APPEAL NO. D050832

COURT OF APPEAL OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

HAROLD P. STURGEON,
Plaintiff and Appellant,

vs.

COUNTY OF LOS ANGELES, *et al.*,
Defendants and Respondents.

ON APPEAL FROM THE FINAL JUDGMENT OF
CALIFORNIA SUPERIOR COURT, COUNTY OF LOS ANGELES
CASE NO. BC351286
THE HONORABLE JAMES A. RICHMAN

APPELLANT'S OPENING BRIEF

Sterling E. Norris (SBN 040993)
JUDICIAL WATCH, INC.
2540 Huntington Drive, Suite 201
San Marino, CA 91108-2601
Tel: (626) 287-4540
Fax: (626) 237-2003

Counsel for Appellant

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Counsel hereby discloses pursuant to Cal. Rule of Court 8.208 that the following entities or persons may have an interest in this case:

Appellant Harold P. Sturgeon

Respondent Los Angeles County (c/o Roy Sinclair)

Respondent Michael E. Antonovich (in his official capacity as Los Angeles County Supervisor)

Respondent Yvonne B. Burke (in her official capacity Los Angeles County Supervisor)

Respondent Don Knabe (in his official capacity as a Los Angeles County Supervisor)

Respondent Gloria Molina (in her official capacity as a Los Angeles County Supervisor)

Respondent Zev Yaroslavsky (in his official capacity as a Los Angeles County Supervisor)

Respondent Larry Gonzalez (in his official capacity as Division Chief of the Countywide Payroll Division of the Los Angeles County Department of Auditor-Controller)

Respondent David E. Janssen (in his capacity as Chief Administrative Officer of Los Angeles County)

Respondent J. Tyler Mccauley (in his official capacity as Auditor-Controller for Los Angeles County)

Attorneys for Appellant

Attorneys for Respondent

All judges of the Superior Court of the State of California, County of Los Angeles

Any judge who formerly served as a judge of the Superior Court of the State of California, County of Lose Angeles who received benefits paid by the County of Los Angeles

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Other Authorities

INTRODUCTION AND STATEMENT OF THE CASE

On April 24, 2006, Plaintiff-Appellant ("Appellant"), a taxpayer and resident of the County of Los Angeles ("the County"), filed this action for declaratory and injunctive relief arising under California Code of Civil Procedure section 526a. Appellant's Complaint named nine defendants: the County, the five members of its Board of Supervisors, its Chief Executive Officer, its Auditor-Controller, and the Division Chief of the Payroll Division of the Auditor-Controller (collectively "Respondents"). Clerk's Transcript ("CT") at 5. Appellant seeks to enjoin Respondents from paying "local judicial benefits" to the judges of the Superior Court for the State of California, County of Los Angeles. *Id.* Appellant also seeks a declaratory judgment as well. *Id.* Appellant contends that the payment of these benefits contravenes the California Constitution and the Lockyer Isenberg Trial Court Funding Act of 1997, among other relevant statutes and provisions of law, and constitutes an unconstitutional gift and waste of public funds. *Id.*

Far from having their compensation or benefits reduced as a result of the passage of the Lockyer Isenberg Trial Court Funding Act of 1997, trial judges in Los Angeles County actually saw their compensation and benefits increase. This is because, not only did the State of California assume "sole responsibility" for

payment of the trial judges' salary and benefits, but the County also allowed the trial judges to continue to participate in the "MegaFlex" cafeteria benefits program and receive other perquisites that the County made available to them before the passage of the 1997 legislation.[1] As described by California Supreme Court Chief Justice Ronald M. George, trial judges in the County have been "double dipping for benefits." CT at 402 (Steve Berry and Tracy Weber, *L.A. County Lets Judges Draw Duplicate Benefits and Perks*, Los Angeles Times, August 20, 2000). It is this practice of "double dipping" that Appellant's lawsuit seeks to stop.

