Steven E. Jahr, Judge, Retired
PO Box 990428, Redding, CA 96099

December 9, 2011

Re: AB 1208 Proposal

Dear Chief Justice and Members of the Judicial Council:

Last Spring, a legislative effort was initiated by some judges which would have deprived the Judicial Council of its fundamental statutory role in trial court budgeting, not to mention its constitutional role as the rule-making body for the judicial branch.

AB 1208 was then justified by its supporters based upon allegations that the Judicial Council had ignored a requirement set out in the Lockyer-Isenberg Trial Court Funding Act of 1997 to promulgate rules of court which would ensure strong and independent local court financial management. Since I had been involved in the trial court funding reform process on behalf of the Judicial Council during those years, I was aware of the steps which had actually been taken and knew these allegations to be untrue. I sought to correct the record on that subject by my letter dated March 2, 2011, a copy of which is attached.

Now these judges have, according to their letter dated December 5, 2011, with enclosures, abandoned those allegations, redrafted their proposed statutory language, the May 18, 2011 version of which I have now read, and supported this effort with allegations of waste and inefficiency on the part of the Judicial Council and Administrative Office of the Courts in the management of trial court operations funding.

As for the redrafted statutory language, it accomplishes the same objective as the earlier version. It empowers a strategic minority of courts to gain control over the budgeting process, via an insurmountable veto power over budgeting initiatives by the council (GC 77202(b)(3)); an essentially static annually recurring pro rata distribution scheme (GC 77202(c); and a structure(GC 77202(b)(1)) enabling, indeed incentivizing, direct lobbying of the legislature by strategically aligned groups of powerful courts to favor as few as two courts at a time with special allocations, unlimited in number, dollar amounts, or defined purposes, to be withdrawn directly from the overall legislative appropriation for all the trial courts, BEFORE any of the remaining funds are disbursed to all the courts statewide.

The structure, if enacted into law, will not only sideline the rule-making body of the state's judicial branch, it will ensure the Balkanization of the branch, from which will emerge a few powerful courts, able by size and legislative constituencies to exercise enormous influence over annual court operations budgets for the entire

state. If one set out to create a scheme whereby the "rich get richer and the poor get poorer", one could scarcely do better than this. But to do so would defeat the defining goals of our branch to provide equal access to quality justice for all Californians regardless of whether they happen to live in our most populous counties or places like Ventura or Contra Costa, let alone Stanislaus, Marin or my own county.

As for the present allegations offered by these judges, I will be the first to say I have no first hand information to offer. My involvement in budgeting matters took place in the 1990's, and a decade has gone by since I served on the Judicial Council myself. But I do know that as one of her first initiatives, our Chief Justice established a Strategic Evaluation Committee to assess the operations of the AOC, top to bottom, which will necessarily examine the assertions raised by these judges. Such an inventory and assessment is wholesome and it is due. Furthermore, the Chief Justice appointed retired Justice Arthur Scotland to chair that effort. The conclusions and recommendations reached by a committee so guided will be unflinching and they will be thorough. It is by those means that the present allegations can be addressed in a way that most benefits the public we serve.

The state funding of trial court operations reform was, and remains, a truly progressive legislative enactment by which equivalent access to justice for all citizens can be attained. The present efforts to dismantle that process, while ever-changing in the specifics, represent a reaction to the balanced governance of the judicial branch by a process which is designed to ensure that all trial courts, however situated, will receive the equivalent consideration that we, as judges, afford the litigants who appear in our courtrooms.

I respectfully urge you firmly to oppose AB 1208. Thank you for your consideration.

Sincerely,

Steven E. Jahr

IN CHAMBERS

RECEIVED
MAR 8 2011
MARY M. ROBERTS

MS ROBERTS — THE HARD COPY OF THE LETTER I SENT TO COURT LEADERS — STEVE JAHR

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SHASTA

STEVEN E. JAHR, JUDGE, RETIRED

P.O. Box 990428
Redding, CA 96099

March 2, 2011

Dear Colleagues:

I write to shed light on a topic I know something about, having served as chair of a judicial branch working group—the AB 233 Working Group[1]—that addressed the topic: the so-called Trial Courts Bill of Financial Management Rights. For those unfamiliar with the history of trial court funding in California, AB 233 was the bill that became the Lockyer-Isenberg Trial Court Funding Act of 1997, reflecting almost 30 years' effort by the judicial branch to achieve the goal of full state funding of the trial courts.

