

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
DF-46 (REV 08/16)

Fiscal Year 2017-18	Business Unit 0250	Department Judicial Branch	Priority No. 005
Budget Request Name 0250-005-BCP-2017-GB		Program 0130 – SUPREME COURT 0135 – COURTS OF APPEAL	Subprogram

Budget Request Description
Appellate Court Appointed Counsel Projects

Budget Request Summary

The Judicial Council requests an ongoing augmentation of \$1.041 million General Fund to support increased costs for contractual services in the Supreme Court's Court-Appointed Counsel Project (\$255,000) and the Courts of Appeal Court Appointed Counsel Project Offices (\$786,000) beginning in 2017-18.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>		Department CIO	Date
For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.			
Project No.		Project Approval Document:	Approval Date:
If proposal affects another department, does other department concur with proposal? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Attach comments of affected department, signed and dated by the department director or designee.</i>			
Prepared By D. Collier Tucker/B. Lowney	Date 12/27/16	Reviewed By M. McClain	Date 12/27/16
Chief Administrative Officer	Date	Administrative Director	Date

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

BCP Type: ☐ Policy ☐ Workload Budget per Government Code 13308.05

PPBA	Original Signed By Brendan Murphy	Date submitted to the Legislature 1/10/17
------	--	---

Analysis of Problem

A. Budget Request Summary

The Judicial Council requests an ongoing augmentation of \$1.041 million General Fund beginning in 2017-18 to support increased costs for contractual services in the Supreme Court's court-appointed counsel project and the Courts of Appeal Court Appointed Counsel Project Offices.

Supreme Court: The requested amount of \$255,000 reflects the increased cost to the Supreme Court for services provided by the California Appellate Project – San Francisco (CAP-SF). The requested funding will aid the Supreme Court in meeting their obligations to ensure justice through competent and qualified defense counsel for indigent defendants in capital appeals.

Courts of Appeal: The requested amount of \$786,000 reflects the increased cost to the Courts of Appeal for services provided by the five Appellate Projects (First District Appellate Project (FDAP), California Appellate Project-Los Angeles (CAP-LA), Central California Appellate Program (CCAP), Appellate Defenders, Inc. (ADI), and Sixth District Appellate Program (SDAP)).

B. Background/History *(Provide relevant background/history and provide program resource history. Provide workload metrics, if applicable.)*

In 1963, *Douglas v. California* (372 U.S. 353) held that the federal Constitution guarantees an indigent defendant convicted of a felony the right to a court-appointed attorney for the initial appeal. Twenty-two years later, in 1985, the Court clarified in *Evitts v. Lucey* (469 U.S. 387), that the guarantee of court-appointed counsel requires that counsel be competent. As indicated in *Evitts v. Lucey*, "[W]e have held that the Fourteenth Amendment guarantees a criminal appellant pursuing a first appeal as of right certain minimum safeguards necessary to make that appeal 'adequate and effective,' see *Griffin v. Illinois*, 351 U.S. 12, 20 (1956); among those safeguards is the right to counsel, see *Douglas v. California*, 372 U.S. 353 (1963)." "[T]he promise of *Douglas* that a criminal defendant has a right to counsel on appeal -- like the promise of *Gideon* that a criminal defendant has a right to counsel at trial -- would be a futile gesture unless it comprehended the right to the effective assistance of counsel." This authority can be found in two Rules of Court: Rule 8.300 (Courts of Appeal) and Rule 8.605 (Supreme Court, death penalty cases). Rule 8.300 states in applicable part: "Each Court of Appeal must adopt procedures for appointing appellate counsel for indigents not represented by the State Public Defender in all cases in which indigents are entitled to appointed counsel.... The court may contract with an administrator [project] having substantial experience in handling appellate court appointments to perform any of the duties prescribed by this rule." (Cal. Rules of Court, rule 8.300(a) and (e)(1).) For death penalty cases, Rule 8.605 states in applicable part: "'Appointed counsel' or 'appointed attorney' means an attorney appointed to represent a person in a death penalty appeal or death penalty-related habeas corpus proceedings in the Supreme Court..." And, "'Assisting counsel or entity' means an attorney or entity designed by the Supreme Court to provide appointed counsel with consultation and resource assistance. Entities that may be designated include the Office of the State Public Defender, the Habeas Corpus Resource Center, and the California Appellate Project of San Francisco." (Cal. Rules of Court, Rule 8.605(c)(1) and (c)(5).) Both the California Appellate Project-San Francisco and the various Court-Appointed Counsel projects for the Courts of Appeal fulfill these rights for indigent defendants.

California Appellate Project-San Francisco (CAP-SF)

Current law requires the appointment of defense counsel in all capital cases for indigent individuals in California. CAP-SF is a non-profit project established in 1983 which provides case-related services and attorney assistance on post conviction capital cases. CAP-SF serves as a legal resource center for private counsel appointed in capital appeals, habeas corpus, and clemency proceedings as well as providing direct representation in some of these matters. CAP-SF provides individual case services to appointed attorneys, provides training, and litigation resource material. In addition, CAP-SF assists unrepresented death row inmates by collecting and preserving records and evidence for later post-conviction use and by providing advocacy needed before counsel is appointed.