On September 6, 2006, Respondents filed a Motion for Summary Judgment Or, in the Alternative, for Summary Adjudication, which Appellant opposed. CT at 25. The Superior Court of California, Los Angeles County heard argument and, by Order dated January 8, 2007, granted Respondent's Motion for Summary Judgment. CT at 1237. Appellant timely appealed the trial court's final judgment. CT at 1274.

---

[1] It is perhaps not coincidental that the compensation received by members of the County's Board of Supervisors is linked to the compensation prescribed by law for judges of the Superior Court in and for Los Angeles County. *See* Los Angeles County Charter, art. II, § 4.

FACTUAL BACKGROUND

I. The California Legislature Enacted the Lockyer Isenberg Trial Court Funding Act with the Express Purpose of Equalizing and Consolidating the Funding of All Trial Court Operations at the State Level.

In 1997, the California Legislature completed a process begun years earlier to equalize and consolidate the funding of all trial court operations at the state level. 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 2; Cal. Gov't Code §§ 77100, 77101, 77200, 77201(a). Specifically, the Legislature enacted the Lockyer Isenberg Trial Court Funding Act of 1997 ("the Act"), the stated purpose of which was to require the State to "assume sole responsibility for the funding of trial court operations" on or after July 1, 1997. *Id.* at Stats. 1997 ch. 850, § 1; Cal. Gov't Code § 77200. In addition to this clear, unambiguous, and express statement of intent, the Act confirms that "[c]ommencing on July 1, 1997, no county shall be responsible for funding court operations." Cal. Gov't Code § 77201(a). The Act defines "trial court operations" to include "salaries, benefits, and public agency retirement contributions for trial court judges." *See* Cal. Gov't Code § 77003(a)(1). As a result of the Act, the State of California, not any individual county, determines and pays the salaries and benefits of all state trial court judges.

II. Under the Act, Counties Are Required to Make Annual Maintenance of Effort Payments to the State, Although Their Fiscal Responsibility for Funding Trial Court Operations Is Capped as the State Has Assumed Fiscal Responsibility for All Future Growth in the Cost of Trial Court Operations.

Pursuant to the Act, starting in fiscal year 1997-98, counties were required to make annual Maintenance of Effort ("MOE") payments to the State based on the amount of funds the counties had expended on court operations in fiscal year 1994-95. Cal. Gov't Code § 77201(b). The State was then required to supplement these funds with its own, additional funds in order to pay the cost of all trial court operations statewide for the 1997-98 fiscal year and subsequent fiscal years. Cal. Gov't Code § 77200(b). The counties' fiscal responsibility for funding trial court operations was thus capped at fiscal year 1994-95 levels, and the State assumed fiscal responsibility for all future growth in the cost of trial court operations. Cal. Gov't Code §§ 77200(b) and 77201(b)(1). The amount of money the counties were required to remit to the State in their MOE was specified in the Act. Cal. Gov't Code §§ 77201(b) and 77201.1(b).

III. Section 77201, Which Set Forth the Counties' MOE Payments and Any and All Adjustments That Counties Could Request Be Applied to Their MOE Payments, Is Expressly Applicable to Fiscal Year 1997-98 Only.

The counties' respective MOE payments for fiscal year 1997-98 were set forth in California Government Code section 77201. Section 77201 also set forth procedures by which certain adjustments could be made to counties' MOE payments based upon declarations submitted by the counties and/or the courts to the Department of Finance, which the Department of Finance would then verify. Cal. Gov't Code § 77201(c) and (d). One such adjustment allowed a county to reduce its MOE payment if it submitted a declaration attesting that the amount of money it had expended on court operations in fiscal year 1994-95 included the cost of "local judicial benefits." Cal. Gov't Code § 77201(c). In the event a county was authorized by the Department of Finance to deduct this amount from its MOE, then the county remained responsible for the payment of "local judicial benefits" for that year only. *Id.* The provision states that, for the 1997-98 fiscal year:

> (c) The Department of Finance shall adjust the amount specified in paragraph (1) of subdivision (b) that a county is required to submit to the state, pursuant to the following:
>
> > (1) A county shall submit a declaration to the Department of Finance, no later than February 15, 1998,

> that the amount it is required to submit to the state pursuant to paragraph (1) of subdivision (b) either includes or does not include the costs for local judicial benefits which are court operation costs as defined in Section 77003 and Rule 810 of the California Rules of Court . . . The Department of Finance shall verify the facts in the county's declaration and comments, if any. Upon verification that the amount the county is required to submit to the state includes the costs of local judicial benefits, the department shall reduce on or before June 30, 1998, the amount the county is required to submit to the state pursuant to paragraph (1) of subdivision (b) by an amount equal to the cost of those judicial benefits, in which case the county shall continue to be responsible for the cost of those benefits.

