Introduction

In 2013, the San Diego County Bar Association (SDCBA) first issued a report on the State of the Judiciary in San Diego County, as a part of the Association’s response to nearly $1.2 billion in cuts to the operating budget for California’s Judicial Branch between 2007 and 2012. The SDCBA aimed to do the following:

- Educate our local elected officials on the state of the judiciary in San Diego County
- Forge relationships with local elected officials
- Create a public understanding and awareness of the effects of inadequately funded courts

In addition, we worked to collect and understand the “real world impacts” funding cuts had on our community – and exactly how businesses and families were affected by reduced court hours, significant processing delays, diminished courthouse staff and other hindrances caused by inadequate funding.

Since the first report was published, we’ve shared these impacts, provided an overview of the “state of affairs,” and shared information on how courts in California are funded.

In 2017, in addition to the local court funding woes that we are facing throughout our county, national issues are also impacting justice here in our community. Laws are changing and our government is moving at a particularly quick pace on varied initiatives. Over the last year, the SDCBA has discussed and developed a thorough policy for how to address issues that impact justice here in San Diego, and has been active in speaking out on injustice in ways where our voice in the community can be of value. As such, this year’s report has been expanded to provide the “bigger picture” and a thorough overview of issues impacting justice — and particularly access to justice — for all.
At least $6 million has been cut/will be cut during this fiscal year (July 1, 2017 through June 30, 2018) from the San Diego Superior Court. We have been talking about the impacts of a budget shortage on the businesses and families in San Diego for many years, and we are now in a position where the impacts will have a very significant effect on the day-to-day lives of San Diego citizens. The court has asked employees to volunteer for buyouts, which means that there will be no layoffs, for now. However, this budget shortfall will have myriad impacts. In short order, due to the budget cuts, the San Diego Superior Court will:

- Close small claims and unlawful detainer operations in Vista and transfer that business downtown.
- Close one civil department.
- Eliminate the use of student workers and retired employees.
- Eliminate court reporters in all family law cases.
- Create “floating” judge positions, where judicial officers will work on multiple assignments, but without any dedicated staff members.
- Close up to 10 courtrooms.
- Close the juvenile dependency operations at the courthouses in downtown San Diego and in Chula Vista, transferring all operations to the Juvenile Court building in Kearny Mesa (Meadow Lark), and eliminating one juvenile delinquency department.
- Close one civil department.
The San Diego Superior Court’s leadership has worked diligently to increase efficiencies in order to avoid eliminating core court functions and eliminating services, including offering court reporters, but such extreme budget limitations mean that this is now our new reality. The impacts of eliminating court reporters in family court may be detrimental in several ways:

• Court reporter costs vary but can be over $100 an hour (sometimes $200), and nearly $800 a day, which may not be affordable for many parties in family court.

• Those who cannot afford a court reporter will need to go without, which will hamper their ability to appeal since there will be very little record for the appellate court to consider.

• If there is not a sufficient written record, cases are often dismissed.

San Diego is home to the second largest court system in California, and yet, the state budget for this year doesn’t allocate any additional funding for court operations. In addition, the court attributes the budget shortage to increased labor cuts and the way that courts are funded statewide – through the Workload Funding Allocation Model (see infographic on page 11). Through this model, San Diego is a “donor” court, meaning that money is given to courts that are perceived to have a greater need, and San Diego, because of its ability to increase efficiencies over the years, receives no additional funding. According to court officials, this may just be the beginning – the courts are expecting even further budget shortfalls in the next few years.

**New Courthouse**

A cause of confusion in this funding crisis is the high-tech 26-story beautiful new courthouse getting ready to open to the public. The new courthouse will help bring justice into the modern era, and we expect the upgraded facilities to help lawyers do their jobs more efficiently. With the court’s budget so severely slashed, the obvious question is how exactly did the court build that gigantic and innovative structure? The short answer is that it was budgeted separately — it was part of a long-term plan and was funded completely separate and apart from what the judicial branch receives from Governor Brown’s annual budget.

Since 2013, we have met with our elected officials, and plan to continue to meet with them to stress the importance of a fully-funded judiciary, and we hope that we are able to make a difference. While we work on reaching out to elected officials in the future, there are other ways we can help now. Jeffrey Barton, San Diego Superior Court Presiding Judge, and Peter Deddeh, San Diego Superior Court Assistant Presiding Judge, shared that anything we could do to lessen the strain on the courts’ limited resources would make a meaningful difference. For example, settling scheduling issues outside of court, or meeting and collaborating with opposing counsel on minor matters related to scheduling — in other words, reducing the use of the court’s time and resources in an administrative function as much as possible.

