.

Of equal concern to us is the small court proposal to alter the Bureau of Labor Statistics (BLS) to transfer significant amounts of funding from larger courts to small courts. The reasons cited for this proposal exist in most, if not all, courts. We all have staff that move elsewhere for a better opportunity. We are advised that some nine accommodations have already been given to small courts including a funding floor, extra funding for case management systems and recent added funding for dependency counsel. Even with these accommodations, many of the small courts are shown on the above-mentioned chart in green – meaning that they are at full or more funding. Changing the BLS formula for small courts will simply make green courts greener and we cannot afford it. Small courts should consider pursuing alternative models of providing their services in a way that would enable them to benefit from economies of scale.

During the August 2017 meetings of the Funding Methodology Subcommittee, we heard two other items of concern. First, it was suggested that "equal funding" for the trial courts could be defined as 5% on a line either side of absolutely equal funding. This is a 10% variance which is too wide and is unacceptable. A more acceptable definition of "equal funding" would be 1.5% on a line either side of absolute equal funding which

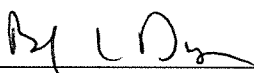
Hon. Jonathan B. Conklin  
September 19, 2017  
Page 3


would be a more narrow 3% variable. The branch has the analytical talent to achieve a 3% variable in the funding of all courts; there is no excuse not to keep the margin to full equal funding as tight as possible. We also heard it may take 10 years to achieve equal funding. This too is not acceptable. The Branch should fully implement WAFM during the next three fiscal years. While progress may vary from year to year, there is no need to extend WAFM implementation beyond a total of eight years. Let's get it done.

Riverside Superior Court does not want other courts' money, judgeships, dependency counsel funding, etc. We just want our fair share of funding which we have never received. The WAFM approach to funding distribution will achieve each court receiving its fair share of funding. WAFM should not be abandoned. While we are open to a more gradual schedule for implementing WAFM, we feel strongly that this model should be fully implemented over the next three years. To continue to institutionalize funding inequities across different court systems is the antithesis of the very concept of a statewide judicial branch.

We thank you again for the opportunity to be heard and look forward to participating in refining the funding model for the courts.

Sincerely,

  
\_\_\_\_\_  
BECKY L. DUGAN  
Presiding Judge

  
\_\_\_\_\_  
W. SAMUEL HAMRICK, JR.  
Court Executive Officer

**From:** "Carvill, Judge Wynne, Superior Court" <[wcarvill@alameda.courts.ca.gov](mailto:wcarvill@alameda.courts.ca.gov)>  
**Date:** September 23, 2017 at 2:45:56 PM PDT  
**To:** "'Conklin, Jon B.'" <[jconklin@fresno.courts.ca.gov](mailto:jconklin@fresno.courts.ca.gov)>  
**Cc:** "Jacobson, Judge Morris, Superior Court" <[mjacobson@alameda.courts.ca.gov](mailto:mjacobson@alameda.courts.ca.gov)>, "Finke, Chad, Superior Court" <[cfinke@alameda.courts.ca.gov](mailto:cfinke@alameda.courts.ca.gov)>  
**Subject:** RE: touching base

Jon,

Morris and I are on the same page here, but I want to make a point that is relevant given the last FMS discussion I observed.

One of the ideas floated was a "band" around the 75% funding level such that courts above the band would be cut to fund those below the band.

For example, if the band was +/- 3%, then those over 78% would be cut to 78% and the money used to provide extra money to those below 72%.

I suspect that is where the committee will come out; the debate will be the width of the band: 1%? 3%? 5%? or what?

There are 2 problems with this:

First, if the band is too tight, lots of courts will be donors and it will lead to the disunity Morris mentions.

Second and perhaps even more importantly, as long as this is all based on filings, it is much too volatile. At best a court can guess where it will be based on their filing trends, but no court can be sure because you don't know until late June what impact the changes in the filings in other courts may be. Thus we might be at 78% this year but we could drop to 71% or jump up to 83% or whatever. These fluctuations don't really matter if there is a hold harmless rule but without such a rule no court other than those at the extremes has a clue what will happen to their funding until the very last moment.

The population model would remove that uncertainty but WAFM could also be modified to do the same thing. I agree with Morris that the population model may be dropped if you like, but that is only because fighting over that obscures the real issue: the impact of cuts compounded by the volatility of filing data.

Wynne





*Superior Court*  
State of California  
County of Lake  
255 N. Forbes Street  
Lakeport, California 95453  
707-263-2374

ANDREW S. BLUM

\_\_\_\_\_  
PRESIDING JUDGE

\_\_\_\_\_  
KRISTA D. LeVIER

\_\_\_\_\_  
COURT EXECUTIVE/CLERK  
JURY COMMISSIONER

September 29, 2017

Funding Methodology SubCommittee  
c/o Hon. Jonathan B. Conklin, Co-Chair and  
Rebecca Fleming, Co-Chair

Re: Bureau of Labor Statistics (BLS) Impact on WAFM Calculations

Dear Committee Members:

Lake Superior Court has always, and continues to support a workload based funding allocation model. The current model simply needs small adjustments to accurately capture the funding need of small rural courts.

The staff memo correctly points out that on average over 25% (27.5%) of Lake's voluntary turnover over the last five years has gone out of county. In two of the last five years 50% of turnover was due to employees taking jobs out of county. (Note: all but one of the employees who took jobs out of county over the last five years, took jobs with a neighboring court.)

It is understood that many courts compete with neighboring courts. However, the BLS factors for most neighboring courts are much closer. For example, Lake's BLS factor is 37% and 47% lower than neighboring Sonoma and Napa, respectively. Whereas, Los Angeles, Ventura and Orange are all within 9% of each other. That means that we cannot address the problem by raising our salaries and hiring fewer staff, contracting out for services instead of hiring full-time employees, or minimizing the number of supervisory positions, all of which Lake has done.

In Lake our actual average salary is \$51,756, excluding the CEO and SJO. The average salary that is calculated into our need under WAFM is \$45,508. In neighboring Sonoma the average salary used to calculate need in WAFM is \$66,554 and Napa is \$72,837. The need as calculated by WAFM is significantly higher in

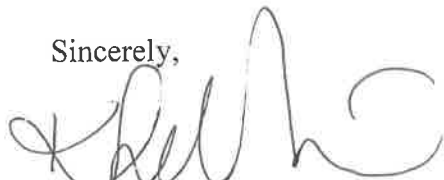
these neighboring courts, despite Lake's labor pool including these two neighboring counties. We are not asking to receive the same BLS factor as neighboring courts, we do recognize that the labor market is not exactly the same as those counties. We are asking that the model recognize that the labor pool in Lake County overlaps with neighboring counties.

A minimum BLS factor of .9 is a good solution for two reasons. First, it is far simpler than attempting to regionalize BLS factors, yet would still be effective in addressing the regional concern. Second, it would ensure the dollar per-FTE figures are not unrealistically low, particularly for small, rural courts.

Early in the implementation of WAFM it was recognized that setting a minimum BLS factor was necessary to avoid "rural courts receiving unrealistically low dollar per-FTE allotments." The FTE Allotment Factor in effect sets the BLS floor at .765 for all courts with an FTE need of less than 50. Despite the attempt to address this recognized issue, small rural courts are in fact receiving unrealistically low dollar per-FTE figures which are used to calculate a court's funding need.

We urge you to adopt a minimum BLS factor of .9 or alternatively ask staff to develop additional options to implement a regional BLS. Thank you for your time.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Krista LeVier', with a stylized, flowing script.

Krista LeVier  
Court Executive Officer



**Superior Court of California  
County of San Bernardino**

**247 West Third Street, Eleventh Floor  
San Bernardino, CA 92415-0302  
(909) 708-8747**

Raymond L. Haight III  
Presiding Judge

Nancy CS Eberhardt  
Court Executive Officer and Clerk  
Jury Commissioner

October 5, 2017

Judicial Council of California  
Trial Court Budget Advisory Committee  
Funding Methodology Subcommittee

Hon. Jon Conklin, Chair  
Ms. Rebecca Fleming, Co-Chair  
455 Golden Gate Avenue  
San Francisco, California 94102

Re: Trial Court Funding Methodology

Members of the Trial Court Budget Advisory Committee (TCBAC) and Funding Methodology Subcommittee (FMS):

This letter is written in support of the Judicial Council's and TCBAC's ongoing efforts to provide funding to trial courts through a fair, consistent, and equitable funding model.

Serving the largest county in the contiguous United States presents many challenges. San Bernardino County is larger than each of the nine smallest states, larger than the four smallest states combined, and larger than 71 sovereign nations. Courthouses are spread out over 20,000 square miles, requiring long commutes for our citizens. Continued and chronic underfunding and under-resourcing of judgeships while experiencing double digit increases in population and case filings in the first decade of this century has compounded the natural and structural barriers affecting our ability to provide access to justice.

The most recent economic downturn and consecutive years of budget cuts served as the perfect storm for the San Bernardino County Superior Court. Between 2008-09 and 2012-13, the court lost one-fifth of its annual funding allocation resulting in an unmet WAFM-based funding need of 54.9 percent. The baseline service levels for the court at that time ranked far below like-size courts. While San Bernardino never had sufficient funding for value-added programs and compliance functions, the severe downturn highlighted the true impact of budget reductions and corresponding severe actions taken by the court. We were, in essence, already cutting from the

bone. The chart attached as Exhibit A reflects our court's annual revenue from fiscal year 2008-09 to present.

In these dire times, the court initially implemented numerous cost saving measures ranging from hiring freezes and furloughs to a wide array of resource, facility, and operational efficiencies. This included an in-depth review of court calendars across various districts that led to the reorganization and consolidation of courtrooms in our central region.

Those efforts were not enough. Subsequently, the court was forced to take drastic measures that led to the closure of five courthouses and 10.4 courtrooms across the county, the elimination of hundreds of staff positions, dozens of layoffs including commissioners and court reporters, as well as significant reductions in service hours. This led to a county-wide disruption in services. In 2013 alone, nearly 9,000 people were denied justice—having either been turned away due to insufficient self-help resources or leaving the court without receiving service due to extended wait times. Our court was forced to close 11 percent of its courtrooms. During this same time our assessed judicial need was 56 new judgeships. Again, justice denied. See Exhibit B for depiction of the closures. These were dark times for our court. Yet we worked diligently to manage our scarce resources and minimize the impact of reduced court services to the public.

Applying reinstated resources received from WAFM allocations and new funding, the court has efficiently and with purpose begun restoring services and access across the county by reopening courtrooms and reinstating service hours. This includes new courtrooms in Family and Juvenile, expansion of self-help resources, establishment of a stand-alone Probate Division, rolling out language access to additional areas, implementing recommendations of the Elkins Family Law Task Force and new staff to support these efforts. As we enter the fifth year of the WAFM rollout, we have reinstated partial services to Needles—located on the Nevada border; residents there currently have a minimum drive of 150 miles to access justice. A depiction of restored services as a result of WAFM funding is attached as Exhibit C. Despite the additional funding provided by the partial rollout of WAFM, our court still has five fewer courtrooms than it did in the fall of 2012.

We have also taken steps to retain and attract a quality workforce, a goal of the Judicial Council's Strategic Plan. This includes—after 8 years of layoffs, furloughs, and no cost of living increases—modest adjustments to staff compensation. When compared to other like-sized courts throughout the state *after* taking into account these actions, the San Bernardino Superior Court still ranks at or near the bottom in nearly every critical staff classification relative to compensation. A chart comparing employee salary/benefits for selected courts is attached as Exhibit D.

Moving forward, we will continue to apply new, ongoing funding to restore services and access by leveraging technology, providing targeted case management in areas like family law, and reopening shuttered courtrooms. We still have a long way to go to return to our resource high water mark from a decade ago, let alone reaching an acceptable level of funding to meet our constitutional obligations.

We recognize allocating all base funding at 100 percent under WAFM will impact courts with more resources while bringing all courts to the same level. The chart attached as Exhibit E illustrates the impact to the largest courts as a result of the current WAFM implementation being extended to a 100 percent allocation. All courts will be equally underfunded at approximately 75 percent of assessed need given current funding of the branch. While it is unacceptable that courts statewide are underfunded to such a great extent, equitable funding would at least provide for consistent service levels across the state. This further highlights the need for adequate funding for all courts to provide reasonable service levels in every county. The chart attached as Exhibit F illustrates the result to the same ten courts if the WAFM rollout is limited to the current reality. If this remains in place without adjustment, the California court system will have accepted a two-tiered system of justice where the traditionally underfunded courts hover at 70 percent funding and traditionally better funded courts hover over 80 percent funding. Equal access to justice will not be a reality in our court system under this multi-tiered system of resource allocation.