Cal. Gov't Code § 77201(c)(1). The Act also created procedures by which counties could file an appeal with the California State Controller with respect to the findings made by the Department of Finance regarding an adjustment. *Id.*

IV. Section 77201.1 Set Forth the Counties' MOE Payments and Any and All Adjustments That Counties Could Request for the 1998-99 Fiscal Year and "Each Fiscal Year Thereafter."

Section 77201.1 set forth the counties' MOE payments to the State for fiscal year 1998-99 and "each fiscal year thereafter." 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997, ch. 850, § 46. Like section 77201, section 77201.1 also set forth procedures for making adjustment to counties' MOE payments. Section 77201.1 stated: "The amount a county is required to remit pursuant to paragraph (1) shall

be adjusted by the amount equal to any adjustment resulting from the procedures in subdivision (c) of Section 77201 as it read on June 29, 1998." *Id.*

V. In 1998, the Legislature Substantially Revised Section 77201.1 to Only Allow Those Adjustments for Which Counties Had Previously Filed an Appeal with the California State Controller with Respect to the Findings Made by the Department of Finance Regarding an Adjustment.

Apparently due to the shortness of time between the passage of the Act and the targeted date for its implementation, in 1998 the Legislature delayed full implementation of the Act until fiscal year 1998-99. Cal. Gov't Code 77201(e); *see also* 1998 Cal. ALS 406, 1997 Cal. AB 1590; Stats. 1997, ch. 406. In doing so, the Legislature added a second version of section 77201 to the California Government Code that is slightly different from the first version.[2] 1998 Cal. ALS 406, 1997 Cal. AB 1590, Stats. 1997, ch. 406, § 3. In addition, the Legislature also amended section 77201.1, which it made operative from July 1, 1998 to July 1, 1999 (*id.* at § 4), and added a second version of 77201.1 to the California Government Code, which it made effective on July 1, 1999. *Id.* at § 5.

Like the prior version of section 77201.1, the 1998 amendment to section 77201.1 set forth the counties' respective MOE payments for fiscal year 1998-99,

---

[2] For purposes of this brief, all citations to section 77201 are to the second version.

as well as procedures for any adjustments. *Id.* at § 4. With respect to adjustments, the amended version of section 77201.1 stated: "Except for those counties with a population of 70,000 or less on January 1, 1996, the amount a county is required to remit pursuant to paragraph (1) shall be adjusted by the amount equal to any adjustment resulting from the procedures in subdivisions (c) and (d) of Section 77201 as it read on June 30, 1998." *Id.*

The version of section 77201.1 that became effective on July 1, 1999 sets forth the counties' respective MOE payments for fiscal year 1999-2000 and "each fiscal year thereafter." Cal. Gov't Code § 77201.1(b). Its procedures for adjustments, however, contain an important limitation not included in the prior versions of sections 77201 and 77201.1. Specifically, the Legislature expressly limited any adjustments to only those counties that had previously filed an appeal with the California State Controller with respect to any findings made by the Department of Finance regarding an adjustment. The provision states:

> Except for those counties with a population of 70,000, or less, on January 1, 1996, the amount a county is required to remit pursuant to paragraph (1) shall be adjusted by the amount equal to any adjustment resulting from the procedures in subdivision (c) and (d) of Section 77201 as that section read on June 30, 1998, **to the extent a county filed an appeal with the Controller with respect to the findings made by the Department of Finance.** This paragraph shall not be construed to establish a new appeal process beyond what was provided by Section 77201, as that section read on June 30, 1998.