Appointment of counsel for indigent persons in capital cases occurs from three sources: (1) the Office of the State Public Defender (OSPD); (2) the Habeas Corpus Resource Center (HCRC); and (3) private counsel. The OSPD may be appointed to represent a defendant on the direct appeal, the HCRC may be appointed to represent a defendant on the habeas petition, and private counsel may be appointed for either direct appeal, habeas corpus, or both (if both defendant and counsel agree). There are two types of appointments for counsel on a capital

Analysis of Problem

appeal; 1) direct appeals that are limited to the facts in the appellate record and 2) habeas proceedings that are a collateral attack on a judgment of conviction or sentence when the facts supporting the claim do not appear in the record. As of August 2015, of the 751 defendants on death row, there are 366 defendants who need an appointment for either their direct appeal and/or habeas corpus proceedings (68 are without counsel for either the direct appeal or the habeas corpus proceedings and only 298 have counsel for the direct appeal, but not for the habeas corpus proceedings). While these three entities provide services to indigent individuals, OSPD and HCRC are unable to address the entire existing backlog of appointments given current resources.

Every death judgment in California results in an automatic appeal, which is mandated by the California Constitution. There is an average of 18 death judgments per year for the last seven years and appointments of counsel has not kept pace with the number of death judgments. Appointing and training qualified counsel, along with ensuring that qualified staff is hired for CAP-SF, continues to be the challenge for the Judiciary. The OSPD and HCRC together cannot provide the representation to meet the current number of death penalty judgments. The costs of providing these services also continue to increase yearly. The Supreme Court has procedures for attracting and appointing qualified counsel to handle capital cases. Accordingly, the services provided by CAP-SF and private counsel appointed in capital cases are both needed and essential to ensure "adequate and competent" representation guaranteed by the U.S. Constitution to indigent appellants for the foreseeable future.

As a non-profit entity, CAP-SF faces the challenges that may not occur for a state entity such as HCRC and OSPD especially as it relates to the hiring, retaining and training qualified attorneys to direct, assist, monitor, and train private counsel appointed to capital cases. To fulfill their duties of directing, training, assisting and monitoring appointed counsel CAP-SF needs to have a level of knowledge and experience that equals or exceeds that of the attorneys they assist. Due to the requirement to have qualified and experienced attorneys for its core business function, it took more than a year for CAP-SF to fill its most recent attorney vacancy.

The costs of providing the contracted services to the Supreme Court by CAP-SF continue to escalate. The 2007 Budget Act provided an additional \$600,000, to support increased workload and associated cost increases. However, since 2007-08, the Supreme Court has not received any additional funding to support this critical workload that is driven by a constitutional right to a court-appointed legal representation.

The increased cost of the contracted services from CAP-SF, as well as private counsel services on capital cases, must be addressed. It has been difficult for CAP-SF, to meet the cost of hiring and retaining experienced and qualified attorneys when competing with the salaries of both private law firms and government agencies. Furthermore, CAP-SF has absorbed increases in the cost of doing business and increases in caseload; it can no longer afford to do so without being a detriment to the indigent appellant and attorneys it is contractually obligated to serve. It can no longer continue to meet the level of service required by the Supreme Court to meet the constitutional guarantee of competent counsel.

Over the last nine years, CAP-SF has absorbed its rent increases and other increased costs by taking several measures, including the following: (1) consolidating two litigation teams to eliminate an attorney supervisor position and 0.7 attorney FTEs; (2) eliminating six non-attorney staff positions, leaving only one secretarial and three caseworker positions; (3) eliminating the associate director (attorney) position in exchange for a lower cost assistant director (non-attorney) position; (4) eliminating the in-house mitigation specialist position in favor of outside contractors and progressively reducing the number of hours allotted to contractors; (5) vastly curtailing attendance at training programs; and (6) drawing down the operating reserves.

Resource History (Dollars in thousands)

Program Contract Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Authorized Expenditures	5,585,218	5,585,218	5,585,218	5,585,218	5,585,218
Actual Expenditures	5,585,218	5,585,218	5,585,218	5,585,218	5,585,218

Analysis of Problem

Workload History

Workload Measure	PY – 5 10-11	PY – 4 11-12	PY – 3 12-13	PY – 2 13-14	PY – 1 14-15	PY 15-16	CY Est. Avg
New Death Judgments Received	23	18	16	20	19	8	17
Ongoing Death Judgments without Counsel	315	324	330	346	366	374	370
New Appointments in Capital Cases Processed	39	29	32	36	41	35	35

During the period from FY 2007-08 to FY 2015-16, there were 178 judgments of death which qualified for an automatic appeal to the Supreme Court. These 178 judgments would have resulted in maximum of 356 capital appeal appointments; *one judgment would have an appellate appointment for direct appeals and one for habeas corpus, unless there was a dual appointment of both. However, during the same period, the Court only made 338 total appointments for direct, habeas or dual. The lack of capacity for the OSPD and HCRC to accept more appointments coupled with the shortage of qualified attorneys who can accept appointment is what is contributing to the backlog of defendants on death row without any appellate representation. The table below summarizes the capital caseload since FY 2007-08.

Capital Caseload by FYs 2007-08 thru 2015-16	FY 07- 08	FY 08- 09	FY 09- 10	FY 10- 11	FY 11- 12	FY 12- 13	FY 13- 14	FY 14- 15	FY 15- 16	Total Between FYs 07-08 - 15-16
Automatic Appeals Per Yr:	16	30	28	23	18	16	20	19	8	178
Supreme Court Death Judgments Automatic Appeal Filed (*one automatic appeal equals two appointments) by Fiscal Year	32	60	56	46	36	32	40	38	16	356
Supreme Court Capital Appointments Made (direct, habeas, and dual) by Fiscal Year	42	43	41	39	29	32	36	41	35	338
(Note: Not all death judgments that occur in the fiscal year will result in a capital appointment in that fiscal year.										
Backlog by Fiscal Year (cumulative)	-10	70	15	7	7	0	4	-3	-19	71
(Note: Represents the cumulative backlog since FY 2007-08, based on new caseload for the same period. A backlog occurs when there is no capital appointment of any type (direct or habeas) in the fiscal year that the death judgment takes place.										