It's helpful to understand the legislative process that resulted in AB 233 and how the "bill of rights" issue arose. Here is a summary:

- A "spot bill" containing only the name of the bill was first introduced as a placeholder. This "spot bill" was AB 2553, introduced in February 1996.
- "Intent" language was worked on by the bill's author, courts, and counties to guide the drafting of the statutes that would become the legislation. "Intent" language was introduced in April 1996.

[1] A review of the roster of the AB 233 Working Group is a trip down memory lane, as most members have since retired from the bench, including me: Judges Victor Chavez and Ray Hart of Los Angeles, Dennis Cole of San Bernardino, Sandra Faithfull of Santa Clara, William Howatt of San Diego, Dwayne Keyes of Fresno, Arthur Wallace of Kern, and Edward Webster of Riverside. And two working group members—Judges Kathleen O'Leary of Orange and Patricia Sepulveda of Contra Costa—have long since moved to higher office. Court executives were also on the working group and several are still in service to the branch, although in different positions: Alan Carlson (San Francisco), Sheila Gonzalez (now Calabro) (Ventura), Ron Overholt (Alameda), Chris Patton (Santa Cruz), and Mike Roddy (Sacramento). Fritz Ohlrich, now Clerk of the Supreme Court, was Court Administrator of the Los Angeles Municipal Court when he served on the working group.

- The last statement of intent was to "acknowledge the need for strong and independent local court financial management, including encouraging the adoption by the Judicial Council of a Trial Courts Bill of Financial Management Rights."
- The trial court legislation was then drafted by a group that included, again, the courts[2] and counties, but also the Department of Finance in addition to legislative staff and staff from the Legislative Analyst's Office. The issues identified in the "intent" language were addressed in statute, with more specificity.
- The "bill of financial management rights" issue was addressed in section 77001, which required the Judicial Council to adopt rules of court to "establish a decentralized system of trial court management" that would ensure local authority and responsibility of trial courts to manage day-to-day court operations.
- AB 2553 failed on the last day of the 1995-1996 legislative session, and was reintroduced as AB 233—the Lockyer-Isenberg Trial Court Funding Act of 1997—in the next session.
- AB 233 was signed into law in October 1997, effective January 1, 1998.
- The AB 233 Working Group worked on drafting rules of court consistent with the statutory directive of section 77001.
- The Judicial Council adopted rules of court effective July 1, 1998.

The statute itself (section 77001) took the notion of "strong and independent local court financial management" from the intent language and specified the areas over which trial courts had authority and management responsibility. Section 77001 as enacted read as follows:

> On or before July 1, 1998, the Judicial Council shall promulgate rules which establish a decentralized system of trial court management. These rules shall ensure:
> (a) Local authority and responsibility of trial courts to manage day-to-day operations.
> (b) Countywide administration of the trial courts.
> (c) The authority and responsibility of trial courts to manage all of the following, consistent with statute, rules of court, and standards of judicial administration:
> (1) Annual allocation of funding, including the authority to move funding between functions or line items.
> (2) Local personnel systems, including the promulgation of personnel policies.
> (3) Processes and procedures to improve court operations and responsiveness to the public.
> (4) The trial courts of each county shall establish the means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerks of court, and jury commissioners.
> (d) Trial court input into the Judicial Council budget process.

[2] I also served as chair of the Task Force on Trial Court Funding formed in 1996 at the instance of then Chief Justice Lucas to develop consensus within the judicial branch and to work with representatives of the executive and legislative branches and the counties to create a full state funding mechanism for trial court operations.

(e) Equal access to justice throughout California utilizing standard practices and procedures whenever feasible.

As a trial court judge I knew local control was a subject near and dear to the hearts of trial court judges. The working group's focus was on drafting rules for Judicial Council consideration that met the requirements of section 77001, and to place those rules within a larger, overarching framework that established the responsibilities of the Judicial Council and the Administrative Office of the Courts for fiscal matters as set forth in other statutes enacted as part of AB 233.

The working group approached its task diligently. Rules were drafted, extensive comments were received, and a report was submitted to the Judicial Council in June 1998 that recommended adoption of proposed new rules that would be a part of a new title in the California Rules of Court on judicial administration. The proposed rules covered all of the topics required by AB 233. As the June 1998 report to the council explained:

> The rules were drafted in response to the Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233), which requires the Judicial Council to adopt rules that (1) "establish a decentralized system of trial court management" by July 1, 1998 (Gov. Code, § 77001); (2) govern "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" (Gov. Code, § 77202 (b)); and (3) relate to "budget submission, budget management, and reporting of revenues and expenditures by each court" (Gov. Code, § 77206(a)).