Cal. Gov't Code 77201.1(b)(4) (emphasis added). Not only is this adjustment expressly contingent on a county having taken an appeal, but conspicuously absent from the subsection is any provision stating that a county shall continue to be responsible for the cost of such benefits. *Id.*

VI. Despite the Express Language of the Act Mandating That the State Is to Assume Sole Responsibility for the Funding of Trial Court Operations, and Despite the Fact That the Counties' Portion of Funding Is Supposed to Be Capped, and Despite the Fact That Revised Section 77201.1 Only Authorizes the Payment of Local Judicial Benefits When a County Had Previously Filed an Appeal, the County Is Still Paying Local Judicial Benefits at an Ever Increasing Amount, Even Though It Never Filed an Appeal.

Respondents admitted below that, since the passage of the Act in 1997, the State has taken over responsibility for payment of salaries and benefits to the judges of the Superior Court for the State of California, County of Los Angeles. CT at 562 (Response to Request for Admission ("RQA") No. 2). Respondents also admitted, however, that "certain benefits that historically were paid by the County of Los Angeles continue to be paid by the County of Los Angeles," despite the fact that the County admits that it did not file any appeal with the California State Controller. *Id.* at 562, 580 (Responses to RQA Nos. 2 and 3 and Response to Special Interrogatory No. 7). The benefits at issue include

participation in the County's "MegaFlex" cafeteria benefits program and a "professional development" allowance. *Id.* (Responses to RQA Nos. 4 and 6).

Under the County's "MegaFlex" program, the County pays participants an allowance equivalent to up to nineteen percent (19%) of their monthly salary, from which participants may purchase a variety of benefits on a pre-tax basis. CT at 413-416 (2006 Annual Benefits Enrollment Guide at 1-4). These include participation in medical and dental plans, group term life insurance, accidental death and dismemberment insurance, short term disability insurance, long term disability insurance, or elective annual leave, among others. *Id.* In the event that a participant chooses not to use any or all of the allowance to purchase benefits, he or she receives any remaining portion of the allowance as additional, taxable pay. *Id.* Far from being merely "certain benefits that were historically paid" to judges, the County "MegaFlex" benefits program is more accurately characterized either as a typical benefits package offered by an employer to its employees, in which case the County is duplicating the benefits already being provided to the trial judges by the State, or, to the extent any particular trial judge chooses not to receive additional benefits, purely supplemental compensation.

According to documents produced by Respondents, in 1998, the County submitted a declaration to the Department of Finance seeking an adjustment to its

MOE of $12,835,295 to reflect the cost of local judicial benefits. CT at 698 (February 12, 1998 Summary of Declarations). Since that time, the County has continued to expend ever increasing amounts of taxpayer funds on these benefits, reaching more than $21 million in fiscal year 2005-06. *Id.* at 577, 582 (Response to Special Interrogatory No. 1 and Exhibit 1). Respondents further admitted that the total cost to taxpayers for providing these duplicate benefits and/or supplemental compensation in fiscal years 2001-02, 2002-03, 2003-04, 2004-05, and 2005-06 was in excess of $107 million. *Id.*

VII. Respondents Failed to Produce Evidence Regarding the Clearly Relevant Factual Circumstances Concerning the County's Decision to Continue Paying "Local Judicial Benefits" in Light of the Passage of the Act.

Respondents never produced a single piece of evidence demonstrating that the County's Board of Supervisors specifically authorized, approved, considered, or deliberated on the payment of duplicate benefits and/or supplemental compensation to trial judges in light of the passage of the Act. CT at 528 (Declaration of Paul J. Orfanedes ("PJO Decl") at para. 12). Moreover, the record is devoid of any evidence that would support Respondents' assertion that the County affirmatively decided to pay duplicate benefits and/or supplemental compensation in order to attract and retain well-qualified judges to serve the