Court Appointed Counsel System for the Courts of Appeal – Appellate Projects

California's Court-Appointed Counsel (CAC) Program fulfills the constitutional mandate of providing adequate representation for indigent appellants in the Courts of Appeal on non-capital cases. The objectives of California's appellate court-appointed counsel system are to: (1) ensure the right of indigent clients to receive the effective assistance of appointed appellate counsel as guaranteed to them by the U.S. Constitution; and (2) provide the Courts of Appeal with useful briefings and arguments that allow the Courts to perform its function efficiently and effectively.

Analysis of Problem

California's CAC system, with non-profit appellate projects and panel attorneys in the private sector, has now been in existence for over 30 years. The Court Appointed Counsel Program for the Courts of Appeal consists of 5 non-profit appellate projects and panel attorneys, all of whom, together, provide critical and constitutionally required representation to indigent individuals in criminal and juvenile appeals. Each district of the California Courts of Appeal contracts with an Appellate Project to manage the court-appointed counsel system in that district and to perform quality control functions. Each Appellate Project oversees a panel of attorneys who receives appointments in that district. The Projects are responsible for working with the panel attorneys to ensure that effective legal assistance is provided to them; reviewing claims for payment for the appellate representation performed by the panel attorneys; providing consistency and controls over the expenditure of these public monies used to pay for the representation; and training attorneys to ensure continuity of quality and competent representation. The contracts between the State and the Appellate Projects requires each project to supervise and assist appointed counsel, so that the State can satisfy its obligation for the provision of competent legal representation for indigent clients in California's Courts of Appeal and, when appropriate, Supreme Court.

The Projects fulfill their contractual obligations to the State by critically reviewing the quality of briefs that are prepared by panel attorneys before they are filed with the Courts of Appeal or the Supreme Court. The level of review that is performed is dependent on whether the legal appointment was made on an "independent" or "assisted" basis, the complexity of the case, and the skills and experience of the assigned panel attorney. In addition to providing the requisite legal assistance and critical review of the panel attorney's work product, the Projects also provide a vital resource and network support to these attorneys, many of them who are sole practitioners or who work in small law offices. The current level of funding for the annual contract with the Appellate Projects is \$17,468,188 and the Courts of Appeal have not received any additional funding to support this critical workload since 2007-08.

Resource History (Dollars in thousands)

Projects Offices Budget	PY – 4 2011-12	PY – 3 2012-13	PY – 2 2013-14	PY – 1 2014-15	PY 2015-16
Authorized Expenditures	17,468,188	17,468,188	17,468,188	17,468,188	17,468,188
Actual Expenditures	17,468,188	17,468,188	17,468,188	17,468,188	17,468,188

Workload History

Workload Measure	PY – 4 11-12	PY – 3 12-13	PY – 2 13-14	PY – 1 14-15	PY 15-16	CY Est. Avg
Project Offices Workload						
New Appointments Received	9,229	8,972	8,972	9,325	9,637	9,800
Number of Claims Processed	14,625	12,999	13,429	13,496	14,409	14,735
Number of Active Panel Attorneys Serviced	925	930	915	913	890	896

C. State Level Considerations

As noted above, the United States Constitution's 6th Amendment guarantees the effective assistance of counsel in criminal proceedings as a fundamental part of our judicial system. The State's courts are required to provide counsel to indigent defendants and must do so in all appeals that may come before them. As set forth in the Judicial Council's long-range Strategic Plan for California's Judicial Branch 2006-2016, Justice in Focus (adopted December 2006; re-adopted and revised December 2014), the mission of the California judiciary is to "in a fair, accessible, effective and efficient manner, resolve disputes arising under the law... protect the rights and liberties guaranteed by the Constitutions of California and the United States." Goal I of the Strategic Plan, Access, Fairness, and Diversity, states that "California's courts will treat everyone in a fair and just manner. All Californians will have equal access to the courts proceeding and programs. Court procedures will be fair and understandable to court users. Members of the judicial branch community will strive to understand and be responsive to the needs of court users." Delay in appointment of counsel for indigent incarcerated appellants can result in additional costs to the state in the form of incarceration/housing of inmates that are eventually found to be innocent, where habeas

Analysis of Problem

is appropriately pursued, and when the delay is so significant that it results in litigation against the state. The Legislative Analyst's Office estimated in 2008-09 that the average annual cost to house inmates was \$41,102, which is even higher today.

D. Justification

California Appellate Project-San Francisco (CAP-SF)

CAP-SF serves the Supreme Court by providing assistance to private appointed counsel in capital cases. According to its contract with the state, the CAP-SF is expected to perform all necessary services related to coordinating court-appointed private counsel services in capital cases before the California Supreme Court.

The requested funding of \$255,000 will offset some of the cumulative cost impact on the CAP-SF's operations since 2007-08. The funding will be used for operational needs:

Rent Increases

CAP-SF's rent has increased over 29 percent from 2008-2009 to 2016-2017 and is projected to increase by another 34.9 percent in 2017-18. In order to address the increased rent costs, CAP-SF has kept authorized paralegal and clerical positions vacant and delayed hiring replacement attorneys to fund the increases, but the costs for leased space remain unchanged.