This is a simple way where we can help, but our efforts ever have a true impact on a $30 million deficit. However, it is something simple we can do to lessen the burden on our courts and better the situation for our clients. Please continue to share your stories on how you and your clients are impacted by diminished services, so that we may share them with elected officials, at www.sdcba.org/realworldimpacts.

To learn more about the court funding situation in our community, and how citizens and businesses in our community are affected and will continue to be affected, please review the SDCBA’s previous “State of the Judiciary” reports on the SDCBA website at www.sdcba.org/courtfunding.

In 2017, we also outlined our specific concerns in a letter to Assemblymember Todd Gloria, which follows here.
June 9, 2017

Assemblymember Todd Gloria
1350 Front Street, Suite 6054
San Diego, CA 92101

Dear Assemblymember Gloria:

In your May 25 letter, you asked for input regarding Governor Brown’s May Revision to the 2017-2018 proposed state budget. We need to bring the issue of court funding to your immediate attention, as it affects every Californian’s ability to access justice, and not only impacts businesses, but citizens with lower incomes.

The May Revision does not include any additional funding for California’s Judiciary, with the branch’s total budget set at $3.6 billion. It is estimated that to preserve the current level of services the courts provide, the budget for the judiciary will need to be increased by over $150 million. In the words of California Chief Justice Tani Cantil-Sakauye, “we cannot provide the justice that Californians deserve without adequate and stable funding. Inadequate funding and chronic underfunding of the courts is just one way a justice system can become unjust.”

By way of background, nearly $1.2 billion was cut from the California Judicial Branch budget between 2007 and 2012, almost 30 percent of the judicial branch’s former operating budget. Since then, the San Diego County Bar Association (SDCBA) has documented the real-world effects of our underfunded courts. Reduced funding for our courts has led to historical delays in service, reduction in services, reduced operating hours, and fewer staff in our courthouses, which directly affects individuals, families and businesses in San Diego County. Long wait times and unprecedented processing delays mean that “justice delayed” for the citizens and businesses in our county continues to be “justice denied.” I encourage you and your staff, and other state assemblymembers to review the impacts budget cuts have had on San Diego citizens and businesses by reviewing the annual “State of the Judiciary” reports on the SDCBA website at www.sdcba.org/courtfunding.

Very few people recognize how important our courts are until they need them to become checks on other branches of government, or to stop injustice. Our local courts provide a guarantee to our rights to life, liberty, and property. Our courts are where society’s questions of innocence and guilt are determined, financial culpability is decided, business disputes are addressed, and complex family matters are resolved. If an individual or business is denied prompt access to their “day in court,” or if justice is delayed, then ultimately, the citizens and businesses in our community suffer.

It is our hope that you will understand the need for adequate court funding and work with us to increase funding for our judiciary in this budget.

Sincerely,

Loren G. Freestone
President
San Diego County Bar Association
Additional Issues Impacting Access to Justice in 2017

The SDCBA is proud to be a representative and advocate for the legal profession and a champion of the justice system. In 2017, for the first time in recent history, the SDCBA created and adopted a policy that informs when the SDCBA will take a public position or provide comment on a “hot topic” or important issue. In short, the SDCBA’s policy allows for the Association to use its voice to educate and inform the public on issues that are in line with the organization’s mission and the goals of its strategic framework. In particular, the SDCBA intends to be, and has been, vocal and visible on issues that have a potential impact in the following areas:

- Administration of justice (including respect for the rule of law and the judicial branch)
- Diversity and inclusion in the profession
- Professionalism/ethics
- Civility
- Equal justice under the law/civil liberties
- Independence of the judiciary, including criticism of judges
- Constitutional rights that impact the justice system
- Access to justice

To weigh, determine, and process requests for comment and in order to be proactive in tackling important issues, the policy provides for the SDCBA to create a “Public Position Advisory Group,” known as PPAG. Through PPAG, the SDCBA has been able to assess and address issues impacting our community.

Statement Regarding 2017 Executive Orders on Immigration and the Independence of the Judiciary

On January 25 and January 27 of 2017, President Donald Trump issued two executive orders concerning immigration. Litigation swiftly followed, along with chaos and confusion with regards to whether new immigrants and existing immigrants would be allowed to enter the country. There were also comments made by the President that were construed by PPAG to undermine the public’s confidence in the justice system and impact judicial independence. As such, the SDCBA, through PPAG, issued the following public statement on February 15.