We recognize that neither scenario is acceptable. Equity in funding for all 58 courts is the ultimate goal and is our charge under the Isenberg-Lockyer Act. However, the current pace of implementation, along with the failure of the Governor and Legislature to adequately fund the courts has left us with a funding model in need of adjustment. The intent of WAFM was to provide a reallocation of funding based on the premise of new funding to the courts equal to the workload assessed. This never materialized. We are at a pause in WAFM implementation and a critical assessment indicates a need for change. The San Bernardino Superior Court supports the Funding Methodology Subcommittees's efforts to review WAFM – the good and bad – and proposes refinements that continue the march toward equity at a more deliberate pace. We support the following principles:

1. maintaining the workload based methodology of determining need;
2. in years with new funding, movement must continue to be made to equity;
3. in years with no new funding, movement to equity may pause temporarily but not for more than one year in any given cycle; and
4. in years with cuts in funding, more underfunded courts take less of a cut in funding than the less underfunded courts,

The current WAFM methodology *works*. Perfect? No, but it is effective and has provided tremendous value to under-resourced courts. The model is fair by relying on workload-driven resource allocation. The Judicial Council, through the Trial Court Budget Advisory Committee, has demonstrated a willingness to modify WAFM to reflect new information, data, or to shore up areas not fully addressed when the methodology was developed in 2013. This is the right thing to do as improvements can, and should, be made when the merits exist. We applaud the openness of the TCBAC's work and the ability for any court to submit a request for modification of the funding methodology.

The last decade has been taxing for all California trial courts. While recent new funding as well as the rollout of WAFM has yielded some restoration of resources to the trial courts, no court today has the resources—judges, staff, or funding—to effectively manage its workload. The Judicial Council has demonstrated leadership on many levels, from aggressively pursuing new funding for courts, to establishing a more equitable method for allocating resources, but more

Members of the Funding Methodology Subcommittee  
October 5, 2017  
Page 4 of 4

work remains to be done to promote the fair and efficient administration of justice. We believe making necessary changes to WAFM and securing new funding for courts to meet constitutional obligations, continues a march in the right direction and fulfills the true intent of the Lockyer/Isenberg Act to unify our courts and provide equal access to justice across the State.

Sincerely,



Raymond L. Haight III  
Presiding Judge



John P. Vander Feer  
Assistant Presiding Judge



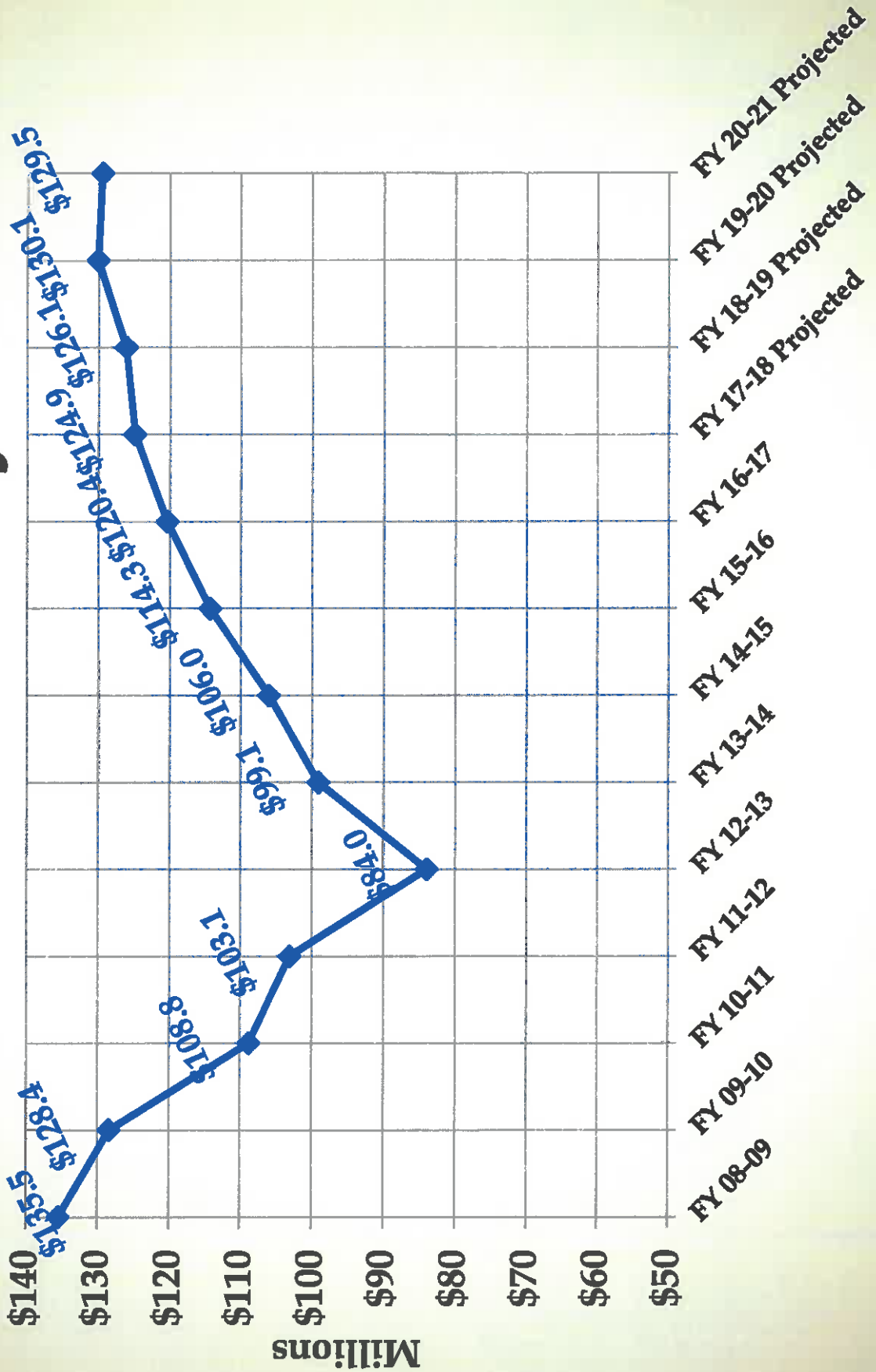
Nancy CS Eberhardt  
Court Executive Officer

RLH/JPV:sb

attachments

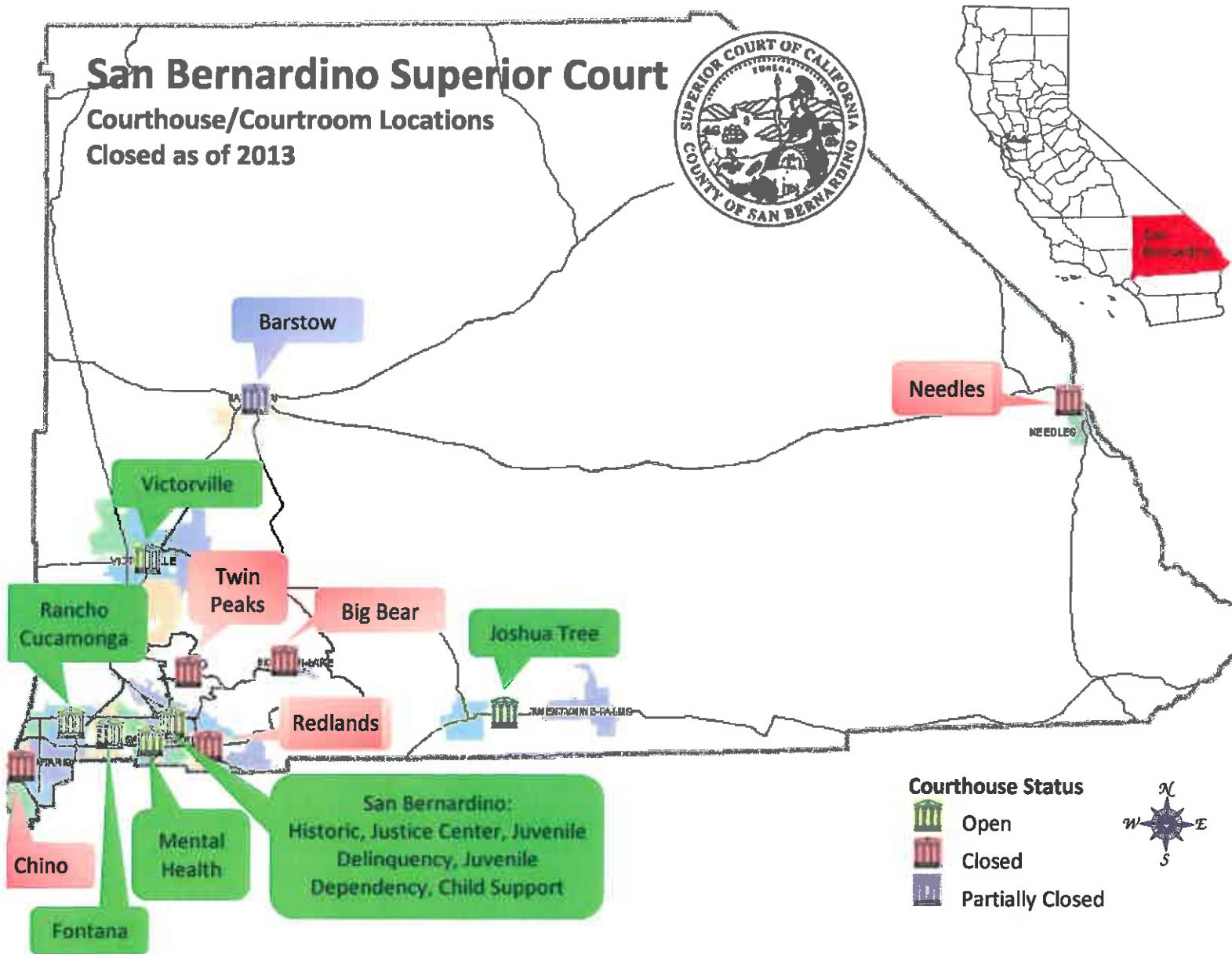
cc: Martin Hoshino, Administrative Director, Judicial Council