public in a high cost-of-living area, the purported justification for the continued payments offered by Respondents during the course of this litigation. *Id.*; *see also* CT at 535 (Defendants' Responses to Plaintiff's First Set of Form Interrogatories at Response to Form Interrogatory No. 15.1); CT at 45 (Defendants' Memorandum of Points and Authorities in Support of Motion for Summary Judgment or, in the Alternative, for Summary Adjudication ("Defs P&A")). Nor did Respondents present any evidence that the County ever considered whether the payment of duplicate benefits and/or supplemental compensation to trial judges would provide an additional public benefit to taxpayers in light of the fact that: (1) the State already pays salary and benefits to trial judges; and (2) in 2000, the State created a new incentive program to address the very same justification offered by the County for its continued payment of "local judicial benefits," namely the retention of experienced trial judges.[3] CT at 528 (PJO Decl. at para. 12); *see also* CT at 47 (Defs P&A).

---

[3] To be clear, Respondents did produce evidence showing that the County's annual budgets contained line items authorizing continued payment of benefits to the trial court judges. What Respondents failed to produce, however, was any agenda items, minutes, resolutions, transcripts or similar evidence demonstrating that the Board of Supervisors even considered, much less debated, the continued payment of these benefits in light of the State's efforts to equalize and take over responsibility for funding all trial court operations by passing the Act or in light of the fact that the State actually pays the salary and benefits of the trial judges.

ARGUMENT

I. Standard of Review

The proper standard of review of a summary judgment ruling by a trial court is well established. This Court has stated that "in evaluating the correctness of a ruling under [Code of Civil Procedure] section 437c," it "must independently review the record before the trial court." *Ranchwood Cmtys. P'ship v. Jim Beat Constr. Co.*, 49 Cal. App. 4th 1397, 1408 (1996) (citations and internal quotation marks omitted). "Because the grant or denial of a motion under [Code of Civil Procedure] section 437c involves pure questions of law," the Court is "required to reassess the legal significance and effect of the papers presented by the parties in connection with the motion." *Id.* Consequently, the Court "must apply the same three-step analysis required of the trial court:"

> First, we identify the issues framed by the pleadings since it is these allegations to which the motion must respond . . .. [Para.] Secondly, we determine whether the moving party's showing has established facts which negate the opponent's claim and justify a judgment in movant's favor. . .. [Para.] When a summary judgment motion prima facie justifies a judgment, the third and final step is to determine whether the opposition demonstrates the existence of a triable, mterial factual issue.

Id. "In practical effect," the Court must "assume the role of a trial court and redetermine the merits of the motion." *Id.* "In doing so," the Court "must rigidly

scrutinize the moving parties' papers." *Id.* "Concurrently, application of a statute to a set of facts raises questions of law to which de novo review applies." *Id.*

II. The Trial Court Erred in Granting Summary Judgment in Respondents' Favor Because the County's Unauthorized Payment of "Local Judicial Benefits" Violates the California Constitution and California Law, and Contravenes the Purposes of the Act.

California Code of Civil Procedure section 526a provides in relevant part that an action may be maintained by a resident taxpayer based on "any illegal expenditure of . . . funds . . . ." Examining the statutory scheme at issue, neither the plain language nor the legislative history of the Act provides authority for the payment by the County of "local judicial benefits." In fact, the payment of "local judicial benefits" contravenes the express purposes of the Act, which was to equalize and consolidate the funding of all trial court operations at the state level. But far worse, the County's unauthorized payment of "local judicial benefits" violates the California Constitution and California law. As will be shown below, the trial court erred in concluding otherwise.

A. The County's Unauthorized Payment of "Local Judicial Benefits" Violates the California Constitution and California Law.

It is well established that a public employee is entitled only to such compensation as is expressly and specifically authorized by law. *Longshore v.*

County of Ventura, 25 Cal. 3d 14, 23 (1979); *Van Riessen v. City of Santa Monica*, 63 Cal. App. 3d 193, 199-201 (1976); *Markman v. County of Los Angeles*, 35 Cal. App. 3d 132, 135 (1973). The California Constitution provides that "[t]he Legislature shall prescribe compensation for judges of courts of record." Cal. Const., art. VI, § 19. Similarly, the California Constitution also provides that "[t]he Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age and disability." Cal. Const., art. VI, § 20. The statutory compensation rights of public employees are strictly limited and cannot be altered or enlarged by conflicting agreements between a public agency and its employees. *Longshore*, 25 Cal. 3d at 23; *Miller v. State*, 18 Cal. 3d 808, 814 (1977); *Boren v. State Personnel Board*, 37 Cal. 2d 634, 641 (1951).