SET THE BAR HIGHER.
SDCBA Public Statement Regarding the January 2017 Executive Orders on Immigration and the Independence of the Judiciary

SAN DIEGO, Feb. 15, 2017 – The executive orders on immigration issued by President Donald Trump on January 25 and 27 have created a swiftly moving and uncertain situation, which has highlighted the necessity of access to justice and the critical importance of an independent judiciary.

The San Diego County Bar Association (SDCBA) is concerned by and strongly condemns the president’s recent comments about the judicial process, including President Trump’s reference to U.S. District Judge James L. Robart as a “so-called judge” and the president’s suggestion that any acts of terrorism should be blamed on “[Judge Robart] and the court system.” Such attacks demean and delegitimize the judiciary. Further, such attacks undermine the public’s confidence in our judicial system and compromise the independence of the judiciary. These comments, like then-candidate Trump’s unfounded personal attack on U.S. District Judge Gonzalo Curiel last summer, must not go unchallenged.

The Constitution provides a time-tested tripartite form of government, in which each co-equal branch provides necessary checks and balances on the others. These checks and balances assure the continued strength of U.S. democracy.

It is the role of the executive and legislative branches to adopt laws and issue executive orders. It is the role of lawyers to analyze, question, and challenge or defend the operation of such laws and executive orders. And it is the role of the judiciary to weigh such arguments and determine the constitutionality and legality of laws and executive orders. The litigation that is currently unfolding regarding the immigration executive orders is an example of this system of governance functioning precisely as it was designed. That process deserves the respect of all who value the Constitution and took an oath to uphold it, including the president and all attorneys.

As officers of the court, we are committed to ensuring meaningful access to justice for all persons regardless of their economic or social conditions. While we await the courts’ final rulings on the president’s executive orders, we will continue to prioritize access to justice for all and equal justice under the law, and to defend the judiciary against attacks on its independence.

We commend the lawyers in San Diego and around the country who have responded admirably in accordance with their professional oath to uphold the Constitution. They are working tirelessly to assist all individuals whose immigration status has been or may be affected by the executive orders, including the most vulnerable.

The SDCBA is a non-political and non-partisan association of 10,000 diverse members, which aims to enhance the legal system and promote justice, professional excellence and respect for the law. Information on how to contact an immigration attorney and resources for understanding the immigration executive orders can be found online at www.sdcba.org/immigrationinfo.

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Support for Legal Services Corporation

In 2017, Legal Services Corporation, which had a history of bipartisan support from both the House and the Senate, was on the brink of losing its funding nationally. In California, that amounted to $40 million, which has been used to aid thousands of people through legal aid organizations throughout the country with issues including domestic violence, consumer fraud, housing, veteran affairs and more.

The SDCBA, joined bar associations throughout the state in writing a letter to our Senators and Representatives in support of Legal Services Corporation. The other Bar Associations included:

- Alameda County Bar Association
- Alameda-Contra Costa Trial Lawyers’ Association
- Bar Association of San Francisco and Justice and Diversity Center
- Beverly Hills Bar Association
- Contra Costa County Bar Association
- Marin County Bar Association
- Monterey County Bar Association
- Orange County Bar Association
- Santa Clara County Bar Association
- San Francisco Trial Lawyers Association
- Ventura County Bar Association

Dear Senators and Representatives:

We are twelve local bar associations across California, writing to urge you to reject the proposed elimination of funding for the Legal Services Corporation (LSC). Our associations are made up of attorneys from large and small corporate law firms, prosecutors, and city attorneys, among others. We are Republicans, Democrats and Independents, but what we have in common is a belief that Legal Aid plays a critical role in the justice system and in our society.

As you no doubt know, the LSC provides funding (through a carefully monitored grant and review process) to Legal Aid organizations across the country. Last year, Legal Aid organizations provided assistance to more than 1.9 million Americans, helping them with issues like obtaining a domestic violence restraining order, dealing with consumer fraud, and struggling with problems in housing conditions. They provide help to veterans in a wide variety of areas. One in five people nationwide qualifies for legal services from the organizations. There are other nonprofits that provide legal services to low-income communities – but the lions’ share of the work is done by the one organization in each region that is funded by LSC.
Without Legal Aid, homelessness, domestic violence, and poverty will increase. Not only would such increases be terrible from a moral and democratic standpoint – they would also significantly decrease the quality of life for all of us living in these communities. Further, having more people trying to represent themselves in courts will create court congestion. Dealing with litigants who are representing themselves takes much more time than dealing with cases with attorneys. Those of us representing America’s corporations and small businesses will be forced to recommend that they pay a private judge in order to get their cases heard in a timely manner.