Health Benefit Cost Increases

Health insurance for CAP-SF's employees continues to increase, as it has for other businesses and state agencies. CAP-SF's insurance premiums have increased 34.3 percent from 2007-08 to 2016-17, and is projected to increase another 52.7 percent in 2017-18. CAP-SF has had to absorb these cost pressures while continuing to provide the required contract services to the Supreme Court. In order to address the annual cost increases, CAP-SF has held positions vacant, reduced the number of eligible health plans, and required employees to pay a greater share of the monthly premium.

Record Collection and Preservation

The Supreme Court directs CAP-SF to assist unrepresented death row inmates by collecting and preserving records and evidence for later post-conviction use. In many cases, trial courts require CAP-SF to pay for copies of case records, arguing that CAP-SF is not a governmental entity and thus not entitled to copies free of charge. In the past, courts did not charge CAP-SF for the cost of these copies, but it is now an unanticipated cost outside of the control of CAP-SF. CAP-SF also collects other records, such as vital, medical, prison and prison medical, jail and jail medical, federal prison, out-of-state court, and Social Security records. These records are used during both the direct appeal and habeas corpus proceedings and while CAP-SF consistently request waivers of copy costs, they are not always granted.

To address these unanticipated costs, CAP-SF began paying a paralegal service between \$900 and \$1,400 a month to collect records from key locations that had charging copying costs. As a result, this has reduced the costs that would have otherwise been paid to those trial courts who charge for copying court records. In addition, CAP-SF has curtailed circumstances in which they request records from courts that will not provide them free of charge. While the collection of these records is necessary to ensure the indigent defendants have adequate representation during the appeals process, CAP-SF is no longer able to continue to absorb these costs at the current contract funding amount.

Training for Staff Attorneys

In order to address non-discretionary cost increases in other areas, CAP-SF is not able to provide training to the degree needed and required for its legal and paralegal staff. CAP-SF has reduced training classes to below prevailing professional standards by sending staff to only local trainings, which are not comparable to major national trainings. CAP-SF has greatly reduced the number of employees it sends to these major national trainings and requires those employees to train other staff. In comparison, all members of the legal staff in the Federal Defender Capital Habeas Units nationwide generally attend two major national trainings per year. Attending these training conferences provides insight to new training methods and delivery of different types of training that impact the capital system and is critical for staff to keep abreast of legal developments, strategic thinking, litigation and fact development techniques that are taught at the national level.

Cost of Living Adjustments and Additional Staff

Analysis of Problem

In order to meet its contractual obligation to the Supreme Court at a funding level that had remained unchanged from 2007-08 until 2015. During that time, CAP-SF has had to resort to measures such as freezing its salary structure, not filling vacant positions, and not awarding cost-of-living adjustments for its employees for over six years.

In 2014 as a result of significant support staff turnover, CAP-SF conducted a comprehensive review of the support staff (non-attorneys) salary structure of OSPD and HCRC and found that in almost all support staff job classifications CAP-SF employees earned significantly less than their counterparts in other agencies, sometimes as much as 22 to 41 percent less. As a result of that study, support staff (non-attorneys) salary ranges were adjusted effective 2015, and many members of the support staff members received one-time adjustments to bring them into alignment with the new structure (Attachment 1).

Attorney pay scales remained static from 2007 until 2015. Due to concerns that a long stagnant salary structure was threatening CAP-SF's ability to recruit qualified applicants and retain its most experienced attorney staff, attorney salary ranges were adjusted upwards by 3 percent in 2015. Most of the attorneys, including those who were at the previous salary maximum, received increases between one and three percent as a result. These adjustments were permanent, and done by the Board with the belief that their submission of the BCP for 2016, would be approved. With the denial of that BCP CAP-SF has been relying on their reserves for these costs.

CAP-SF staff received a modest classification based salary adjustment ranging from 2 percent to 3 percent on July 1, 2015. When compared with state entities that do similar work (see Attachment 1 – Classifications and Compensations for CAP-SF) such as the HCRC and OSPD, CAP-SF salaries are considerably lower than for similar HCRC and OSPD classifications. The comparison is even more pronounced when compared to the public sector in that attorneys with only 3-6 years of criminal law experience receive higher compensation than CAP-SF, OCSF, and HCRC. The increases in compensation are reasonable given CAP-SF's compensation levels and classifications. The additional funding requested will allow CAP-SF to provide modest salary increases¹ and to hire one attorney and 1.5 paralegal/caseworker staff to replace support staff that was previously eliminated. CAP-SF will re-organize how it assigns work to these support positions to provide necessary case worker/paralegal coverage for all of its appellate, habeas, and unrepresented project teams. The addition of an attorney position and paralegal/caseworker positions are critical to project's legal teams and longer term for the Project to meet its contractual obligations.

The requested funds will provide some support to the current level of services that the Supreme Court will require of CAP-SF through 2017-18. The services provided by CAP-SF are essential to support the needs of counsel appointed by the Court and enable CAP-SF to fully participate in the growing collaborative activities with the HCRC and the OSPD to increase the pool of attorneys qualified to represent capital case defendants.

Website Modernization

Pursuant to its contract with the Judicial Council, CAP-SF maintains a website for the dissemination of resource and training materials, publication of training announcements, information from the Court and other news items, such as the monthly case update bulletin, *reCAP*. The current website is based on obsolete technologies and the code is difficult and in some instances impossible to maintain. Security holes have developed and CAP-SF has devised awkward workarounds that have necessitated multiple, repetitive logins by internal users.

More generally, CAP-SF's current website is visually and, more importantly, functionally outdated. It is difficult for users to know what resources are even available, let alone to locate specific documents. Updating content on the site and uploading new resources is a labor-intensive process, whereas modern sites allow for simple, semi-automated or fully automated updates.