As noted above, section 77201.1(b)(4), which expressly governs fiscal year 1999-2000 and "each fiscal year thereafter," only allows for an adjustment of a county's MOE payment "to the extent [the] county filed an appeal with the Controller with respect to the findings made by the Department of Finance." Cal. Gov't Code § 77201.1(b)(4). And, it is only receiving an adjustment that authorizes the counties to continue to pay "local judicial benefits." Cal. Gov't Code § 77201(c)(1). In the instant matter, Respondents admitted that the County did not file any appeal. CT at 580 (Response to Special Interrogatory No. 7). As a

result, the County cannot continue to have adjustments to its MOE and, consequently, is not authorized to continue to pay "local judicial benefits." Nonetheless, Respondents admitted below that they are they paying "local judicial benefits," and in ever increasing amounts. CT at 562, 577, 580, 582 (Responses to RQA Nos. 2 and 3 and Special Interrogatory No. 1, including Exhibit 1). Because the California Constitution requires that the Legislature "prescribe compensation for judges of courts of record" and "provide for retirement, with reasonable allowance, of judges of courts of record for age and disability," and because the County's payment of "local judicial benefits" is not authorized or required by the Act, and, in fact, contravenes the express language of the Act, the County's continued payment of "local judicial benefits" violates both the California Constitution and the Act. Cal. Const., art. VI, §§ 19 and 20.

In addition, because under California law a public employee is entitled only to such compensation as is expressly and specifically provided by law and the statutory compensation rights of public employees are strictly limited and cannot be altered or enlarged by conflicting agreements between a public agency and its employee (*Longshore*, 25 Cal. 3d at 23; *Miller*, 18 Cal. 3d at 814; *Van Riessen*, 63 Cal. App. 3d at 199-201; *Markman*, 35 Cal. App. 3d at 135; *Boren* , 37 Cal. 2d at

641), the County's payment of unauthorized "local judicial benefits" violates California law as well.

Finally, because the County's payment of "local judicial benefits" was not authorized by the Act, and, in fact, contravenes the Act, the payment of these benefits also violates the California Constitution's prohibition on gifts of public money, as well as its prohibition on extra retroactive compensation and payment of claims under an agreement not authorized by law. Cal. Const., art. IV, § 17; Cal. Const., art. XVI, § 6. The trial court concluded that the payment by the County of "local judicial benefits" is not a gift because the payment is "for a public purpose." CT at 1256. The trial court missed the mark, however, because the fact that the payment of "local judicial benefits" is not authorized transforms the payment into an unconstitutional gift, regardless of whether the payment is "for a public purpose."

The decision of *Conlin v. Board of Supervisors*, 99 Cal. 17 (1893), shows why this is the case. In *Conlin*, the plaintiff entered into agreements with the superintendent of streets to make improvements to city and county streets. Each agreement contained an express condition that in no case would the city or the county be liable for any portion of the expense of the improvements, or for any delinquency of persons or property assessed. In other words, the plaintiff agreed

to waive all legal claims against the city and county. When the plaintiff experienced difficulty in receiving compensation for his work from the sources agreed upon in the contracts, the California Legislature passed an act ordering the city and county to compensate the plaintiff. The plaintiff brought suit against the city and county to collect payment. The city and county defended the suit, alleging that any payment would violate the California Constitution's prohibition on gifts of public money. The California Supreme Court agreed.

