

*Resolution posted pursuant to Conference Rules Art. II, Sec. 6(c). The CCBA Board of Directors will consider whether to accept the filing of this resolution at its meeting on Sept. 15, 2011. Counterarguments may be submitted to the board at [admin@calconference.org](mailto:admin@calconference.org) until 12:00pm on Sept. 15, 2011.*

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**ELF-3-2011**

**Legislature Shall Ensure That Appropriation Is Sufficient  
For Keeping Trial Courts Open Year-Round**  
**(Govt. Code §77202)**

**DIGEST**

Legislature Shall Ensure That Appropriation Is Sufficient  
For Keeping Trial Courts Open Year-Round

**RESOLUTIONS COMMITTEE RECOMMENDATION**

NONE

History:

No similar resolutions found.

Reasons:

Res Com has not considered or acted on this emergency late-filed resolution that was not presented to Res Com.

**TEXT OF RESOLUTION**

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Government Code Section 77202 to read as follows:

§77202

(a) The Legislature shall make an annual appropriation to the Judicial Council for the general operations of the trial courts based on the request of the Judicial Council. The Judicial Council's trial court budget request, which shall be submitted to the Governor and the Legislature, shall meet the needs of all trial courts in a manner that ensures a predictable fiscal environment for labor negotiations in accordance with the Trial Court Employment Protection and Governance Act (Chapter 7 (commencing with Section 71600) of Title 8), that promotes equal access to the courts statewide, and that promotes court financial accountability. In making an annual appropriation to the Judicial Council for the general operations of the trial courts, the Legislature shall provide sufficient funding, consistent with the Judicial Council's trial court budget request, to ensure that California's state trial courts can remain open year-round, except for judicial holidays as defined by Code of Civil Procedure section 135. The annual budget request shall include the following components:

(1) Commencing with the 2006-07 fiscal year, annual General Fund appropriations to support the trial courts shall be comprised of both of the following:

(A) The current fiscal year General Fund appropriations, which include all of the following:

(i) General Fund moneys appropriated for transfer or direct local assistance in support of the trial courts.

(ii) Transfers to the Judicial Administration Efficiency and Modernization Fund.

(iii) Local assistance grants made by the Judicial Council, including the Equal Access Fund.

(iv) The full year cost of budget change proposals approved through the 2006-07 fiscal year or subsequently approved in accordance with paragraph (2), but excluding lease-revenue payments and funding for costs specifically and expressly reimbursed through other state or federal funding sources, excluding the cost of one-time or expiring programs.

(B) A cost-of-living and growth adjustment computed by multiplying the year-

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to-year percentage change in the state appropriation limit as described in *Section 3 of Article XIII B of the California Constitution* by the sum of all of the following:

(i) The current year General Fund appropriations for the trial courts, as defined in subparagraph (A).

(ii) The amount of county obligations established pursuant to subdivision (b) of Section 77201.1 in effect as of June 30, 2005, six hundred ninety-eight million sixty-eight thousand dollars (\$698,068,000).

(iii) The level of funding required to be transferred from the Trial Court Improvement Fund to the Trial Court Trust Fund pursuant to subdivision (k) of Section 77209, thirty-one million five hundred sixty-three thousand dollars (\$31,563,000).

(iv) Funding deposited into the Court Facilities Trust Fund associated with each facility that was transferred to the state not less than two fiscal years earlier than the fiscal year for which the cost-of-living and growth adjustment is being calculated.

(v) The court filing fees and surcharges projected to be deposited into the Trial Court Trust Fund in the 2005-06 fiscal year, adjusted to reflect the full-year implementation of the uniform civil fee structure implemented on January 1, 2006, three hundred sixty-nine million six hundred seventy-two thousand dollars (\$369,672,000).

(2) In addition to the moneys to be applied pursuant to subdivision (b), the Judicial Council may identify and request additional funding for the trial courts for costs resulting from the implementation of statutory changes that result in either an increased level of service or a new activity that directly affects the programmatic or operational needs of the courts.

(b) The Judicial Council shall allocate the funding from the Trial Court Trust Fund to the trial courts in a manner that best ensures the ability of the courts to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost-saving measures in court operations, in order to guarantee access to justice to citizens of the state.

The Judicial Council shall ensure that allocations to the trial courts recognize each trial court's implementation of efficiencies and cost-saving measures.

These efficiencies and cost-saving measures shall include, but not be limited to, the following:

(1) The sharing or merger of court support staff among trial courts across counties.

(2) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(3) The establishment of a separate calendar or division to hear a particular type of case.

(4) In rural counties, the use of all court facilities for hearings and trials of all types of cases and the acceptance of filing documents in any case.

(5) The use of alternative dispute resolution programs, such as arbitration.

(6) The development and use of automated accounting and case-processing systems.