Thousands of briefs are available through the site, but they are poorly indexed and word searching is rudimentary. Some searches are nonfunctional or may lead to inconsistent or misleading results. Manual

¹CAP-SF is proposing an increase of 1%-3% across the board. CAP-SF will not treat the increase as a COLA, but base the potential increase on merit. For some employees there would presumably be no increase if performance were significantly below expectations.

Analysis of Problem

searches by support staff or inefficient and time consuming emailed queries among the legal staff are often necessary.

Migration to a modern content management system by a mid- to top-tier web development firm can range from \$35,000 to \$100,000 or more. CAP-SF has yet to solicit bids, but believe that a one-time working budget of \$50,000 should be adequate for their needs.

Court Appointed Counsel System for the Courts of Appeal – Appellate Projects

The requested funding of \$786,000 will offset some of the cumulative cost increases that and continue to impact on the Courts of Appeal Projects' operations since 2007-08. The funding will be used for operational needs outlined below.

The Appellate Projects (Projects) exist for the purpose of ensuring competent representation at the Courts of Appeal and, with limited exceptions, is their sole source of funding for their non-profit operation. Since 2007-08, the Projects have experienced significant cost increases in areas such as rent, liability insurance, employee benefits, and technology, but have received no contract increases since that time. In an effort to contain costs and remain within their operating budgets, the Projects have taken different actions to address the funding shortfalls, including: moving to lower rent areas to lessen the impact of rent increases; keeping positions vacant to the detriment of the project and its remaining staff; reducing health plan coverage and/or passing on greater co-pay and premium costs to employees; reducing salaries or keeping salaries constant; decreasing or eliminating employer contributions to retirement plans; re-negotiating contracts with vendors; significantly reducing the size of print libraries; and deferring critically needed technology upgrades.

Rent

On average, the Projects' rent has increased 31.8 percent since 2007-08. To mitigate these increases, three Projects (California Central Appellate Program, First District Appellate Project, and Sixth District Appellate Program) have moved to significantly smaller spaces to reduce rent costs. Additionally, the First District Appellate Project took advantage of free rent for 3 months in 2015-2016 as part of the deal to leave their prior space.

Benefit increases

Health insurance premiums have increased 48 percent since 2007-08. The Projects have taken numerous steps to reduce the cost of providing health insurance to its employees including: decreasing coverage; increasing employee co-pays; increasing employee contributions; using insurance brokers to get competing bids to identify lowest prices; and similar activities to decrease the employer cost of health insurance by passing on the cost of coverage to its employees. Nevertheless, the Projects have continued to see double digit increases in the cost of health insurance.

Payroll Taxes and Professional Liability Insurance / Fiduciary Insurance

Like rent, increases in payroll taxes, professional liability insurance and fiduciary insurance are non-discretionary expenditures. The appellate projects have experienced significant increases in payroll taxes – 31.8 percent increase since 2007-08. In addition, the appellate Projects maintain professional liability insurance for themselves as well as for the attorneys that are members of their respective panels. Fiduciary insurance is required for the Boards of Directors of these nonprofit entities as the Boards are fiduciaries. Fiduciary insurance has increased by 16 percent since 2007-08 to 2012-13.

Increased Costs of Doing Business

Since August 2007, the Consumer Price Index has increased 16.7 percent. In the past 6 years alone it has increased 8.9 percent. The requested funding will provide some limited funds that can be used for increased costs of doing business for each of the five nonprofit projects that provide contractual services to the Court Appointed Counsel Program: the Courts of Appeal, Judicial Council Appellate Court Services Office, and the statewide panel attorneys. The Projects are unable to continue to provide the high level of services to the

Analysis of Problem

Program and Courts without annual increases in funds. With this modest 4.5 percent request and ten years with no increase, the Projects level of service is have reduced.

Over these years, the Projects have experienced a wide variety of such cost increases. Significantly, in the area of technology, there is significant upward cost pressures associated with changing technology needs – including costs for operating systems, software, hardware purchases and leases, servers, ongoing programming and maintenance of case management systems (and prudent replacement cycles for computers). Furthermore, the Projects have reduced their basic operational costs by significantly shrinking their inventories of print legal research materials, re-negotiating contracts with vendors, including for professional services (payroll, accounting, and auditing), delaying required maintenance of equipment, and reducing postage and delivery costs. But costs continue to rise, such as storage, shredding, professional services, telephone service and systems, etc.

The requested funding will allow the Projects to maintain a reduced level of service in these areas, as well as address a portion of their technology needs. As the Appellate Courts continue to move to automate their systems and move to e-filing all of their documents, the Appellate Projects must also increase their technology level to meet the needs and processes of the Courts. The additional new funds will provide the Projects some resources to achieve the much needed automation of their claims transmission and data storage systems. Many of their systems have been in place since 2000. Two of the three Projects have been able to do some re-design and update their systems, by drawing down their reserves. The other Projects do not have adequate reserves to make the updates or modifications to their systems. These funds will allow the Projects to completely re-design and deploy systems that will be compatible with the Courts and Judicial Council systems.

The Projects must maintain very experienced and specialized staff attorneys to perform the services outlined in this request. The requested funds will provide needed increases in compensation and will provide stability to the Projects most valuable assets (employees).