# Total Revenues By Year



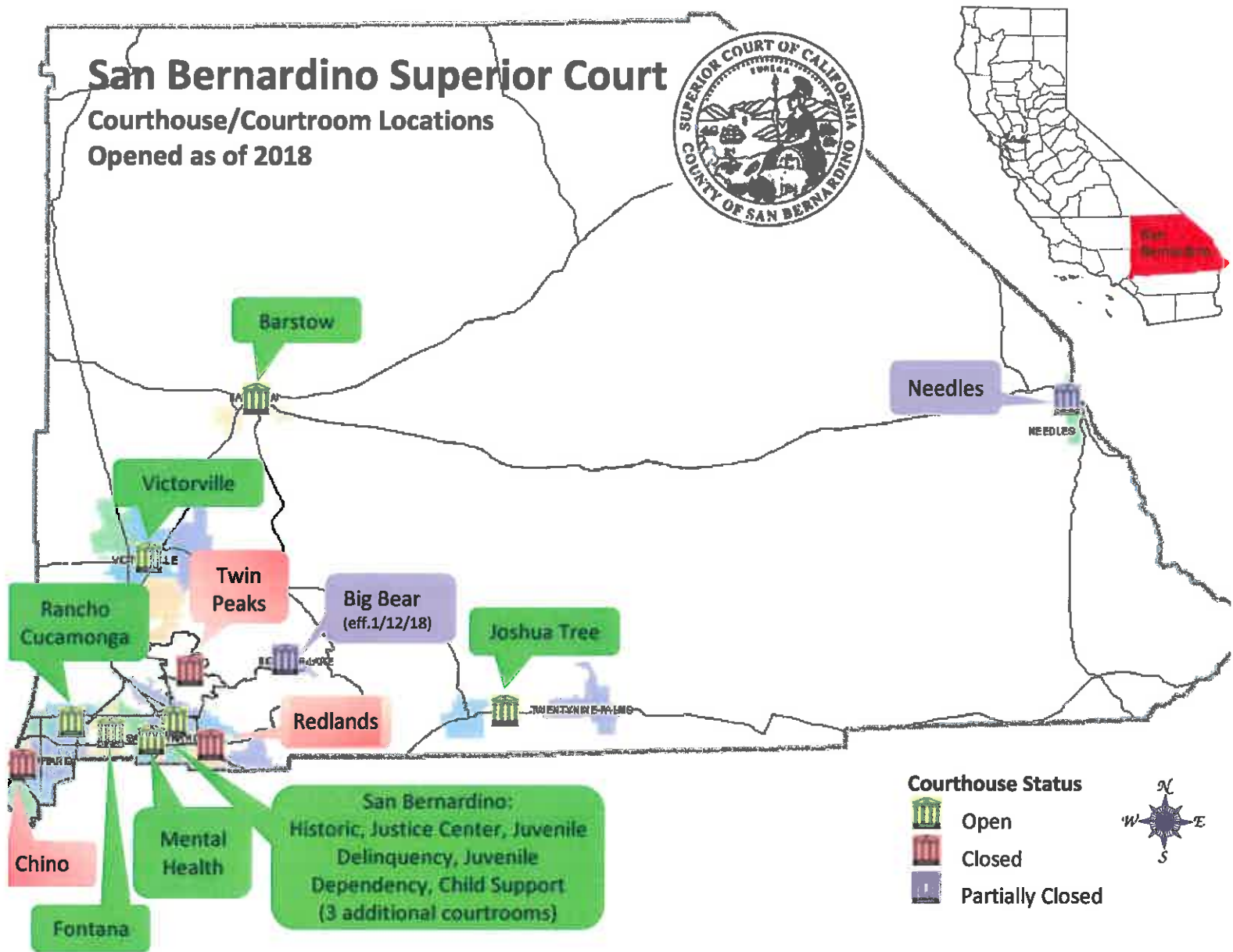


## EXHIBIT B



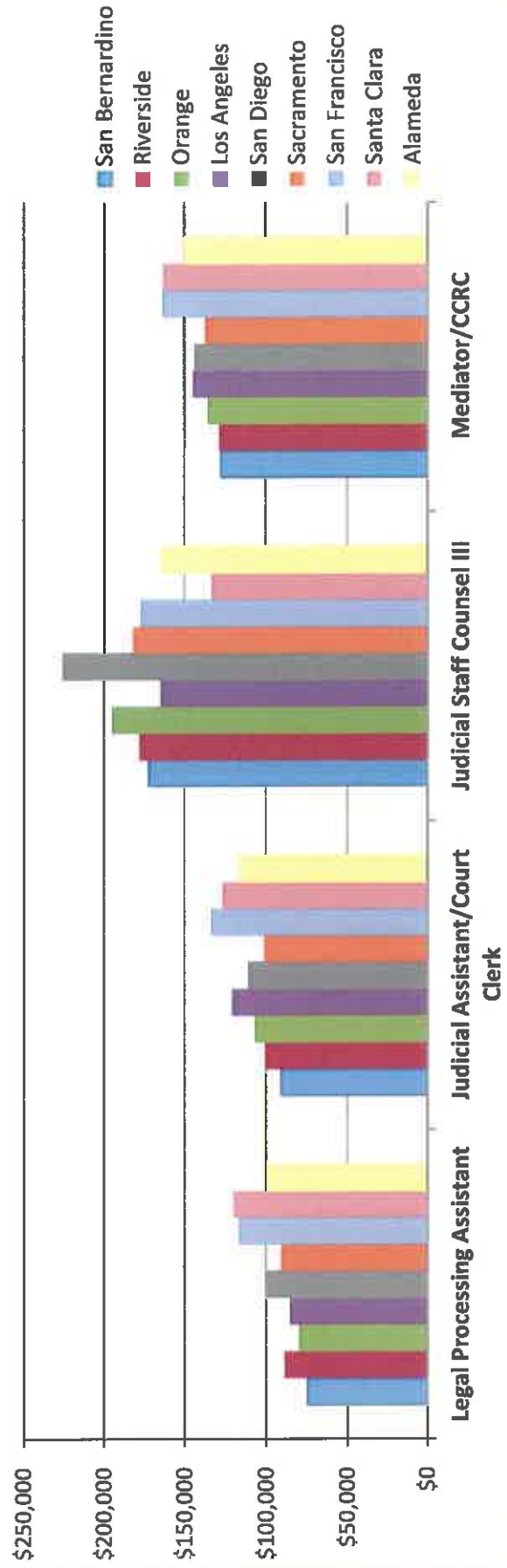


## EXHIBIT C



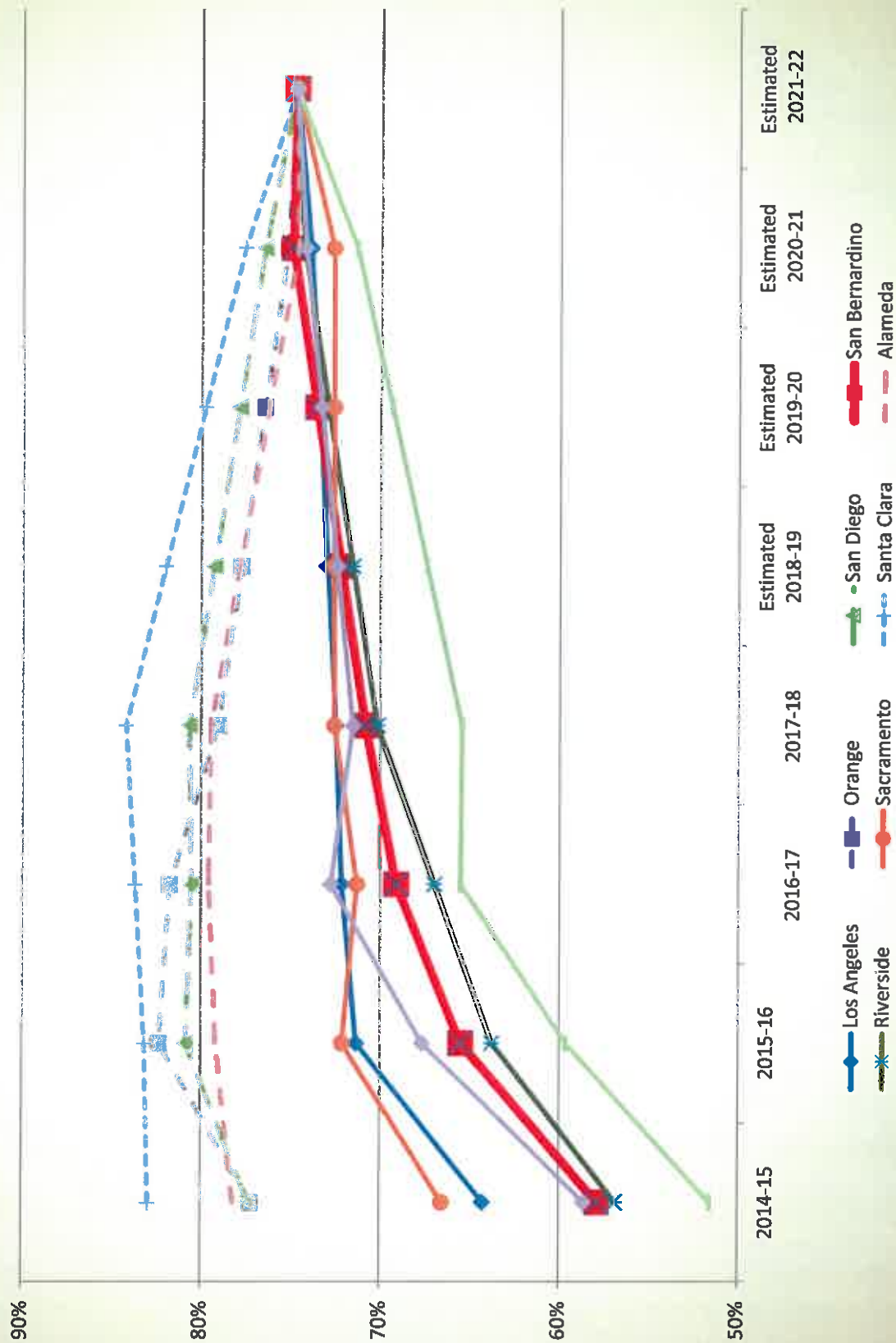
# Position Salary Benefit Comparison for Various Courts <sup>1]</sup>

Classification	San Bernardino	Riverside	Orange	Los Angeles	San Diego	Sacramento	San Francisco	Santa Clara	Alameda
Legal Processing Assistant/Court Operations Clerk	\$ 74,889	\$ 88,482	\$ 79,559	\$ 85,121	\$ 99,763	\$ 90,636	\$ 116,842	\$ 119,835	\$ 99,471
Judicial Assistant/Court Clerk	\$ 90,866	\$ 100,533	\$ 106,882	\$ 120,949	\$ 110,923	\$ 100,986	\$ 133,613	\$ 126,626	\$ 115,788
Judicial Staff Counsel III	\$ 172,230	\$ 178,082	\$ 194,931	\$ 164,814	\$ 225,805	\$ 181,937	\$ 177,109	\$ 133,374	\$ 163,548
Mediator/CCRC	\$ 127,676	\$ 128,590	\$ 135,544	\$ 144,795	\$ 143,723	\$ 137,374	\$ 163,584	\$ 162,950	\$ 149,835

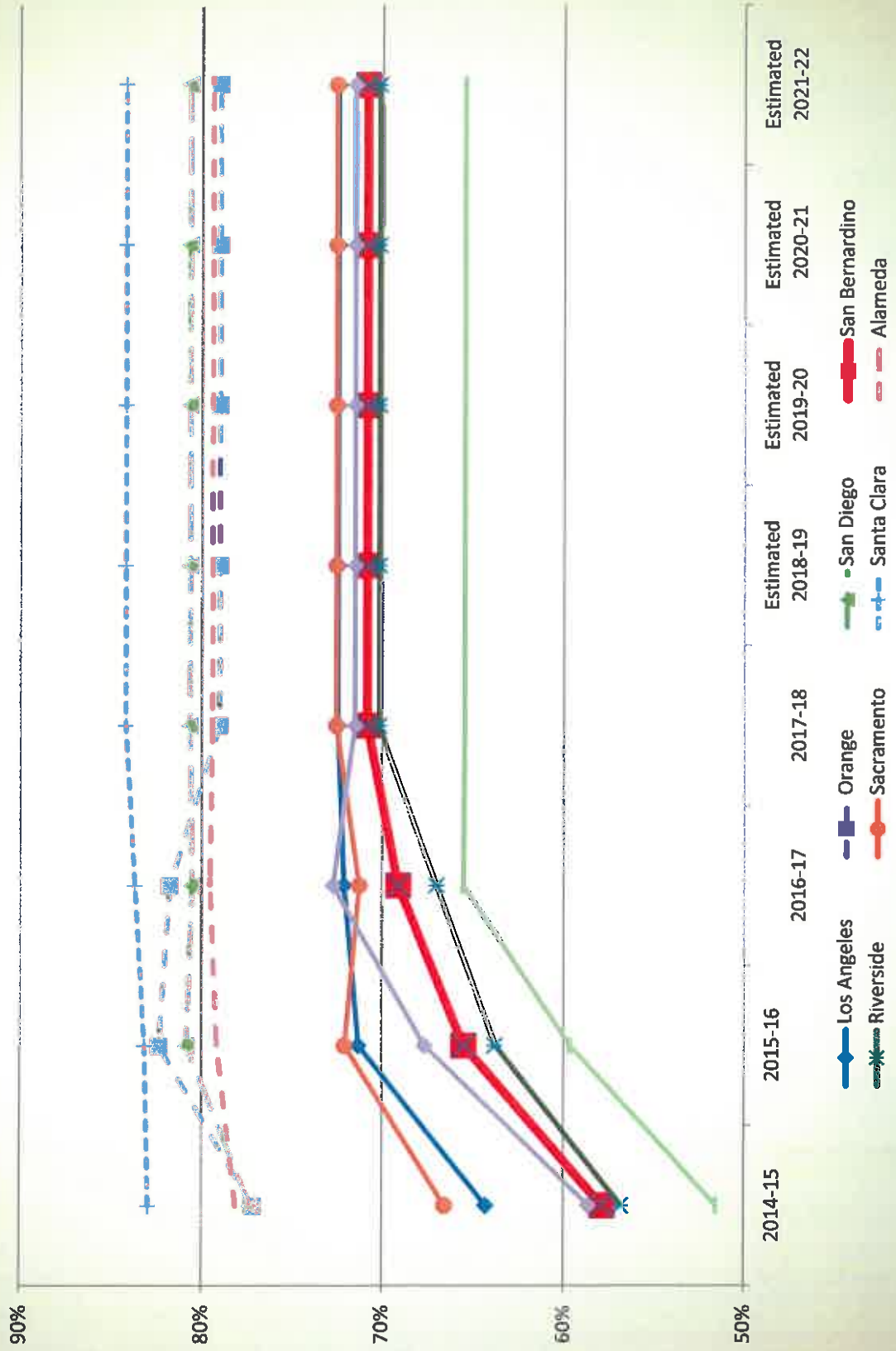


<sup>1]</sup> Based on FY 2016-17 Schedule 7A data

# WAFM-Related Allocation as a % of Court WAFM Total Funding Need (100% WAFM Allocation)



# WAFM-Related Allocation as a % of Court WAFM Total Funding Need (50% WAFM Allocation + New Funding through 2016-17)



## REVISITING WAFM – Orange County Superior Court

October 16, 2017

As we are entering the 5<sup>th</sup> year of the Workload-based Allocation and Funding Methodology (WAFM) phase-in implementation, the concerns raised by various courts suggest revisiting the original intent of WAFM and evaluating whether it has achieved its original goals. Has it worked as intended? What needs improvement or adjustment? We wholeheartedly support the underlying model of funding on workload, but there have been challenges when putting it into practice, especially when it comes to advocacy and obtaining ongoing State funding for court operations.