Some have suggested that if the federal government defunds Legal Aid, private lawyers will step in and cover the gap with pro bono work. In fact, just the opposite is true. As more than 150 law firms stated in a letter to the Office of Management and Budget, “Eliminating the Legal Services Corporation will not only imperil the ability of civil legal aid organizations to serve Americans in need, it will also vastly diminish the private bar’s capacity to help these individuals.... The pro bono activity facilitated by LSC funding is exactly the kind of public-private partnership the government should encourage, not eliminate.”

This is not a partisan issue. The LSC has long enjoyed bipartisan support in both the House and the Senate. Legal Aid is a critical part of the justice system, and if that piece is broken, the entire system will virtually cease to function. And the justice system, in turn, is one of the key elements keeping the wheels of American commerce rolling. LSC’s budget for the entire country is only $385 million – that’s .00009% of the federal budget. Yet the $40 million that California alone stands to lose makes all the difference.

We urge you to stand firm, and insist that the LSC budget remain uncut.

Sincerely,

Alameda County Bar Association
Alameda-Contra Costa Trial Lawyers’ Association
Bar Association of San Francisco and Justice and Diversity Center
Beverly Hills Bar Association
Contra Costa County Bar Association
Marin County Bar Association
Monterey County Bar Association
Orange County Bar Association
Santa Clara County Bar Association
San Diego County Bar Association
San Francisco Trial Lawyers Association
Ventura County Bar Association
August 18, 2017

The Honorable Chuck Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Re: S. 276

Dear Chairman Grassley and Ranking Member Feinstein,

The State of California is among the jurisdictions that make up the U.S. Court of Appeals for the Ninth Circuit, along with Washington, Oregon, Montana, Idaho, Nevada, Arizona, Alaska, Hawaii, and the U.S. Territories of Guam and the Northern Mariana Islands. Pending legislative proposals would divide the Ninth Circuit and create a new Twelfth Circuit. Such a division would be costly, inefficient, and harm the administration of justice. A division of the Ninth Circuit would undermine the consistent body of law that has developed in the West. Thirty-four judges of the Ninth Circuit have signed a letter expressing their opposition to the proposed legislation to split the Ninth Circuit. The San Diego County Bar Association supports the current constitution of the Ninth Circuit Court of Appeals and strongly opposes any effort to split the circuit.

Sincerely,

Loren G. Freestone, Esq.
President, San Diego County Bar Association
San Diego is a proud military town with one of the highest concentrations of service personnel in the country at over 100,000 individuals. We respect, honor and support every single service member who has dedicated their life to our nation. President Donald Trump recently commented via Twitter that transgender troops would not be allowed to serve in any capacity in the armed forces. Whether his statement has or will become the policy of the United States military is still unclear. Regardless, the San Diego County Bar Association (SDCBA) is dedicated to the constitutional principle of equal protection under the law for all. As such, the SDCBA denounces any government action or rhetoric that is discriminatory or prejudicial, or denies equal rights for all. Marginalizing transgender individuals currently serving or who want to serve our country is not only a step backwards, but an affront to all who have worked, sacrificed or given their lives to make America a country built on the principles of equality, inclusion and diversity.
Conclusion

As we head into 2018, there is still a lot of uncertainty. Our current administration is moving at a rapid pace, and things are changing quickly. The impacts of reduced services in our courts, particularly the elimination of court reporters in family court and closed courtrooms, have yet to be fully experienced. We anticipate that the year ahead will provide many opportunities for the SDCBA to educate, inform, and serve our community by understanding, analyzing, and speaking on topics that impact justice and our justice system.

We encourage you to keep up on the SDCBA’s efforts and send requests for action to PPAG at www.sdcba.org/advocacy

Continue to share your stories of the impacts of our reduced court budget at www.sdcba.org/realworldimpacts.

For more on how courts in California are funded see our infographic on the Workload Allocation Funding Methodology (WAFM) on the next page.
CALIFORNIA COURTS
WORKLOAD ALLOCATION FUNDING METHODOLOGY (WAFM)

WAFM is the formula that the Judicial Council of California uses to determine funding needs for 58 courts statewide.

The WAFM formula method is based on the Resource Allocation Study (RAS) model that estimated the number of staff needed to handle the volume of filings. RAS was developed by looking at 5000 cases in 24 trial courts.

A court system’s WAFM share is calculated based on a number of factors:

- Case Quantity & Type
- Staffing Needs
- Operating Expenses
- Special Expenditures & Unique Factors

WAFM GAP
The WAFM gap is the disparity between the WAFM calculated need and state budget appropriations.

- The WAFM Gap statewide is $444 MILLION
- The WAFM Gap in San Diego County exceeds $25 MILLION

A 30% DEFICIT exists between the WAFM identified workload and 2016–2017 budget allocations.