- The Projects, with limited exception, have not provided any salary increases since 2007-08. One Project took further action to reduce salaries across the board by 2 percent. All Projects have had to maintain staff vacancies, consolidate positions, unable to hire critically needed staff to support the administrative burdens associated with e-filing, and reduce or eliminate contributions toward employee retirement. As a result, the Projects are losing experienced staff as they find they cannot compete with compensation offered in city, county, or state government. Projects have even lost staff attorneys who opted to become a panel attorney as these attorneys are more efficient and can process more cases that would result in a higher level of compensation when compared to being a salaried attorney. When this occurs, it can significantly impact the Projects ability to fulfill its contract obligation to the State with respect to performing the critical review on the quality of the appeals brief that is prepared by the panel attorney before the brief is filed with the Court of Appeals, especially when it involves experienced staff attorneys. The requested funding will allow the Projects to address some limited salary, benefit, and staffing needs.
- Automate systems and update software – no major system upgrades in over 15 years to some of their case management system and claims processing system.
- Across Projects, the pension contribution level for the employee's retirement plan has been reduced without the infusion of new contract funds. The pension contribution level may defer from Project to Project, but historically, prior 2007-2008, it was about 10-15 percent. But since the Projects began to feel the effects of the contract stagnation, Projects have found it increasingly necessary to continue to reduce the contribution. For one Project, starting in 2014, the board has voted a 0 percent employer-funded contribution, offset by the employee's choice of a payment of 5 percent to the employee-funded discretionary 403b plan or a cash payment. (The vast majority chose the latter.) Pension contributions were at least 10 percent in 2007-2008 for most of the Projects. Since 2012, the Projects Boards have voted to continue to reduce the pension contributions, between 5 and 8 percent. At least one project's board has voted to return to the 10 percent level for pension contribution; however, most will not be able to return to the 10 percent level without the addition of new funds. The requested funds will provide at least a 10 percent pension contribution level for all of the Projects.

Analysis of Problem

- Address the ongoing increase in the costs of doing business – all of the basic operating costs continue to increase without new funds to cover the increases, such as costs related to utilities, postage, training, travel, toner, paper, record storage of case files, and computer research, etc. Projects are operating with outdated office equipment, such as copiers, phone systems, and computers. As a result of outdated technology equipment and software, delays occur in operational areas, such as, claim processing, claim transmissions, and data analysis - services that require timely responses and support to the Courts, panel attorneys, Judicial Council offices, and Appellate Indigent Defense Oversight Committee.

The numbers of appointments and claims have not increased significantly, but the case complexity and need for a higher level of oversight by the Project attorney to the panel attorneys has increased. As the more experienced attorneys leave the panel for retirement and newer less experience attorneys are brought onto the panel project attorney staff has to provide more oversight and monitoring. The size of the cases and the complexity of the cases continue to increase.

E. Outcomes and Accountability *(Provide summary of expected outcomes associated with Budget Request and provide the projected workload metrics that reflect how this proposal improves the metrics outlines in the Background/History Section.)*

Provide equal public access to justice, timely, and adequate legal representation for indigent appellants for capital and non-capital appeals in California.

California Appellate Project-San Francisco (CAP-SF)

In FY 2014-15, there were 751 defendants on death row, and 366 defendants who needed an appointment for either their direct appeal and/or habeas corpus proceedings (68 were without counsel for either the direct appeal or the habeas corpus proceedings and only 298 had counsel for the direct appeal, but not for the habeas corpus proceedings). The workload for CAP-SF continues to increase each year as it receives appointments from the Supreme Court to address the backlog of defendants who do not currently have any representation for the direct appeal and/or habeas corpus proceeding. The goal for CAP-SF and the Supreme Court is to have a stable CAP-SF organization that can provide the contractual services required to handle the continued increase in capital appointments. It is difficult to measure outcomes when the appeal for capital cases can last many years. However, based on the level of appointments for the death judgments rendered each year, an increase in staff resources will be greatly needed to address the backlog and to respond to the unrepresented appellants.

Court Appointed Counsel System for the Courts of Appeal – Appellate Projects

Increased funding to support the Projects will result in claims being processed timely and indigent appellants will have adequate legal representation on their appeals in non-capital cases. The Projects service approximately 896 private attorneys. These attorneys are appointed to approximately 9,800 non-capital appeal cases each year and they review and process over 14,700 claims each year. For the Appellate Projects their contract is their sole source of income.

The funding will also allow for necessary technology upgrades that will be in line with the Courts and the Judicial Council and provide the ability to transmit and function with e-filing and with other new automated court systems. The technology will provide critical data on the program to the Appellate Indigent Defense Advisory Oversight Committee (AIDAO). AIDAO is charged by the Judicial Council with monitoring the efficiency of the court-appointed counsel system (non-capital appeals), including both the Appellate Projects and the panel attorneys; analyzing the cost, workload, and a variety of other factors to ensure that the Projects and the panel attorneys continue to provide value to the Courts of Appeal and the “adequate and effective” presentation to the indigent appellant as guaranteed by the Constitution. AIDAO continuously reviews trends and re-evaluates course direction when appropriate. For example, after noticing an increase in the amount of time spent and compensated for “un-briefed issues,” AIDAO worked with the project directors to refine the

Analysis of Problem

guidelines regarding when it is appropriate to seek compensation in this category. The AIDOAC will monitor this line item as part of its quarterly reviews to determine the impact of this change in guidelines.