We are pleased that the committee was formed to evaluate WAFM and its effectiveness and we encourage the committee to continue evaluation in the following areas:

- 1) **Simplifying the formula** and establishing a measure that is easier for the legislature and public to understand.
- 2) **Focus on funding advocacy for equity and parity with other State agencies** (such as building in a cost of living adjustment or growth factor).
- 3) **Improve predictability and stability:** establishing predictability and avoiding devastating downward swings in funding.
- 4) **Minimize reductions:** consider a position of growth for all courts and consider holding courts harmless with 50% funds to all and the remainder to those most underfunded when there is new funding and no further reallocation of historical funding when there is no new State funding. Contributing courts continue to dismantle important programs and public services and the focus needs to shift to what we can accomplish with more funding to the branch so that we can all focus on restoration and improving services to the public.

### THEME 1: Minimize volatility, maximize stability and predictability

**Suggestion: Explore ways to minimize the swings or changes in filing data**

- Provide new WAFM rates to courts as early as possible for planning purposes, but no later than April when courts begin to build budgets for the upcoming fiscal year.
- Limit percent swing or dollar change from year-to-year (*already being explored*)
  - Courts can't move too quickly in either direction
  - Consider 1% cap on adjustments for zero funding years

**Suggestion: Explore other less volatile measures or adjusted factors**

### THEME 2: Improve transparency/accountability

**Suggestion: Revisit or eliminate the historical base calculation used for WAFM and establish a new base**

- Discontinue historical base target of \$1.4 billion. Instead, allocate total appropriations for general trial court funding *less programmatic needs and NSIs (as defined by subcommittee)*

- Consider including cost of living adjustments (COLA). COLAs are easier to understand by the public and are universal factors, whereas NSIs could vary from court to court and would be hard to explain.
- Set aside a reserve for new workload swings or even funding changes that the formula does not address (past examples include Prop 47, AB 109, Amnesty – all of which led to loss of revenue).

**Suggestion: Audit and standardize JBSIS data and reporting**

- Standardize JBSIS reporting, provide training, and address any CMS limitations. **MAKE THIS A PRIORITY** (some courts count cases differently).
- Schedule regular audits and report findings so that courts can move toward standardized reporting. Implement a transparent plan that includes regular communication and training.

### **THEME 3: Mitigate impact to access to justice / consider local realities and impacts**

**Suggestion: Survey top 10 courts that have lost the most funding in the last 5 years to understand the impact on public service** (Plumas, Siskiyou, Marin, Glenn, San Francisco, Santa Clara, Inyo, San Benito, Salaveras, and Alameda)

**Suggestion: Consider service impacts before reducing any court further**

- The top 10 contributing courts have lost on average over 20% of base funding when comparing, point in time to point in time, 2017-18 funding reallocation as a percent of change from the 2013-14 base funding prior to WAFM implementation. Please refer to the attached chart; source is from Judicial Council 7/25/13 WAFM exhibits and 6/8/17 TCBAC WAFM exhibits.
- As a court with 11% in reductions, Orange had to close two court locations in the southern part of the County that serviced a population of 600,000 residents. Since the recession, Orange also reduced staffing from 1,900 employees to fewer than 1,450 employees. The top 10 contributing courts have suffered worse reductions that have impacted public service and access to justice. In our quest for funding parity and equity, we should be mindful of the overall service impacts to the public, regardless of whether they are residing in Siskiyou, Glenn, San Francisco, Fresno, or Riverside.

**Suggestion: Hold all courts harmless from further reductions**

- Allocate a portion of any new / additional funding (50% to all courts and the remainder to the most severely underfunded; the committee to develop and define qualifications for severely underfunded – refer to the themes suggested above)



### Year 5 WAFM Reallocation of Funding as a Percent of 2013-14 Pre-WAFM Base Funding

row	Cluster	Court	FY 2013-14 Base (pre-WAFM)*	**FY 2017-18 Cumulative WAFM Reallocation	% of change since FY 2013-14 Pre-WAFM Base
1	1	Plumas	1,429,991	(492,032)	-34.4%
2	2	Siskiyou	3,317,504	(935,142)	-28.2%
3	2	Marin	13,587,985	(3,453,384)	-25.4%
4	1	Glenn	1,799,795	(377,816)	-21.0%
5	4	San Francisco	55,153,072	(11,036,077)	-20.0%
6	4	Santa Clara	75,407,649	(12,905,278)	-17.1%
7	1	Inyo	1,919,492	(316,667)	-16.5%
8	1	San Benito	2,476,122	(389,648)	-15.7%
9	1	Calaveras	1,927,985	(250,452)	-13.0%
10	4	Alameda	74,069,725	(9,512,623)	-12.8%
11	4	San Diego	126,960,874	(14,911,172)	-11.7%
12	1	Del Norte	2,315,586	(268,261)	-11.6%
13	1	Amador	2,066,138	(229,703)	-11.1%
14	4	Orange	127,622,123	(14,000,446)	-11.0%
15	1	Colusa	1,352,785	(116,703)	-8.6%
16	2	Lake	3,130,735	(253,241)	-8.1%
17	3	San Mateo	31,297,630	(2,099,821)	-6.7%
18	2	El Dorado	5,867,266	(379,696)	-6.5%
19	2	Napa	6,628,648	(364,624)	-5.5%
20	3	Santa Barbara	19,657,482	(1,079,191)	-5.5%
21	2	Nevada	4,478,125	(234,445)	-5.2%
22	2	Mendocino	4,636,654	(185,966)	-4.0%
23	3	Sonoma	19,577,796	(746,010)	-3.8%
24	2	San Luis Obispo	11,353,662	(421,015)	-3.7%
25	2	Tuolumne	2,819,593	(100,693)	-3.6%
26	1	Trinity	1,431,739	(30,827)	-2.2%
27	2	Santa Cruz	10,187,917	(210,668)	-2.1%
28	2	Madera	6,269,329	(94,905)	-1.5%
29	2	Humboldt	5,258,372	(46,626)	-0.9%
30	3	Contra Costa	34,237,741	83,392	0.2%
31	4	Sacramento	64,637,712	219,669	0.3%
32	3	Solano	16,489,461	436,993	2.7%
33	2	Merced	9,195,644	415,188	4.5%
34	3	Monterey	13,973,323	664,060	4.8%
35	4	Los Angeles	428,645,200	22,309,330	5.2%
36	2	Butte	7,956,105	419,892	5.3%
37	2	Imperial	6,805,406	433,848	6.4%
38	2	Shasta	10,063,775	672,007	6.7%
39	2	Tehama	2,879,149	254,500	8.8%
40	3	Fresno	35,177,288	3,908,725	11.1%
41	2	Placer	11,920,337	1,354,525	11.4%
42	3	Ventura	26,332,175	3,080,831	11.7%
43	2	Kings	5,292,481	643,125	12.2%
44	2	Yuba	3,335,312	407,102	12.2%
45	2	Yolo	7,474,390	914,199	12.2%
46	2	Sutter	3,604,262	505,801	14.0%
47	3	San Joaquin	24,406,106	3,554,799	14.6%
48	3	Stanislaus	15,772,316	2,423,555	15.4%
49	4	San Bernardino	66,832,972	11,589,021	17.3%
50	4	Riverside	61,221,794	10,931,184	17.9%
51	3	Tulare	12,726,148	2,474,845	19.4%
52	3	Kern	30,203,399	8,919,537	29.5%

\*Per 7/25/13 Judicial Council materials, beginning base (col 1) plus allocation of \$261 million reduction (col 2)

\*\*Per 6/8/17 TCBAC exhibit 1L, "FY 2017-2018 Allocation of New Funding and Reallocation of Historical Funding",  
sum of Col G & J, net reallocation of 50% and reallocation of new \$233.8M

\*\*\* 6 funding floor courts are excluded: Alpine, Lassen, Mariposa, Modoc, Mono, and Sierra

	# courts	Average gain / loss	Top 10 Average	Max	Min
Contributing Courts (exclude floor)	29	-10.9%	-20.4%	-34.4%	-0.9%
Recipient Courts (exclude floor)	23	10.6%	16.5%	29.5%	0.2%
	52				

Siskiyou County Superior Court

311 Fourth Street, Room 206, Yreka, CA 96097

October 23, 2017

To Honorable Members of the Funding Methodology Subcommittee:

At the outset, kindly excuse the format of these comments. The meetings of the Funding Methodology Subcommittee, in October with goal to make recommendations to the TCBAC for its November meeting and then to the Judicial Council for its January 2018 meeting seem to be moving at a pace that is difficult for any meaningful input or comment from the trial court judges or CEOs.

The BLS factor should be reviewed in WAFM, as it remains the factor, from inception, that has inequitably underestimated the funding need for small rural courts. The concerns of a collaboration of small courts were set forth in the March 22, 2017 letter to Chief Justice Cantil-Sakauye and Director Hoshino. This collaborative letter emphasized that the BLS factor, for small rural courts, should be re-examined. We note said letter has been provided to the committee in its materials for meeting on October 26, 2017, but without the attachments referenced in the foot notes of the collaborative letter.

As these materials were omitted, we are attaching copies to this comment letter. The exhibits attached to the letter of March 22, 2017, were summaries of Court Statistics from the 2015 Court Statistics Report and Trial Court Allocations for 2015-2016. They demonstrate that the Cluster 4 courts having 59% of the state's workload receive 64% of the funding allocation, and the <50FTE courts have 1.9% workload and 1.6% of funding allocation. This is a result of the BLS factor currently used in WAFM, which ties small rural courts to the poverty of their counties.

The discussions of the FMS at its meeting on October 2, 2017 also have to be addressed. Despite all concerns raised regarding the BLS, the BLS factor was described as the most understood factor in WAFM. There is also a lack of understanding on how that factor came to be in WAFM. That decision was made by an earlier funding methodology subcommittee after looking at other labor "indexes" and after it was decided on, it was described as a deal breaker. In other words, there was nothing else the committee was going to consider as a labor factor.

There was no consistency in the BLS when initially decided on as a factor, as data from counties was inconsistent. There was an effort from some of the trial courts to follow through with the BLS, and at some point it appeared the public administration was at least an index within the BLS that had more consistent data compilation. It became apparent that in the small rural courts, and the example was Del Norte, low local BLS would not even begin to represent local wages where the state workforce, as in Pelican Bay, drove the labor market. The discussions then turned to consider the state BLS to some degree, with the understanding that the state labor factor by itself would not



be considered. The 50-50 suggestion was eventually adopted and included. This was just a consensus by the subcommittee as to when the state BLS would be applied. The inclusion of the 50-50 (local and state) increased the funding allocation for 3 Cluster 1 courts, 2 Cluster 2 and 1 Cluster 4.

There was also a consensus by a small committee to develop a <50 FTE consideration, when the funding floor was also explored. The <50 FTE is what some members of the committee describe as a "BLS Flooring." The WAFM in its current formulation then has a funding floor and a BLS flooring. After these initial modifications, there were no further considerations by any committees regarding the "parking lot" issues raised primarily by small courts, particularly regarding their hybrid employees, an issue raised again in the March 22, 2017 letter.

The FMS is reviewing the funding floor for an inflationary increase. It could be stated that a court funding floor should have been the start of a funding allocation methodology then with a multiplier factor based on filings. Instead, given the pressure to come up with something, as described in the March 22, 2017 letter, this was a secondary consideration.

People talk about the BLS as if it was a gold standard, which it is not. It is data that is compiled from voluntary reporting and some data collection. Note that in the 2017-2018 BLS factors presently before the committee, Alameda, Alpine, Merced, San Benito and Sierra reported 0% state employees. This demonstrates that the same data is not being compiled for each county.

Now that the BLS (public administration index) is in the "formula" the argument becomes, if there is an "arbitrary" adjustment, does that invalidate the factor and undermine the credibility of the formula. It is not an arbitrary adjustment to make a decision that the "BLS Flooring" should be .9 for the trial courts <50 FTE. This would support a more transparent and less complicated methodology, in that the <50FTE factor could be deleted. It would directly impact the funding floor as well, and reduce the number of trial courts relying on the funding floor.

Comment on the "bands," to achieve a mean funding allocation: it may be more productive to look at "bands" by Clusters. The 58 trial courts include courts from 3 FTE up to 4,716, judges from 2 to 585, filings from 825 to 1,891,060, and populations between 1,110 and 10,170,292. Economies of scale are not considered at all in the band. Can it really be shown that all trial courts can stay open and operational with the band applied to reallocate funding?