(c)

(1) The Judicial Council shall adopt policies and procedures governing practices and procedures for budgeting in the trial courts in a manner that best ensures the ability of the courts to carry out their functions and may delegate the adoption to the Administrative Director of the Courts. The Administrative Director of the Courts shall establish budget procedures and an annual schedule of budget development and management consistent with these rules.

(2) The trial court policies and procedures shall specify the process for a court to transfer existing funds between or among the budgeted program components to reflect changes in the court's planned operation or to correct technical errors. If the process requires a trial court to request approval of a specific transfer of existing funds, the Administrative Office of the Courts shall review the request to transfer funds and respond within 30 days of receipt of the request. The Administrative Office of the Courts shall respond to the request for approval or denial to the affected court, in writing, with copies

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provided to the Department of Finance, the Legislative Analyst's Office, the Legislature's budget committees, and the court's affected labor organizations.

(3) The Judicial Council shall circulate for comment to all affected entities any amendments proposed to the trial court policies and procedures as they relate to budget monitoring and reporting. Final changes shall be adopted at a meeting of the Judicial Council.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Summer D. Haro, Penny R. Brown, Carter Glahn, Joan Stone, Diane Wasznicky, Borden D. Webb, Kelly L. Borelli, Kenneth G. Petrullis, David Boyd, Jennifer Kim, Joan Nelms, Bernie Mikell

STATEMENT OF REASONS:

Existing Law: This section only requires that the Legislature make an annual appropriation for trial courts based on a budget proposed by the Judicial Counsel. This section requires that the proposed budget ensure that all needs of the trial courts are met, but not that the Legislature's appropriation also ensure that those needs are met.

This Resolution: Requires that in making appropriations for the trial courts, the Legislature protect the right to due process by ensure by providing sufficient funding to, at least, keep the trial courts open year-round, except for statutorily designated judicial holidays.

The Problem: Without open courtrooms, there can be no access to justice and no guarantee of due process. Without adequate funding, there will be no open courtrooms.

Because of the Legislature's repeated drastic funding cuts to the trial courts, counties, big and small, are being forced to not only lay-off critical support staff, but are being forced to close the courts for lengthy periods of time, to delay trials by years, and to eliminate entire departments (e.g. small claims in San Joaquin County and complex civil litigation in San Francisco County).

For example, Placer County is proposing multiple week-long court closures to preserve finances (Public Notice, Superior Court of the State of California, in and for the County of Placer, Court Executive Office, Aug. 19, 2011), San Francisco County anticipates having to close 25 of its 63 courtrooms which will cause civil cases to wait nearly 5 years for trial (*Budget Cuts Hit Home*, California Bar Journal, Aug. 2011).

Chief Justice Tani Cantil-Sakauye has expressly and openly sought input from members of the bar to find solutions to the repeated cuts to the judicial branch's budget (*Chief Justice Invites Attorneys to Explore Solutions to Unprecedented Cuts in Court Funding*, News Release No. 40, Judicial Council of California, Aug. 12, 2011).

Chairs of the Trial Court Presiding Judge's Advisory Committee and of the Court Executives Advisory Committee have expressed a consensus that more needs to be done to convince the Legislature and the Governor that reducing court funding will cripple the judicial system. (*Court Leaders Report on Managing in Face of Funding Cuts*, News Release No. 40, Judicial Council of California, Aug. 12, 2011).

California's Constitution guarantees that no person may be deprived of life, liberty or property without due process of law. (Cal. Const., Art. I §7(a)) The right to due process applies to both criminal prosecutions and civil rights. (*Katzberg v. Regents of University of California* (2002) 29 Cal. 4th 300 , 318-319)

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When enacting the Brown-Presley Trial Court Funding Act, the Legislature expressly found that state funding of trial courts was necessary to promote the general welfare and to protect the public interest in a viable and accessible judicial system. (Govt. Code §77100) The Legislature further found that the trial of civil and criminal actions is an integral and necessary function of the judicial branch of state government under Article VI of the California Constitution, and that there should be equal and ready access to the trial courts. (Govt. Code §77100)

However, without a sufficient number of open courtrooms, California will not be able to provide anyone with their due process, and there will be no access to justice.

The Legislature has no current obligation to ensure adequate funding for trial courts, and has consistently cut the judiciary's funding. This has closed courtrooms and gutted the very purpose of state funding for the judicial branch. This resolution requires that the Legislature take action to ensure that California's trial courts stay open and that California's Constitutional rights are protected.

#### IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

**AUTHOR AND/OR PERMANENT CONTACT:** Summer D. Haro, Goodman & Associates, 3840 Watt Avenue, Building A, Sacramento, CA 95821; (916) 643-0600; email: [suharo@goodman-law.com](mailto:suharo@goodman-law.com)

**RESPONSIBLE FLOOR DELEGATE:** Summer D. Haro

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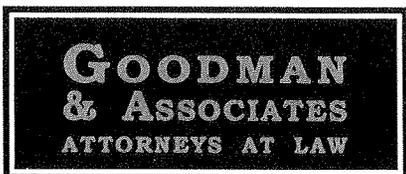
#### **COUNTER-ARGUMENT TO RESOLUTION ELF –**

In this time of extreme budget cuts, by guaranteeing funding to the courts to keep them open, it could have the inadvertent consequence of taking funding away from an equally worthy entity and further hamper the legislative process because there are already so many limits as to how the Legislature can craft its budget. For example, if the courts are guaranteed funding at a certain level, the Legislature will have to make spending cuts somewhere else. So what will get cut? Education, healthcare for the indigent? The proposed resolution risks setting the full funding of court operations above any other need to have efficient courts.

Therefore, the proposed resolution may run contrary to the Legislature's duty to prioritize its General Fund expenditures according to a prioritized set of needs determined by it relative to all other needs. Requiring permanent, set funding for the courts, would inappropriately create an unintended imbalance in the concept of equal yet separate branches of government, and thereby diminish the Legislature's constitutional authority over the power of the purse.

Further, if the Judicial Counsel and Legislature must base the judicial budget on keeping all trial courts open, then they will be forced to adopt the budget proposals of every county in California; how else would the Judicial Counsel know the amounts required to keep all trial courts open? This would provide unequal power to the individual counties and undermine the policy and economy of a unified court system.

While the courts are experiencing financial struggles, so is the rest of California. The courts are supposed to be an equal branch of the government, not the only branch free from budget constraints.



September 12, 2011

John Patton, Chairman,  
Conference of California Bar Associations  
Pasternak, Pasternak & Patton  
1875 Century Park East, Suite 2200  
Los Angeles, CA 90067

**RE: Emergency Late-Filed Resolution – Legislature Shall Ensure That Appropriation Is Sufficient For Keeping Trial Courts Open Year-Round**

Dear Mr. Patton:

I propose the attached Emergency Late-Filed Resolution which pertains to the problem of insufficient trial court funding in California. I would like to address the factors considered for Emergency Late-Filed Resolutions under Article II (6)(c) of the Conference Rules as follows:

- (1) The resolution deals with a matter of substantial importance to the bar and the public as it pertains to the critical lack of funding experienced by California's judicial system during the last several years. Because of continued funding cuts by the Legislature counties throughout California are literally closing their courtrooms, eliminating departments, laying off staff, and anticipating five year delays for trial. Without funding for the courts, California's populace will have no effective due process and no access to justice, regardless of their personal finances. Because the right to due process is guaranteed by California's Constitution, California's courts need to be funded so they can ensure that right. If the Legislature's funding decisions for California's courts continue, the right to due process will be nothing more than lip-service to a noble ideal. If such basic constitutional rights can be ignored, the third, and supposedly equal, branch of the government, the judiciary will be meaningless. California's courts are crucial, not just for those of us who practice in them, but for everyone who avails themselves of California's rights and protections.
- (2) Only in mid-August 2011, did California's courts, large and small,, and the State Bar, make public announcements about the major changes, closures and limitations they will be facing because of the budget cuts. Up until this year, the judiciary and counties have been using their reserves to continue providing services, but many of those reserves are being

exhausted, and the extent of the funding cuts were not made public until August 2011. Consequently, the events giving rise to this resolution effectively precluded me from filing it before the regular filing deadline or the late-filed deadline of two months before the conference.

- (3) This resolution is presented as soon as practicable after the August 2011, announcements from the courts and State Bar. I circulated the proposed resolution to members of several delegations on September 9, 2011, regarding comments, concerns, and potential opposition. I have incorporated the comments for opposition into the opposition statement. I have also received confirmation that the following members of the State Bar, all in good standing, support the proposed resolution:

Summer D. Haro  
Carter Glahn  
Penny R. Brown  
Joan Stone  
Diane Wasznicky  
Borden Webb  
Kelly Borelli  
David Boyd  
Kenneth G. Petrullis  
Jennifer Kim  
Virginia Cale  
Joan Nelms  
Barbara Figari  
Bernard J. Mikell, Jr.

- (4) The subject matter of the resolution will not be before the Conference unless the resolution is filed.
- (5) The business of the Conference allows time for consideration of the resolution without unduly restricting time for consideration of other matters of equal or greater importance to the Conference, the Bar and the public.

The resolution is attached to this letter, together with counter-arguments by proposed by Shaun Jacobs and Andie Liebenbaum. I would like to post the resolution to the website to allow others to submit counter-arguments. Thank you.

Sincerely,



Summer D. Haro