These funds support some of the ongoing increases in operational costs of the Projects. It is important to note that the contracts are the only source of funds to support their operations and their contract level has not changed in over 9 years. CPI has increased over 16 percent during the 9 years. It is imperative that the Projects maintain experienced attorney staff to monitor, review, and direct the work of the panel attorneys, especially the less experienced panel attorneys. Without the new funds to maintain the core operations, the statewide court-appointed counsel program will be negatively impacted and jeopardize the level of service to the Courts and defendants on appeal. The primary function of the Court Appointed Counsel Program is to provide adequate legal representation to the defendants on their appeals and without new funding the Projects will not have sufficient operational resources and experienced attorney staff to achieve that primary function of the program. As a result of no increases in compensation over 9 years, the Project attorneys remain under compensated for the level of legal services performed and several courts of appeal have hired some of the Projects very experienced attorneys. Without new funds to increase the compensation of the project staff attorneys, they will continue to be under compensated and lose even more attorneys and that will negatively impact their ability to fully service the CAC program. In addition, it is important to note that the highest compensated Project position is the Executive Director at the hourly rate of \$82.88 and the current State hourly rate for legal services is \$170 per hour (see Appendix A). The State of California Department of General Services 2015-16 Price Book has the compensation rate of \$170 per hour for legal services - Hearing Officer, Legal Advice Hourly Services, and Contracts Review and Approval.²

F. Analysis of All Feasible Alternatives

1. Do not fund this request and continue with the status quo.

Pro:

- No impact to the State General Fund.

Cons:

- Backlog for death row inmates without counsel will continue to grow. Without an increase for the Project contract, the Project would need to reduce its contractual services to the court appointed counsel program, continue to lose its most experienced staff and panel attorneys, and fail in its ability to retain newer attorneys to the panel or recruit new attorneys.
- Appellate Projects will not be able to provide adequate assistance and oversight to the appointed attorneys in either capital or non-capital appeals which would result in more hours claimed and higher appellate costs for the CAC Program.
- The quality of justice provided to the people of California will likely be seriously impaired.

2. Provide an ongoing augmentation of \$1.041 million General Fund for both CAP-SF and the Court of Appeal Projects.

Pros:

- Provide funding to address some of the programmatic needs of the Appellate Projects and the vital function that these Projects perform for the Court Appointed Counsel System.
- Will enable all of the Projects to more effectively meet their ever increasing operating costs.
- Will enable the Projects to attract more highly qualified staff to carry out these essential functions for the State of California.

Con:

- Results in additional ongoing General Fund resources.

² For additional information, contact the Office of Legal Services at (916) 376-5090 or visit our website www.dqs.ca.gov/home.aspx

Analysis of Problem

3. Provide an augmentation of \$255,000 for the CAP-SF Project.

Pros:

- Provide funding to address the programmatic needs of the Project and the vital function that it performs for the Court Appointed Counsel System.
- Will enable the Project to more effectively meet its ever increasing operating costs; and
- Will enable the Project to attract more highly qualified staff to carry out these essential functions for the State of California.

Cons:

- Appellate Projects will not be able to provide adequate assistance and oversight to the appointed attorneys in either capital or non-capital appeals which would result in more hours claimed and higher appellate costs for the CAC Program.
- The quality of justice provided to the people of California will likely be seriously impaired.
- Results in additional ongoing General Fund resources.

4. Provide an ongoing augmentation of \$786,000 for the Court of Appeal Projects

Pros:

- Provide adequate funding to address the programmatic needs of the Projects and the vital function that they perform for the Court Appointed Counsel System.
- Will enable the Projects to more effectively meet their ever increasing operating costs; and
- Will enable the Projects to attract more highly qualified staff to carry out these essential functions for the State of California.

Cons:

- Backlog for death row inmates without counsel and in need of CAP SF will continue to grow. Without an increase for the Project contract, the Project would need to reduce its contractual services to the court appointed counsel program, continue to lose its most experienced staff and panel attorneys, and fail in its ability to retain newer attorneys to the panel or recruit new attorneys.
- The quality of justice provided to the people of California will likely be seriously impaired.
- Results in additional ongoing General Fund resources.

G. Implementation Plan

Effective July 1, 2017, provide the Supreme Court's CAP-SF with an augmentation to its annual contract.

Effective July 1, 2017, provide the Courts of Appeal's Appellate Projects with an augmentation to each of their annual contracts.

H. Supplemental Information *(Describe special resources and provide details to support costs including appropriate back up.)*

None.

I. Recommendation

The Judicial Council recommends an ongoing General Fund augmentation of \$1.041 million to support increased costs for contractual services in the Supreme Court's court-appointed counsel Project, and Court of Appeal's court-appointed counsel Projects.

**APPENDIX A – CURRENT SALARIES: SNAPSHOT OF STATEWIDE
PROJECT SYSTEM (JULY 2016)
VS
STATE PRICE BOOK 2015-16**

POSITIONS	FTE Annual Salary (Highest)	FTE Monthly Salary (Highest)	FTE Hourly Salary (Highest)	Price Book: Hourly Rate for Legal Services
General Services Price Book 2015-16				
Legal Services - Consultation				\$170
Attorneys				
0 to 4 years	\$102,500	\$8,542	\$53.39	
4 to 8 years	\$133,000	\$11,083	\$69.27	
8 or more years	\$133,080	\$11,090	\$69.31	
Assistant executive director	\$151,693	\$12,641	\$79.01	
Executive director	\$159,132	\$13,261	\$82.88	
Support Staff				
Managerial non-attorney staff	\$94,504	\$7,875	\$49.22	
General administrative and technical staff - paralegals, case and claim processors, clerical and secretarial personnel, bookkeeper, IT, etc.	\$64,857	\$5,405	\$33.78	
Law clerks, law graduates	\$65,772	\$5,481	\$34.26	