Very truly yours,

*Honorable William Davis, PG*  
*Honorable Laura Masunaga, APG*  
*Renee McCanna Crane, CEO*

BLS by Clusters based on 2015 Court Statistics Report and Trial Ct Allocations 2015-2016									
		AJP'14(JE'13-14)(Assessed '14)*	BLS in "15-'16 WAFM	Total WAFM Funding Need	Number of Filings	Filings/APJ	RAS*-CEO	FTE	Metro (M)
<b>Subcluster 1</b>									
1	Alpine	2.3(2.3)(0.2)	0.83	378,883	1531	666	2		
1	Sierra	2.3(2.3)(0.2)	0.73	368,280	623	271	2		
1	Amador	2.3(2.9)(2.7)	1.00	2,773,992	7806	3394	25		
1	Calaveras	2.3(2.6)(2.8)	0.91	2,716,963	6442	2801	26		
1	Colusa	2.3(2.4)(1.6)	0.71	1,880,790	9017	3920	17		
1	Glenn	2.3(2.4)(2.0)	0.69	2,048,781	11089	4821	21		
1	Inyo	2.3(2.4)(1.6)	0.83	1,963,799	10787	4690	19		
1	Lassen	2.3(3.0)(3.2)	0.80	2,595,035	7669	3334	27		
1	Mariposa	2.3(2.5)(1.3)	0.78	1,282,132	3366	1463	12		
1	Modoc	2.3(2.3)(0.8)	0.60	917,190	2342	1018	9		
1	Mono	2.3(2.4)(1.1)	1.15	1,795,596	6184	2689	12		
1	Plumas	2.3(2.6)(1.4)	0.70	1,299,380	3656	1590	13		
1	San Benito	2.3(2.4)(2.8)	0.98	2,874,516	7702	3349	26		M
1	Trinity	2.3(1.9)(1.6)	0.65	1,290,907	2896	1259	12		
1	Del Norte	2.8(3.3)(3.7)	0.77	3,012,322	7513	2683	28		
<b>Subcluster 2</b>									
2	Tehama	4.3(4.6)(5.8)	0.80	5,026,551	20870	4820	53		
2	Lake	4.8(5.8)(5.2)	0.75	3,677,284	11919	2483	45		
2	Tuolumne	4.8(5.0)(4.3)	0.83	3,442,496	10300	2168	37		
2	Siskiyou	5.0(5.4)(3.4)	0.69	3,103,058	17130	3426	34		
2	Sutter	5.3(5.8)(6.7)	0.95	6,509,119	19430	3666	61		M
2	Yuba	5.3(5.7)(5.6)	0.93	4,961,988	16237	3046	53		M
2	Nevada	7.6(8.1)(5.4)	0.97	5,512,421	25156	3310	53		
2	Humboldt	8.0(8.7)(10.6)	0.77	7,863,801	29317	3665	90		
2	Napa	8.0(8.5)(8.2)	1.22	8,717,542	26069	3259	71		M
2	Mendocinc	8.4(8.5)(7.3)	0.83	6,450,265	22935	2730	65		
2	El Dorado	9.0(10.7)(9.9)	1.00	9,020,166	27775	3086	86		M
2	Kings	8.5(9.7)(11.4)	0.88	8,763,482	34473	4056	98		M
2	Madera	9.3(9.9)(10.9)	0.93	9,681,041	27795	2989	95		M
2	Imperial	11.4(11.6)(13.8)	0.78	11,522,757	71989	6326	137		M
2	Shasta	12.0(13.2)(16.4)	0.85	12,953,657	42140	3512	147		M
2	Yolo	12.4(12.9)(11.2)	1.03	11,394,431	36673	3046	102		M
2	Santa Cruz	13.5(13.8)(14.2)	1.15	15,417,797	57235	4240	131		M
2	Butte	13.0(14.1)(14.2)	0.91	12,827,059	38208	2939	133		M
2	Merced	12.0(12.4)	0.90	16,884,889	56380	4698	149		M
2	Marin	14.5(14.4)(11.8)	1.28	13,305,924	48648	3355	105		M
2	San Luis Obispo	15.0(15.5)(17.9)	1.07	17,894,938	51705	3447	153		M
2	Placer	14.5(16.1)(19.4)	1.17	20,924,301	50851	3507	167		M
<b>Subcluster 3</b>									
3	Monterey	21.2(21.4)(21.8)	1.19	22,176,616	67790	3198	192		M
3	Santa Barbara	24.0(24.3)(23.4)	1.17	25,514,338	96925	4039	214		M
3	Solano	23.0(25.0)(25.0)	1.20	27,158,939	68418	2975	221		M
3	Sonoma	23.0(25.2)(26.1)	1.17	30,874,621	77355	3363	230		M
3	Tulare	23.0(25.4)(25.9)	0.83	22,962,196	85284	3708	243		M
3	Stanislaus	24.0(24.5)(32.6)	1.02	31,536,429	77911	3246	286		M
3	San Mateo	33.0(32.7)(31.1)	1.44	42,969,454	160115	4852	279		M
3	Ventura	33.0(33.9)(40.4)	1.21	45,268,238	158987	4818	366		M
3	San Joaquin	33.5(34.8)(42.3)	1.10	44,735,436	121834	3637	368		M
3	Kern	43.0(41.7)(58.0)	1.05	68,715,131	211920	4928	534		M
3	Contra Costa	46.0(47.6)(42.5)	1.25	54,845,890	147606	3209	380		M
3	Fresno	49.0(50.2)(60.7)	0.99	65,077,123	171025	3490	532		M
<b>Subcluster 4</b>									
4	San Francisco	65.0(66.7)(53.8)	1.68	67,069,047	233399	3591	379		M
4	Sacramento	72.5(76.1)(81.8)	1.28	102,140,312	325138	4485	728		M
4	Riverside	76.0(84.3)(127.4)	1.08	121,029,006	423340	5570	1099		M
4	Alameda	85.0(84.1)(70.1)	1.42	85,724,209	320554	3771	600		M
4	Santa Clara	89.0(88.6)(69.6)	1.44	86,629,182	245244	2756	581		M
4	San Bernardino	86.0(89.3)(143.0)	1.06	132,144,453	411101	4780	1200		M
4	Orange	144.0(146.2)(155.6)	1.30	173,366,093	511134	3550	1310		M
4	San Diego	154.0(151.0)(153.3)	1.17	169,142,391	558351	3626	1276		M
4	Los Angeles	585.3(570.8)(629.5)	1.34	718,122,121	2183611	3731	5201		M
<b>Total</b>				<b>2,380,254,758</b>					<b>*RAS Program 10 &amp; 90</b>
									<b>* excludes CEO,</b>
		*AJP 2014		D-H from Trial Court Allocations 2015-2016					<b>Enhanced Collection,</b>
		Judicial Equivalents:		Judicial Council Report Dated 7-17-15					<b>Interpreter, Security</b>
		2013-2014		effective 7-28-15					
		Assessed Judicial Need							
		Dec. 2014							

Courts	Population	%of population	% of Filings 2016 Court Statistics	Share % total Wafm funding need FY 16-17	% of Historical Funding	Authorized Judicial positions as of 6/30/15 less 50 AB159	Judicial position equivalents FY 14-15	Assessed Judicial needs 2016 report JC 10/28/16
Los Angeles	10,170,292.00	0.2598	0.2768	0.2981	0.2725	585.3	572.9	573.3
San Diego	3,299,521.00	0.0843	0.0782	0.0691	0.0852	154	151.9	142.9
Orange	3,169,776.00	0.081	0.0712	0.0717	0.0854	144	147.4	144
Riverside	2,361,026.00	0.0603	0.0585	0.0503	0.0397	76	86.4	122.8
San Bernardino	2,128,133.00	0.0544	0.0531	0.0548	0.0426	86	89.7	134.1
Santa Clara	1,918,044.00	0.0491	0.0317	0.0379	0.0516	89	92	66.9
Alameda	1,638,215.00	0.0419	0.0414	0.0368	0.0483	85	83.9	67.7
Sacramento	1,501,335.00	0.0384	0.0406	0.042	0.0427	72.5	78.7	82.9
Contra Costa	1,126,745.00	0.0288	0.0222	0.0218	0.0228	46	48.3	40.9
Fresno	974,861.00	0.0249	0.0226	0.0291	0.0239	49	50.4	61.8
Kern	882,176.00	0.0225	0.029	0.0298	0.02	43	44.1	56.8
San Francisco	864,816.00	0.0221	0.033	0.0287	0.0368	55.9	59	48.4
Ventura	850,536.00	0.0217	0.0223	0.0194	0.0169	33	35.5	38
San Mateo	765,135.00	0.0195	0.0226	0.018	0.0207	33	33.3	29.1
San Joaquin	726,106.00	0.0185	0.0168	0.0198	0.0164	33.5	35.6	42.2
Stanislaus	538,388.00	0.0138	0.0098	0.0133	0.0108	24	24.6	31.5
Sonoma	502,146.00	0.0128	0.0108	0.0124	0.0131	23	24.9	23.8
Tulare	459,863.00	0.0117	0.0123	0.0104	0.0085	23	25.1	27.5
Santa Barbara	444,769.00	0.0114	0.014	0.0112	0.0127	24	26.1	22.4
Solano	436,092.00	0.0111	0.0088	0.0111	0.0109	23	24.7	22.6
Monterey	433,898.00	0.0111	0.01	0.0096	0.009	21.2	21.9	20.5
Placer	375,391.00	0.0096	0.0066	0.009	0.0077	14.5	16.3	19.2
San Luis Obispo	281,401.00	0.0072	0.0075	0.0073	0.0074	15	15.9	16.9
Santa Cruz	274,146.00	0.007	0.0071	0.0066	0.0069	13.5	14.2	13.6
Merced	268,455.00	0.0069	0.0073	0.007	0.0063	12	12.8	15
Marin	261,221.00	0.0067	0.0063	0.0056	0.0093	12.7	11.8	10.6
Butte	225,411.00	0.0058	0.0051	0.0056	0.0051	13	14	14.6
Yolo	213,016.00	0.0054	0.0052	0.005	0.0045	12.4	13	11
El Dorado	184,452.00	0.0047	0.0033	0.0037	0.0041	9	10.9	9.1
Imperial	180,191.00	0.0046	0.01	0.0049	0.0044	11.3	11.7	12.9
Shasta	179,533.00	0.0046	0.0064	0.0056	0.0051	12	13.4	16.7
Madera	154,998.00	0.004	0.0036	0.0042	0.0041	9.3	9.4	10.3
Kings	150,965.00	0.004	0.0052	0.0039	0.0033	8.6	9.4	11.7
Napa	142,456.00	0.0036	0.0032	0.0038	0.0042	8	8.5	8
Humboldt	135,727.00	0.0035	0.0039	0.0034	0.0035	8	8.7	10.4
Nevada	98,877.00	0.0025	0.0036	0.022	0.0026	7.6	8.1	4.9
Sutter	96,463.00	0.0025	0.0029	0.0029	0.0024	5.3	5.7	6.8
Mendocino	87,649.00	0.0022	0.0029	0.0028	0.003	8.4	8.7	7.5
Yuba	74,492.00	0.0019	0.0023	0.0026	0.0022	5.3	5.3	5.9
Lake	64,591.00	0.0017	0.0016	0.0017	0.002	4.7	5.8	5.5
Tehama	63,308.00	0.0016	0.0029	0.0022	0.002	4.3	4.6	5.8
San Benito	58,792.00	0.0015	0.0012	0.0012	0.0017	2.3	2.6	2.6
Tuolumne	53,709.00	0.0014	0.0016	0.0015	0.0018	4.8	4.9	4.5
Calaveras	44,828.00	0.0011	0.001	0.0012	0.0014	2.3	3	2.7
Siskiyou	43,554.00	0.0011	0.0024	0.0013	0.0023	5	5.3	3.2
Amador	37,001.00	0.0009	0.0012	0.0012	0.0014	2.3	2.8	2.8
Lassen	31,345.00	0.0008	0.0012	0.0011	0.0013	2.3	2.9	2.6
Glenn	28,017.00	0.0007	0.0015	0.0008	0.0013	2.3	2.4	1.6
Del Norte	27,254.00	0.0007	0.0013	0.0014	0.0015	2.8	3.3	3
Colusa	21,482.00	0.0005	0.0014	0.0008	0.0009	2.3	2.4	2.7
Plumas	18,409.00	0.0005	0.0005	0.0006	0.001	2.3	2.4	1.2
Inyo	18,260.00	0.0005	0.0015	0.0008	0.0012	2.3	2.8	1.5
Mariposa	17,531.00	0.0004	0.0005	0.0005	0.0006	2.3	2.4	1
Mono	13,909.00	0.0004	0.0012	0.0008	0.0009	2.3	2.5	1
Trinity	13,069.00	0.0003	0.0004	0.0006	0.0007	2.3	2.5	1.5
Modoc	8,965.00	0.0002	0.0003	0.0004	0.0006	2.3	2.3	0.9
Sierra	2,967.00	0.0001	0.0001	0.0001	0.0004	2.3	2.4	0.2
Alpine	1,110.00	0.000028	0.0002	0.0002	0.0004	2.3	2.3	0.2
Totals	39,144,818.00	1.000228	1.0001	1.0196	1	1963.1	2013.8	2049.7

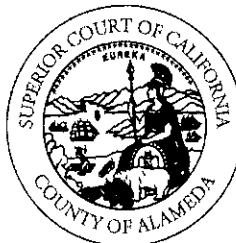
**From:** Finke, Chad, Superior Court  
**To:** [Conklin, Hon. Jonathan](#); [Fleming, Rebecca](#)  
**Cc:** [Hoshino, Martin](#); [Theodorovic, Zlatko](#); [Jacobson, Morris](#); [Carvill, Judge Wynne, Superior Court](#)  
**Subject:** Request by the Superior Court of Alameda County for Adjustments to WAFM  
**Attachments:** [Request for adjustments to WAFM 9-21-17.pdf](#)

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Please see the attached letter.