The Judicial Council adopted the proposed new rules effective July 1, 1998, meeting the deadline stated in section 77001 for adoption of rules establishing a decentralized system of trial court management. That specific topic was addressed in several proposed rules, among them rule 2501, which read as follows:

TITLE SIX. JUDICIAL ADMINISTRATION RULES

* * *

DIVISION IV. TRIAL COURT ADMINISTRATION

CHAPTER 1. GENERAL RULES ON TRIAL COURT MANAGEMENT

Rule 2501. Trial court management

(a) **[Purpose and intent]** The purpose of the rules in this division is to establish a system of trial court management that:

(1) Promotes equal access to the courts;

(2) Establishes decentralized management of trial court resources; and

(3) Enables the trial courts to operate in an efficient, effective, and accountable manner in serving the people of California.

(b) **[Goals]** These rules are intended to ensure the authority and responsibility of the trial courts in each county to do the following, consistent with statutes, rules of court, and standards of judicial administration:

(1) Manage their day-to-day operations with sufficient flexibility to meet the needs of those served by the courts;

(2) Establish the means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerks of the court, and jury commissioners;

(3) Manage their personnel systems, including the adoption of personnel policies;

(4) Manage their budget and fiscal operations, including allocating funding and moving funding between functions or line items;

(5) Provide input to the Judicial Council, the Trial Court Budget Commission, and the Administrative Office of the Courts on the trial court budget process; and

(6) Develop and implement processes and procedures to improve court operations and responsiveness to the public.

(c) **[Decentralized management]** "Decentralized management" as used herein refers to the administration of the trial courts on a countywide basis, unless an alternative structure has been approved by the Judicial Council, consistent with applicable statutes, rules, and standards of judicial administration.

In addition, concerning financial matters, rule 2530 confirmed local (though on a countywide basis) responsibility of the trial courts for financial management and budget procedures, including expenditure management authority to distribute funding, once received, along with the discretion to redistribute funding as a budget year unfolded.

Rule 2501 has been amended several times since its adoption in 1998. The amendments have replaced the Trial Court Budget Commission[3] with the Judicial Branch Budget Advisory Committee, which in turn was replaced by the Trial Court Budget Working Group, renumbered the rule (now rule 10.601), and made minor nonsubstantive changes. The substantive rule provisions, however, remain virtually unchanged since their adoption.

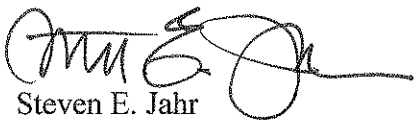
Why is this history relevant now? Although retired from the bench, I am aware that some judges have asserted that the Judicial Council failed to do what the Legislature intended because the

[3] The Trial Court Budget Commission, on which I served from its inception and which I chaired from 1997 to 1998, was established by the Judicial Council in 1992 to review and make recommendations to the council for approval of trial court budgets for submission to the Legislature and allocation of state funds to the trial courts. The commission was replaced by the Judicial Branch Budget Advisory Committee in 2002, which was replaced by the Trial Court Budget Working Group in 2007.

council did not adopt a "trial courts bill of rights." As one (of many) who was actively involved in implementing the legislative intent as expressed in the statutes enacted under AB 233, I can say with confidence that those assertions miss the point. The Legislature's stated intent was to "acknowledge the need for strong and independent local court financial management," which it did by enacting section 77001. While the Legislature did not codify the words "trial court bill of rights" in section 77001, it did within that section direct the Judicial Council to adopt rules that "establish a decentralized system of trial court management." The council did so, aided by the hard work of the AB 233 Working Group and by the AOC staff who ably assisted the group. Those rules continue to provide for decentralized management of trial court resources, entirely consistent with statute and with the statement of legislative intent.

Each of us is entitled to our own opinion, and I have no quarrel with those whose opinions may differ from mine. But we are not entitled to our own facts. And it is simply inaccurate to blame the Judicial Council for failing to do what it was *not* charged with doing, especially in light of the fact—not opinion—that the council did as it *was* charged. I hope this letter helps set the record straight.

Sincerely,



Steven E. Jahr
Judge (retired)