Comparison: 2015 Classification and Salary								
Class Description	Minimum Monthly Salary	Minimum Annual Salary	Maximum Starting Monthly Salary	Maximum Starting Annual Salary	Benefits-Minimum Salary	Benefits and Annual Salary-Minimum	Benefits-Max Salary	Benefits and Annual Salary-Max
California Appellate Project--SF								
Staff Attorney	\$ 4,197	\$ 50,364	\$ 9,324	\$ 111,888	\$ 17,627	\$ 67,991	\$ 39,161	\$ 151,049
Senior Staff Attorney	\$ 9,324	\$ 111,888	\$ 10,844	\$ 130,128	\$ 39,161	\$ 151,049	\$ 45,545	\$ 175,673
Supervising Staff Attorney	\$ 9,507	\$ 114,084	\$ 11,036	\$ 132,432	\$ 39,929	\$ 154,013	\$ 46,351	\$ 178,783
Litigation Support Analyst (Paralegal)	\$ 3,467	\$ 41,604	\$ 4,730	\$ 56,760	\$ 14,561	\$ 56,165	\$ 19,866	\$ 76,626
Habeas Corpus Resource Center								
Habeas Corpus Counsel I	\$ 7,021	\$ 84,252	\$ 8,923	\$ 107,076	\$ 29,488	\$ 113,740	\$ 37,477	\$ 144,553
Habeas Corpus Counsel II	\$ 8,084	\$ 97,008	\$ 10,787	\$ 129,444	\$ 33,953	\$ 130,961	\$ 45,305	\$ 174,749
Habeas Corpus Counsel III	\$ 9,148	\$ 109,776	\$ 12,209	\$ 146,508	\$ 38,422	\$ 148,198	\$ 51,278	\$ 197,786
Senior Habeas Corpus Counsel	\$ 10,089	\$ 121,068	\$ 13,461	\$ 161,532	\$ 42,374	\$ 163,442	\$ 56,536	\$ 218,068
Staff Attorney III	\$ 6,387	\$ 76,644	\$ 8,114	\$ 97,368	\$ 26,825	\$ 103,469	\$ 34,079	\$ 131,447
Paralegal I-HCRC	\$ 4,116	\$ 49,392	\$ 5,000	\$ 60,000	\$ 17,287	\$ 66,679	\$ 21,000	\$ 81,000
Paralegal II-HCRC	\$ 4,525	\$ 54,300	\$ 5,501	\$ 66,012	\$ 19,005	\$ 73,305	\$ 23,104	\$ 89,116
Supervising Paralegal-HCRC	\$ 5,725	\$ 68,700	\$ 6,959	\$ 83,508	\$ 24,045	\$ 92,745	\$ 29,228	\$ 112,736
Office of the State Public Defender								
Senior Deputy State Public Defender	\$ 8,872	\$ 106,464	\$ 11,392	\$ 136,704	\$ 37,262	\$ 143,726	\$ 47,846	\$ 184,550
Deputy State Public Defender (Class A: two years experience practicing law)	\$ 5,895	\$ 70,740	\$ 7,414	\$ 88,968	\$ 24,759	\$ 95,499	\$ 31,139	\$ 120,107
Deputy State Public Defender (Class B: four years experience practicing law)	\$ 6,636	\$ 79,632	\$ 8,512	\$ 102,144	\$ 27,871	\$ 107,503	\$ 35,750	\$ 137,894
Deputy State Public Defender (Class C: six years experience practicing law; four of those years criminal law)	\$ 8,032	\$ 96,384	\$ 10,305	\$ 123,660	\$ 33,734	\$ 130,118	\$ 43,281	\$ 166,941
Supervising Deputy State Public Defender	\$ 8,879	\$ 106,548	\$ 11,290	\$ 135,480	\$ 37,292	\$ 143,840	\$ 47,418	\$ 182,898
Senior Legal Analyst (Paralegal)	\$ 4,829	\$ 57,948	\$ 6,048	\$ 72,576	\$ 20,282	\$ 78,230	\$ 25,402	\$ 97,978
Legal Analyst (Paralegal)	\$ 4,016	\$ 48,192	\$ 5,029	\$ 60,348	\$ 16,867	\$ 65,059	\$ 21,122	\$ 81,470
Public Sector (Benefits added at 31%)								
Attorney II (3-6 years criminal law experience)	\$ 11,105	\$ 133,258	\$ 12,050	\$ 144,604	\$ 41,310	\$ 174,568	\$ 44,827	\$ 189,431
Paralegal III	\$ 5,253	\$ 63,036	\$ 8,494	\$ 101,928	\$ 19,541	\$ 82,577	\$ 31,598	\$ 133,526

BCP Fiscal Detail Sheet

BCP Title: Court Appointed Counsel Projects

BR Name: 0250-005-BCP-2017-GB

Budget Request Summary

	FY17					
	CY	BY	BY+1	BY+2	BY+3	BY+4
Operating Expenses and Equipment						
539X - Other	0	255	255	255	255	255
54XX - Special Items of Expense	0	786	786	786	786	786
Total Operating Expenses and Equipment	\$0	\$1,041	\$1,041	\$1,041	\$1,041	\$1,041
Total Budget Request	\$0	\$1,041	\$1,041	\$1,041	\$1,041	\$1,041

Fund Summary

Fund Source - State Operations

0001 - General Fund	0	1,041	1,041	1,041	1,041	1,041
Total State Operations Expenditures	\$0	\$1,041	\$1,041	\$1,041	\$1,041	\$1,041
Total All Funds	\$0	\$1,041	\$1,041	\$1,041	\$1,041	\$1,041

Program Summary

Program Funding

0130 - Supreme Court	0	255	255	255	255	255
0135 - Courts of Appeal	0	786	786	786	786	786
Total All Programs	\$0	\$1,041	\$1,041	\$1,041	\$1,041	\$1,041