Thanks,  
Chad

Chad Finke  
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## SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Executive Office

René C. Davidson Courthouse • 1225 Fallon Street, Oakland, CA 94612

Telephone: (510) 891-6012

MORRIS D. JACOBSON  
*Presiding Judge*

CHAD FINKE  
*Executive Officer*

September 21, 2017

Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee, and Co-Chair, Funding Methodology Subcommittee

Ms. Rebecca Fleming, Co-Chair, Funding Methodology Subcommittee

VIA E-MAIL

Dear Judge Conklin and Ms. Fleming,

This letter is intended to be a formal request by the Superior Court of Alameda County for adjustments to WAFM. This request is made pursuant to the revised process adopted by the Judicial Council of California on July 28, 2017. While the revised process contemplates the request being made on an application form to be developed by Judicial Council staff, we are not aware that any such form yet exists. As such, we are presenting our request in letter format and we trust that that will be acceptable.

In making this request, we are addressing the eight informational points set forth in the revised process adopted by the Judicial Council of California on July 28, 2017. Because that process appears to contemplate that requests will be limited to the addition of new WAFM "factors," some of the informational points are not directly applicable to our request. Nonetheless, we have done our best to respond to each informational point. And we are happy to provide any additional information as may be requested by the Judicial Council, the Trial Court Budget Advisory Committee, the Funding Methodology Subcommittee, or any other body.

### 1. Description of how the factor is not currently accounted for in WAFM

Our request is that WAFM be amended as follows:

- Eliminate all reference to, or use of, the "historic share" in calculating annual allocations to the trial courts.
- Adopt the trial courts' FY 17-18 allocations as their new respective "base" funding levels.
- Modify the WAFM formula such that, where the overall allocation to the trial courts for a fiscal year (not including one-time or specially designated funds such as dependency funding or

Hon. Jonathan B. Conklin and Ms. Rebecca Fleming  
 September 21, 2017  
 Page 2

innovation grant funding) is the same as the allocation for the prior fiscal year, then the courts' respective allocations likewise remain the same for the two years. In other words, make WAFM a "no cuts" model in flat budget years. To illustrate: If the FY 17-18 allocation to the trial courts is \$1.4B, and the allocation in FY 18-19 is also \$1.4B, then each court should, in FY 18-19, get the same allocation it received in FY 17-18.

- Modify the WAFM formula such that, in a year where the overall allocation to the trial courts for a fiscal year increases over the allocation for the prior fiscal year, each trial court's starting base budget allocation will be the same as in the prior fiscal year. Then, modify the formula such that a percentage of the increased overall allocation (which percentage shall be determined by FMS) is allocated only to the most severely underfunded courts. Lastly, modify the formula such that the remainder of the increased overall allocation is allocated to all courts, subject to criteria to be determined by FMS. To illustrate: If the trial courts overall receive \$100M more in FY 18-19 than in FY 17-18, then, e.g., \$50M of that new funding should go solely to the most underfunded courts, while the remaining \$50M should be distributed among all 58 courts.
- Modify the WAFM formula such that, in a year where the overall allocation to the trial courts for a fiscal year decreases over the allocation for the prior fiscal year, each trial court's starting base budget allocation will be reduced by a percentage equal to the value of the overall percentage reduction to the trial courts overall. To illustrate: If the trial courts overall receive 5% less funding via the State Budget in FY 18-19 than in FY 17-18, then each court's allocation in FY 18-19 should be reduced by 5%. Note that FMS would likely need to adopt a funding floor for the smallest courts in connection with this modification to ensure that they do not suffer reductions that effectively render them unable to function.

The "factors" embodied by the above-multi-part request are not currently accounted for in WAFM. That is, WAFM continues to rely on the "historic share" to some extent. Further, WAFM reallocates funding each year without regard to the overall level of funding to the trial courts respective to the prior fiscal year. And in years where funding to the trial courts overall is increased, it is still theoretically possible for a court not only to not share in the new funding, but to actually see a cut to its budget. Thus, our overall proposal represents an approach to funding allocation that is not currently accounted for under WAFM.

## **2. Identification and description of the basis for which the adjustment is requested**

This informational point does not appear to be applicable to our request.

## **3. Detailed analysis of why the adjustment is necessary**

While WAFM has resulted in a redistribution of currently available funding amongst the trial courts, it has done so at the cost of major disruptions to the operations of many of the "donor" courts, as well as a significant decrease in access to justice for the public served by those courts. The changes proposed in this request will make WAFM more transparent, stable, and predictable. This will, in turn, ensure that access to justice for the citizens of the "recipient" counties does not come at the cost of a reduction in

Hon. Jonathan B. Conklin and Ms. Rebecca Fleming  
September 21, 2017  
Page 3

access by citizens in the “donor” counties. We discuss the access implications further in connection with informational point 6 below.

As to transparency, both FMS and TCBAC have acknowledged, in public meetings, that WAFM in its current incarnation is difficult both to explain and understand. In particular, the calculations involved in determining the phase-in of the “historic share” over time make the WAFM formula complex to the point of opacity. Eliminating the historic share as proposed will make the formula much easier to explain and thus significantly more transparent, particularly to those outside of the branch.

As to stability and predictability, WAFM as it stands is flawed in a number of regards. First, WAFM is overly sensitive to changes in filing trends. By recalculating each court’s share on an annual basis, with reference to the immediate past three years of filings data, WAFM leads to unpredictable, sometimes extreme swings in funding “need” from year-to-year. This is not speculative; historical WAFM data demonstrate that there are a number of courts that have oscillated between “donor” and “recipient” status since the model’s inception, sometimes seeing year-to-year swings in excess of \$1M.

Exacerbating the issue, courts do not receive their WAFM allocation information until mid-June, just weeks before those allocations go into effect. Moreover, because WAFM is reliant on data from all 58 courts, there is no way for any single court to predict accurately whether it will in fact be a donor or recipient, nor to what extent. Thus, a court may find itself approaching July 1 expecting to receive an increase in its allocation over the prior year, only to learn at the last minute that it will instead be facing a reduction, perhaps even at a catastrophic level. Conversely, a court may find itself an unexpected recipient, without any clear, fiscally prudent plan for how to spend its excess funding.

These sorts of last-minute, unpredictable, and often dramatic changes in funding make it nearly impossible for any court other than the most under-resourced (which can at least assume that they will be “recipients” to some extent, and thus plan accordingly) to engage in sound budget management, including entering into multi-year contracts (which often provide fiscal savings over contracts of shorter duration) or agreeing to multi-year COLAs for staff (which then causes the court and the JCC to expend resources annually on wage reopeners).

Our proposal cures these issues. As stated above, the fundamental principle underlying the proposal is stated simply as “no more cuts,” i.e., no court will suffer any cut in its allocation over the prior year unless the trial courts as a whole are cut. That fact—whether the trial courts overall are likely to see a budget reduction—is generally telegraphed by the Governor in January. Thus, under our proposal all courts would know approximately 6 months in advance if there was a need to prepare for a budget reduction. Otherwise, each court would know that its budget for the upcoming year would be at least the same as the current year, which would begin to restore our ability to engage in long-range planning and expenditure plans.

As an added benefit, adopting a “no cuts unless all are cut” model would eliminate the current unfortunate situation in which courts are divided by WAFM into two warring camps. Because WAFM is, in essence, a zero-sum game; some advance only at the expense of others. By adhering to a model that is, at its heart, divisive, the branch has weakened the ability of the trial courts to harmonize our message

Hon. Jonathan B. Conklin and Ms. Rebecca Fleming  
 September 21, 2017  
 Page 4

to the other branches. If, however, our proposal is accepted, it will instantly align the trial courts around a single goal: vigorous advocacy for much-needed new funding, to be disproportionately allocated to those courts most in need.

**4. Description of whether the unaccounted for factor is unique to the applicant court or has broader applications**

This request has a statewide application, and would affect all 58 trial courts.

**5. Detailed description of staffing needs and/or costs required to support the factor that is unaccounted for by WAFM**

In our view, the elimination of the "historic share" and the calculations surrounding its application will greatly reduce the workload on Judicial Council staff tasked with implementing WAFM. That workload reduction should easily offset any one-time workload involved in creating the new calculations necessary to implement the recommendations above.

**6. Description of the consequence to the public and access to justice without the funding**

As noted above, one presumably unintended consequence of WAFM in its current form has been that it has significantly reduced access to justice for the citizens in some counties, particularly those in which the trial courts have been repeated "donors." Among other things, the public in perennial "donor" counties have seen the following:

- Reductions in clerk's office hours;
- Court closures on days that would otherwise be business days, to accommodate voluntary and mandatory furloughs;
- Longer lines and increases in various response times as a result of decreased staffing levels; and
- A loss of certain grant-funded programs due to unavailability of sufficient matching funds at the local level.

These access restrictions are particularly harmful to our most vulnerable populations, e.g., the indigent, the elderly, and others whose life situations already limit their options in terms of available time for traveling to, and interacting with, the court.

We understand and acknowledge that many of these outcomes may have been present in the most severely underfunded courts for years. And yet we cannot accept that it is now "the turn" of courts that were historically less underfunded to have to suffer those same access reductions. That position is, in our view, simply a restatement of the principal that somehow "two wrongs DO make a right." In our view, the solution that is best for the public as a whole across the state is to adopt a "hold harmless" model like we have proposed, ensuring that those with the most dire need grow the fastest while at the same time not forcing some citizens to endure increased access restrictions to mitigate historical access restrictions faced by others.



Hon. Jonathan B. Conklin and Ms. Rebecca Fleming  
 September 21, 2017  
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To be clear, however, without the changes we have proposed—i.e., if WAFM continues as it has—there is no doubt that we will continue to see access eroding in the “donor” counties. Clerk’s hours will continue to be reduced, services will be curtailed, staff reductions will continue, and the public will suffer for it.

**7. Description of the consequences to the requesting court of not receiving the funding**

As a court that has been a major “donor” for most of the lifespan of WAFM, it is tempting to say that, if our request is not granted, Alameda will suffer the additional reductions in staff, services, and access described above. And yet, because of the unpredictability and volatility of WAFM, there is no way, in September 2017, to predict with any certainty what the specific fiscal consequences will be for our court if our proposal is rejected. It may be that the filings of the other 57 courts will decline more than ours, and we will reap a windfall as a “recipient” next year. Or the converse may happen and we may take a significant cut and have to revive the layoff plan that we had prepared to put into place in FY 17-18.

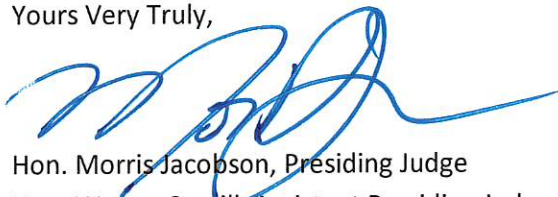
The fact is that we don’t know, and in fact no court other than the most underfunded can know either. Thus, if our proposal or some other “no more cuts” proposal is not approved, then we will all do our best to manage the money we received this year, without ability to plan confidently for next year. We will continue to pass up multi-year contracts that offer good rates, for fear of not being able to afford them in the out years. We will continue to try to get our labor unions to agree to meager COLAs with annual reopeners, in hopes of fending off strikes. We will continue to assure the public that we regret the loss of services, and that we would like to restore them if only we could predict accurately whether we can truly afford to hire more staff.

If, however, our proposal were adopted, we could in fact begin to address these issues. We would have assurances as to at least our minimum funding level for next year, which would allow for some planning to begin.

**8. Any additional information requested by the JCC, et al., deemed necessary to fully evaluate the request**

We are happy to provide any additional information that may be needed, and we thank FMS and TCBC in advance for their consideration of our request.

Yours Very Truly,



Hon. Morris Jacobson, Presiding Judge

Hon. Wynne Carvill, Assistant Presiding Judge and Presiding Judge Elect

Chad Finke, Executive Officer

cc: Martin Hoshino, Administrative Director of the Courts, Judicial Council of California  
 Zlatko Theodorovic, Director and Chief Financial Officer, Judicial Council of California

**From:** Finke, Chad, Superior Court  
**To:** ["ExecutiveNetwork List"](#)  
**Subject:** memo on WAFM discussion points for this week's PJ-CEO meetings

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Dear Colleagues,

As you all know, the TCPJAC/CEAC meetings this week will feature a number of break-out sessions, including one on WAFM. This conversation is crucial because the 5-year WAFM phase-in that was approved back in 2013 has been completed. Given the chronic underfunding of the judicial branch by the Legislature and the Governor, we think that the issue of how trial courts will be funded going forward is perhaps the most important issue before us at the moment.

In terms of process, the Trial Court Budget Advisory Committee (TCBAC) and its Funding Methodology Subcommittee (FMS) have already begun work on what comes next as we complete the original 5-year WAFM implementation. The Judicial Council has approved a deadline for offering input from the interested stakeholders, including the Presiding Judges and their CEOs. That deadline is October 15, 2017, so the available time to be heard is very limited.

Earlier this year Alameda circulated a proposed alternative to WAFM, the Population to Judge Ratio. While that model serves as an example of a more transparent, stable, and predictable alternative to WAFM, we remain open to and supportive of any budget allocation methodology that provides these basic protections to all of the trial courts. Thus, this email is not intended to reiterate that model nor seek support for it. Rather, we hope to build consensus among the courts as to certain fundamental concepts that should underpin whatever comes next, whether WAFM or some other methodology. Those concepts are as follows.

### **1. ELIMINATE THE "HISTORICAL SHARE"**

Under WAFM, a portion of each court's budget is based on its "historical share" of overall trial court funding. As has been noted many times, this factor—a product of political compromise in the 1990s—is largely responsible for the disparities and inequities in trial court funding that persist to this day. Whatever allocation model is used moving forward, it should in no way rely on the "historical share." That measure is anachronistic and has no relevance to the funding needs of the trial courts in 2017 and beyond. It is time to abandon the historical share as a part of the model and instead use FY 2017-18 as a new "base" from which to proceed.

### **2. NO MORE CUTS; STAGGER THE GROWTH; ALL SHARE EQUALLY IN OVERALL CUTS TO THE BRANCH**

The allocation model for our branch should no longer rely on cutting some courts to benefit others. While some courts are still more underfunded than others, after five years of “robbing Peter to pay Paul,” we have largely succeeded only in changing the names in the “budget winners” and “budget losers” categories. The courts that were historically underfunded remain underfunded, while courts that were managing have now also been brought down to minimal levels of functionality. It does not appear that access to justice has improved overall for trial court users under the five years of WAFM.

As an apparent prerequisite to a return to full funding, the Judicial Branch attempted in good faith to address inequalities within our own ranks. That return to full funding never materialized and our Branch remains woefully underfunded. Now is the time to send a message to the other branches that we will no longer cut ourselves; the further elimination of funding disparities will only be achieved when the Legislature and Governor adequately fund the courts.

**a. No more cuts in flat budget years**

In a flat budget year, like the present year, every court should get the same allocation as in the previous year. Thus, while the rate of growth for the most underfunded courts would be slowed, no courts would suffer harsh cuts without the ameliorating offsets of lesser budget gains (as many courts suffered this year).

**b. More underfunded courts receive a higher percentage of new funding in budget growth years**

Because some courts remain more underfunded than others, any new money coming into the branch should be disproportionately allocated to the most underfunded courts to bring them up to the level of those that are less underfunded. However, in a budget growth year, all courts should get at least some money, including the “least underfunded” courts. When new money comes in, some portion of that money should be divided among all 58 courts so that we all benefit. Another portion of the new money should be earmarked specifically for those courts that are most in need so as to continue to eliminate the funding gap between us. Such a split at, e.g., a 50/50 level would ensure that in good years we all gain, but those who need the most will gain the fastest.

**c. All courts share equally in budget reduction years**

In the unfortunate event of a future funding cut to the entire branch, all courts should share equally in the cut. For example, if the overall trial court budget were reduced by 5%, all courts should take a 5% cut, perhaps subject only to some level of funding floor for the very small courts. Such a model would ensure a shared community of interests among the trial courts.

### **3. THE FUNDING STRUCTURE MUST PROMOTE UNITY IN OUR BUDGET ADVOCACY**

Both agreeing to stop cutting courts in years with flat or improved budgets and agreeing to share overall branch cuts equally, have additional benefits. One consequence of WAFM has been that it has made it much more difficult for the courts to speak with a unified voice when it comes to budget advocacy. By pitting the courts against each other for a limited pool of resources, we have eroded our ability to come together and present a cohesive front to the Legislature and the Governor. If, however, we agree to treat FY 2017-18 as a new “base” year from which to build, it will be much easier to get all 58 courts to engage in vigorous advocacy around a single, unifying principle: full funding to the Judicial Branch so that all trial courts are both adequately and equally resourced.

### **CONCLUSION**

We appreciate the opportunity that the Council, TCBAC, TCPJAC, and CEAC have provided to comment on these extremely important issues. Our time to make our voices as the leaders of the 58 trial courts heard is extremely short given the need for a Council to vote on a WAFM successor next spring. While we may not all agree completely on the specifics of any given model, we hope that each of you will give consideration to supporting us on the basic principles outlined above, and that you will communicate that support to TCBAC by no later than its October 15 deadline for doing so.

Thank you,

Hon. Morris Jacobson, Presiding Judge, Superior Court of Alameda County

Hon. Wynne Carvill, Assistant Presiding Judge and Presiding Judge-Elect, Superior Court of Alameda County

Chad Finke, Executive Officer, Superior Court of Alameda County

Trial Court Budget Advisory Committee  
Funding Methodology Subcommittee  
October 26, 2017

Re: Future Distribution Formulas

Dear Members:

I address you on behalf of the Orange County Superior Court. As one of the participating members of TCBAC that helped develop WAFM, I continue to be supportive of WAFM and the work before this subcommittee. Clearly, recommending to TCBAC and the Judicial Council on how best to allocate funding in the future is extremely complex and will be long lasting. The long-lasting effect is why I feel compelled to provide these comments.

My thoughts are consistent with remarks I made during the full Budget Advisory Committee meeting in July, where I felt it was necessary to review the impact of WAFM on the trial courts during the previous five years. It is obvious that those courts that have been woefully underfunded have gained with this new methodology. Gains from modest increases in new funding, but also through the reallocation of historic funding to less underfunded courts.

Today, recipient courts are in a much better place as funds have allowed those who struggled financially to reopen courtrooms, hire much needed staff, and invest in their infrastructure. During that same period, the less under-resourced courts have seen their workforce decline by 20-35%, close courtrooms, reduce service hours to the public, and see their backlogs skyrocket. Despite such sacrifices, I continue to be a supporter of WAFM as we have established a model for allocating trial court funds on the basis of workload.

As we plan for our future, it is very clear that drawing upon historic funding to increase funding to receiving courts will result in even further reductions in staff, courtrooms, public service hours, and growing backlogs for contributing courts. The additional funds that have been appropriated in the past few years have provided needed resources for some trial courts, but those courts that have been contributing toward WAFM have experienced ten years of consecutive reductions. This has been a product of zero funding years and the redistribution of historic funding. This fact was expressed by one of the Funding Methodology Subcommittee members at your previous meeting.

During the construction of WAFM in 2012, members of the TCBAC remained optimistic that this new and equitable calculation to fund trial courts would be received positively by the Governor and Legislature such that they would adequately fund the trial courts. Hope and reality are concepts that have not paired

in the funding of our Branch since the birth of WAFM. At this stage in its evolution, it is obvious that adopting any practice of allocating additional funding to trial courts by reducing funding to others outside of the WAFM model (the banding concept) would be counter-productive if it will require further reductions to any court.

As I've spoken with other colleagues who have contributed the most toward improving equity, I believe courts have reached a breaking point and cannot sustain further reductions in their allocations. With costs continuing to climb, these courts have been required to reduce staff, services and other expenses as operating costs continue to climb. For these stated reasons, we urge this body to adopt a formula for the future allocation of funds to trial courts that are not offset by further reductions to other courts.

I urge this body to rely upon funding increases to our base to help courts that have been woefully underfunded and allow the less underfunded courts to sustain services at the current and already diminished services levels by discontinuing any further baseline reductions.

Sincerely,

David Yamasaki  
Court Executive Officer



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

**Executive Office**

**René C. Davidson Courthouse • 1225 Fallon Street, Oakland, CA 94612**

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**CHAMBERS OF  
WYNNE CARVILL**  
*Assistant Presiding Judge  
and Presiding Judge-Elect*

**CHAD FINKE**  
*Executive Officer*

November 15, 2017

Hon. Jonathon Conklin, Chair, Trial Court Budget Advisory Committee  
Members of the Trial Court Budget Advisory Committee

**VIA EMAIL**

Dear Judge Conklin and Members of the Trial Court Budget Advisory Committee:

As always, we appreciated the opportunity to attend the meeting of the Funding Methodology Subcommittee (FMS) on October 26, 2017. We are heartened to see the increased interest and public participation in these meetings by multiple trial courts, which certainly speaks to the criticality of the work that FMS is doing.

However, we are troubled by one glaring omission from the October 26 FMS meeting, as well as the November 14, 2017, telephonic meeting that followed. In contravention of its own internal policies, the FMS failed to give any consideration to the Adjustment Request Procedure (ARP) submitted by the Alameda County Superior Court on September 21, 2017. We know the ARP was received, as it was included as Attachment C2 to the materials that were provided to the members of FMS as part of the meeting materials for the October 26 meeting, and again as Attachments 3(B) to the materials for the November 14 telephonic meeting.

FMS itself has clearly articulated a process for considering ARPs submitted by the trial courts. According to the memorandum from staff dated October 19, 2017, which memorandum was included as Attachment C1 to the FMS meeting materials for October 26, each ARP submitted by a trial court shall be subject to the following specific, three-step process:

## Trial Court Budget Advisory Committee

November 15, 2017

Page 2

- a) initial review to determine whether the factor identified in a court's request should form the basis of a potential *modification* to WAFM [emphasis added];
- b) evaluation of whether and how the *modification* should occur [emphasis added]; and
- c) evaluation of whether, for those circumstances where it is determined that the factor should ultimately be included in the underlying Resource Assessment Study model (RAS), an interim adjustment should be made to a trial court's WAFM funding need pending a more formal adjustment to the RAS model.

(Memorandum included as Attachment C1 to October 26, 2017, FMS meeting materials, at p 2.)

It is true that the same memorandum goes on to note that the process detailed above may not be workable in all instances:

The ARP presumes that proposals be made to change or alter the existing allocation methodology, WAFM. Currently, FMS is in the midst of reviewing WAFM to determine whether the formula should be updated or changed going forward. Since this work has not been finalized, it's currently impossible to review ARP requests against the funding formula in the way the ARP process envisions (although this process will be workable in the future once a funding model is finalized).

(Memorandum included as Attachment C1 to October 26, 2017, FMS meeting materials, at p 2.)

We would assume, however, that even if the specific steps articulated above are not directly applicable to a court's ARP, the FMS would nonetheless endeavor, in its public meetings, at least to adhere to the spirit of that process in evaluating requests made by the trial courts.

Unfortunately, however, this did not occur at either the October 26 or November 14 FMS meetings. Indeed, the Alameda ARP was not discussed at all at either meeting.<sup>1</sup> As FMS staff acknowledges in the memorandum attached as Attachment C1, Alameda's proposal had, as a key component, a change to WAFM that would "[a]llocate new funding in a way that would ensure that no court received less funding than the prior year . . . ." (Memorandum included as Attachment C1 to October 26, 2017, FMS meeting materials, at p 3.) We have referred to this interchangeably as the "hold harmless" or "no more cuts" model and, for reasons that we have repeatedly articulated, we believe that it is superior to the current "rob Peter to pay Paul" model under which certain courts are repeatedly cut to provide additional funding to others.

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<sup>1</sup> We note that the minutes from the October 26 FMS meeting, which were approved by FMS on November 14, give the incorrect impression that Alameda's ARP was in fact considered by FMS. Specifically, the minutes under the second bullet point of Item 2 note that "[s]ubmissions and letters were discussed in the context of the WAFM Decision Points." We interpret "submissions and letters" in that context as including Alameda's ARP, and we strenuously disagree with the characterization that that ARP was "discussed" by FMS in any meaningful way at the October 26 meeting.



Notably, at least one other large court—the Superior Court of Orange County—agrees with us, as that Court likewise submitted two separate documents requesting that FMS consider amending the allocation model to “hold all courts harmless from future reductions.” (See letter included as Attachment C10 to October 26, 2017, FMS meeting materials, at p 2; written public commentary from the Superior Court of Orange County dated October 24, 2017, located online at <http://www.courts.ca.gov/documents/tcbac-20171026-fms-publiccomment.pdf>.) As with Alameda’s ARP, Orange’s request that FMS consider a “hold harmless” model was not addressed at the October 26, 2017, FMS meeting, despite the fact that the CEO of Orange, David Yamasaki, reiterated his court’s request orally during the opening public comments that same day.

While we anticipated that some members of FMS might disagree with our proposal, imagine our shock and dismay when that subcommittee failed, on two separate occasions, even to discuss the concept. Rather, at the October 26 meeting the FMS discussion of how to proceed in “flat” budget years began at approximately 1:05 p.m. with the assumption already in place that there would be a funding “band” that would apply in those years. In other words, it appears to have been predetermined, outside of the public meeting, that FMS would move forward with a model under which some courts’ budgets will continue to be cut so that other courts’ budgets can be enhanced in “flat” budget years. The discussion that followed delved deeply into how often these cuts would recur, e.g., whether they would occur in every flat budget year. There was also some discussion about the appropriate size of the “band” that would determine which courts get cut and which courts get enhanced at their expense. And there was discussion about a potential percentage “cap” on those courts that will continue to get cut, such as Alameda, Orange, San Diego, San Francisco, and Santa Clara. There was not, however, any discussion about the “no cuts in flat years” proposals made by Alameda and Orange.

We were troubled by this omission, as we received multiple assurances over the past several months that any and all proposals submitted to FMS would be given full and fair consideration by the subcommittee. And while FMS appeared to indicate, at its November 14 meeting, that its charge was limited to considering “workload-based” alternatives or amendments to WAFM, we were never informed of such a limitation. In fact, we originally submitted an alternative to WAFM that was based not on workload, but on population; at no point were we told that such a model would be outside the scope of FMS’s charge, and therefore not eligible for consideration. That point proved moot, however, because when we were asked if we would be willing to withdraw our population-based model in light of the limitations on staff resources, we agreed to do so. As we stated then—and as I said again at the October 2, 2017, FMS meeting—we agreed to withdraw our alternative model in reliance on good faith consideration being given to our “hold harmless” ARP. As I stated in October, we believe that the “hold harmless” alternative is critical if courts are not to be put at risk of being cut based on a “workload model” that uses unaudited and perhaps inconsistently reported data. Until such data can be verified through an

audit process to be reliable—a solution advocated by Judicial Council executive management at the October 26 FMS meeting—we strongly object to any “workload-based” model that relies on such data unless that model also includes the protection of a hold harmless provision, and we assumed that FMS would at least consider that concern in making its recommendation to TCBAC; it did not.

Perhaps even more disturbing than FMS’s failure to consider our “hold harmless” proposal, however, is that fact that there was no meaningful discussion of the impact on access to justice of the model that FMS appears to have predetermined to recommend. This concern—that continuing to cut some courts to fund others will have a disastrous impact on access to the public served by the “donor” courts—was a significant factor underscoring Alameda’s ARP. As we have repeatedly pointed out, while redistributing trial court funds via WAFM for the last five years may have improved access in some of the “recipient” courts, it has done so directly at the expense of greatly limiting access to justice in the “donor” courts. Courts like Alameda, San Francisco, and San Diego are, among other things, reducing clerk’s office hours, furloughing staff, and making operational decisions that will increase wait and case processing times. The Budget Advocacy Grid that was handed out at the TCPAC/CEAC Executive Meeting on October 18, 2017, a copy of which is attached, supports this conclusion, showing urgent levels of funding need in the perennial “donor” courts for all manner of public access-related issues.

When WAFM was proposed to the Judicial Council in April 2013, the group then known as the Trial Court Budget Working Group explicitly stated, in its report to the Council, that WAFM would have two outcomes:

The funding methodology proposed will result in a more systematic, transparent, and equitable allocation of trial court funding and address issues of disparities in court services for California’s court users. Subsequently, *it will further the branch’s commitment to provide equal access to justice for all Californians.*

(Emphasis added.)

Judicial Council staff has acknowledged that they also view “equitable access to justice” as one of “the two principal objections of WAFM.” (See Report To Trial Court Budget Advisory Committee dated December 4, 2017, and included as Item 1 to November 14, 2017, FMS meeting materials, at p. 3.) Staff go on to note that some FMS members preferred to characterize access to justice as a “secondary objective” of WAFM, and that “policy decisions made concerning the funding methodology were not done explicitly to increase or change access to justice – the hope was that equalizing funding would in turn improve access to justice.” (See *id.* at pp. 3-4.) Nothing in the April 2013 WAFM report itself, however, suggests that access to justice was a “secondary” objective, and certainly there is nothing to suggest that the Council

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members who approved WAFM in April 2013 would have considered a significant reduction in access in the donor courts to be an acceptable outcome.

Further, the characterization of access to justice as a “secondary” concern does not appear to harmonize with the Chief Justice’s strong public advocacy in support of her admirable “Access 3D” initiative. Given the prominence of Access 3D as the Chief’s vision for our branch, we simply cannot believe that the Judicial Council’s position is that it is acceptable to significantly cut access for some Californians in order to somewhat improve access for others. Further—and even if there is good faith disagreement over what was intended in April 2013—it is unfathomable to us that FMS did not even make a token consideration of access to justice issues at its October 26 and November 14 meetings, despite our explicit request that it do so. We would assume that considerations regarding limiting access to justice, particularly among our most vulnerable populations, would be a foremost consideration in the discussion of post-WAFM funding models.

It is difficult for us to understand FMS’s decision not to consider our ARP. We realize that Alameda has been an outspoken court over the last year, and we acknowledge that we have not been hesitant about making our views regarding the current allocation model known. At times, we have been accused of allegedly not following proper processes and procedures in advocating for our point of view. We believe that we have always advocated respectfully, transparently, and within every appropriate venue afforded to us. Here, we have gone to great lengths to work firmly within the bounds of the processes approved by the Judicial Council, including the ARP process. And yet we are now confronted with FMS doing the very thing for which we have been castigated: not following approved procedure. We are, frankly, at a loss as to how to interpret this, as well as how to proceed with advocating for our position respecting future trial court allocations.

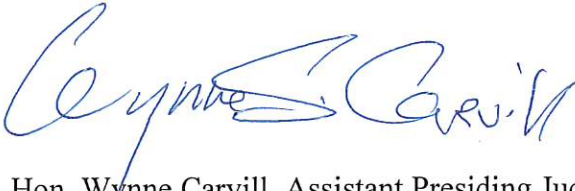
Like all of the trial courts, we are anxious to have a definitive answer to the question “What comes next after WAFM?” We too want to begin the modelling and fiscal planning that will be necessary if we all find ourselves in another year without meaningful new funding for the trial courts. Notwithstanding our desire for resolution, however, we do not feel that we can sit idly and allow our proposal not to be considered. Thus, we respectfully request that the members of TCBAC not approve the forthcoming recommendation of FMS, and that TCBAC instead insist that FMS schedule another meeting to give all courts’ proposals complete consideration on the record before moving any recommendations on to TCBAC. To do otherwise will, we fear, greatly erode our and other courts’ confidence in the process.

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Yours Very Truly,

A handwritten signature in blue ink, appearing to read "Wynne Carvill". The signature is fluid and cursive, with the first name "Wynne" and last name "Carvill" clearly distinguishable.

Hon. Wynne Carvill, Assistant Presiding Judge and Presiding Judge-Elect  
Superior Court of Alameda County

cc: Hon. Morris Jacobson, Presiding Judge, Superior Court of Alameda County  
Chad Finke, Executive Officer, Superior Court of Alameda County

Court	Reduce/eliminate backlogs for processing civil judgments.	Reduce/eliminate backlogs for processing criminal judgments, orders sealing juvenile records, probation transfers in/out, etc.	Reduce Family Court Services wait times for emergency custody orders and custody mediations	Restore hours for public access at clerk's office	Restore service hours at Self-Help Center/Family Law Facilitator's Office	Restore case types in courthouses where they previously had been heard
Alameda						
Alpine						
Amador						
Butte						
Calaveras						N/A
Colusa						
Contra Costa						
Del Norte						
El Dorado		N/A				
Fresno						
Glenn						
Humboldt						
Imperial						
Inyo						
Kern						
Kings						N/A
Lake						
Lassen						
Los Angeles						
Madera						
Marin						
Mariposa						
Mendocino						
Merced						
Modoc						
Mono						
Monterey						
Napa						
Nevada						
Orange						
Placer						
Plumas						N/A
Riverside						
Sacramento						
San Benito						N/A
San Bernardino						
San Diego						
San Francisco						N/A
San Joaquin						
San Luis Obispo						
San Mateo						
Santa Barbara						
Santa Clara						
Santa Cruz						
Shasta						
Sierra						
Siskiyou						
Solano						
Sonoma						
Stanislaus						
Sutter						
Tehama						N/A
Trinity						
Tulare						
Tuolumne						
Ventura						
Yolo						N/A
Yuba						

## Small Court Adjustments (SCAs) to Workload Models (RAS/WAFM) Overview

Overall, there are 9 small court adjustments (SCAs) made to the Resource Assessment Study (RAS) model and Workload Assessment Funding Model (WAFM). These include 4 SCAs in the RAS model and 5 in the WAFM. These adjustments are often referred to as small court adjustments because the adjustments generally benefit the smaller courts--specifically the 15 Cluster 1 courts--more than larger courts (clusters 2-4). However, each individual SCA adjustment impacts each cluster--and courts within each cluster--differently.

Cluster 1 courts: Alpine, Amador, Calaveras, Colusa, Del Norte, Glenn, Inyo, Lassen, Mariposa, Modoc, Mono, Plumas, San Benito, Sierra, and Trinity.

### Small Court Adjustments: Resource Assessment Study (RAS) Model

1. **Rounding to Whole Numbers:** The FTE need that is determined using the RAS model is rounded up to a whole number to create the final FTE need. Rounding applies to all courts, but the beneficial impacts are greater for the smaller courts (e.g., rounding from an FTE need of 12.3 to 13 provides greater beneficial impact in the smaller courts compared to rounding up from 975.4 to 976 in the larger courts).
2. **Manager/Supervisor Ratio:** The manager/supervisor FTE need is calculated using the cluster median of the ratio of Program 10 (operations) supervisors and managers to Program 10 staff using data reported in the Schedule 7A over a three-year period. Clustering accounts for the lack of economy of scale in the smaller courts, and removes the disadvantage that small courts would experience if a statewide ratio were used. Three cluster ratios are used to determine supervisor/manager FTE need: one each for Cluster 1, Clusters 2 & 3, and Cluster 4.
3. **Program 90 Cluster Ratio:** The Program 90 (administrative staff) FTE need is calculated using the cluster median ratios of actual Program 90 staff to Program 10 staff using data reported in the Schedule 7A. Clustering accounts for the lack of economy of scale in the smaller courts, and removes the disadvantage that small courts would experience if a statewide ratio were used. Three cluster ratios are used to determine Program 90 need: one each for Cluster 1, Cluster 2, and a combined ratio for clusters 3 and 4.
4. **Infractions case weights:** Two case weights have been developed for infractions, one for courts with fewer than 100,000 traffic infractions filings and one for those with more than 100,000 filings. The decision to have two case weights addresses a lack of economy of scale in courts with fewer traffic infractions filings (less than 100,000). Courts with more than 100,000 infractions filings often have practices in place--such as automation--to assist with the workload, whereas courts with fewer infractions filings may not have the volume to justify such expenditures.

**Small Court Adjustments: Workload Assessment Funding Model (WAFM)**

5. **Allotment Factor** – applied to salary (pre-benefits)
  6. **Allotment Factor** – applied to Program 10 salary-driven benefits
  7. **Allotment Factor** – applied to Program 90 salary-driven benefits
- The allotment factor (5-7 above of the WAFM small court adjustments) is a funding adjustment applied to small courts with low dollar per-FTE allotments that meet two criteria: (1) their BLS-adjusted FTE dollar allotment is below the median BLS-adjusted FTE dollar allotment and (2) their FTE need is below 50 FTE. The allotment factor is applied three ways (5-7 above): (5) to salaries, (6) to salary-driven benefits for Program 10 staff, and (7) to salary-driven benefits for Program 90 staff. This decision is consistent with federal and state government policies that recognize the special needs of employers of fewer than 50 employees.
8. **Funding Floor Adjustment:** The funding floor adjustment addresses the concern that estimated workload need in small courts may not meet the minimum level of funding necessary for a small court to “keep the doors open” and serve the public. There are two funding floors applied: absolute and graduated. The absolute funding floor is currently set at \$750,000. The three graduated funding floors are \$875,000, \$1.25m, and \$1.875m.
  9. **OE&E Clustering** (OE&E for Cluster 1; OE&E for Clusters 2-4): Operating Expenditures and Equipment (OE&E) is funding for non-personnel costs (supplies, equipment, etc.). OE&E is a ratio calculated using actual FTEs (as reported in Schedule 7A) and actual OE&E expenditures (as reported in Phoenix). Two cluster ratios are calculated: one for Cluster 1 courts and one for Clusters 2-4. Applying a Cluster 1 ratio addresses an economy of scale issue by recognizing that Cluster 1 courts have higher OE&E expenses compared to courts in the other three clusters.