The High Court defined the term gift not only to include "a mere voluntary transfer of personal property without consideration," but also "all appropriations of public money for which there is no authority or enforceable claim, or which rest upon some moral or equitable obligation, which in the mind of a generous or even a just individual, dealing with his own moneys, might prompt him to recognize as worthy of some reward." *Conlin*, 99 Cal. at 21-22. The Court found that, because the plaintiff had waived all legal claims and had no right to compensation from the city and county, any payment to the plaintiff could "be regarded in no other light than as a simple gift," which would violate the constitutional prohibition on gifts of public money. *Id.* at 23. The fact that the plaintiff's improvements had bestowed a public benefit on the city and county had no bearing whatsoever on whether the payment was a gift because there existed no enforceable claim or

authority to make the payment in the first instance. *See also McBean v. San Bernardino*, 96 Cal. 183 (1892) (Despite public benefit of sewer work by contractor, payment to contractor was an unconstitutional gift because no enforceable claim existed for payment.). As demonstrated above, like in *Conlin* and *McBean*, there exists no legal authority for the County's continued payment of "local judicial benefits." Consequently, any such payment is an unconstitutional gift of public money regardless of any alleged public benefit that might result.

B. The Trial Court's Interpretation of the Act Violates Ordinary Principles of Statutory Construction.

California law requires that, when interpreting any legislation, courts look to the plain, common sense meaning of the statute. *Regency Outdoor Advertising, Inc. v. City of Los Angeles*, 39 Cal. 4th 507, 524 (2006). "If the language of the statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary." *Id.*; *see also In re San Diego Commerce*, 40 Cal. App. 4th 1229, 1236 (1995) ("[P]rimary guide in construing any statute is that [a court] must turn[] first to the words [of the statute] themselves for the answer" and must not consider "other-statutes" and "other source material" when language of statute is clear and unambiguous.). "If, however, the statutory language lacks clarity, [a court] may resort to extrinsic sources, including the

ostensible objects to be achieved and the legislative history." *Id.* (internal quotation marks omitted).

Importantly, however, the "role of the judiciary is not to rewrite legislation to satisfy the court's, rather than the Legislature's, sense of balance and order. Judges are not knight[s]-errant, roaming at will in pursuit of [their] own ideal of beauty or of goodness." *People v. Carter*, 58 Cal. App. 4th 128, 134 (1997) (citation and internal quotation marks omitted). "In construing a statute the function of the judge is simply to ascertain what in terms or substance is already there and not to insert what has been omitted or omit what has been inserted." *Estate of Tkachuk*, 73 Cal. App. 3d 14, 18 (1977) (citing Cal. Code Civ. Proc. § 1858). "Under the guise of construction the court will not rewrite a law; [citation omitted] it will not supply an omission [citation omitted]; and it will not give the words an effect different from the plain and direct import of the terms used." *Id.* (citation omitted). Moreover, statutory language "must be given such interpretation as will promote rather than defeat the general purpose and policy of the law." *Harry Carian Sales v. Agricultural Labor Relations Bd.*, 39 Cal. 3d 209, 223 (1985) (citation and internal quotation marks omitted).

Two other principles of statutory construction also are important. First, the law assumes that "every part of a statute serves a purpose and nothing is

superfluous." *In re J.W.*, 29 Cal. 4th 200, 209 (2002). "The other principle, commonly know under the Latin name of *expressio unius est exclusio alterius*, is that the expression of one thing in a statute ordinarily implies the exclusion of other things." *Id.*

In the instant matter, the trial court concluded that the provision for adjusting counties' MOE payments in subsequent years, *i.e.*, section 77201.1(b)(4), authorizes the continued payment of "local judicial benefits" because the subsection incorporates by reference section 77201(c)(1), which references a county's continuing responsibility to pay "local judicial benefits" if an adjustment is received to its MOE. CT at 1254. Section 77201.1(b)(4), however, only allows for an adjustment of a county's MOE payment for fiscal year 1999-2000 and "each fiscal year thereafter," and only then "to the extent [the] county filed an appeal with the Controller with respect to the findings made by the Department of Finance." Cal. Gov't Code § 77201.1(b)(4). Moreover, conspicuously absent from this subsection is any provision stating that a county shall continue to be responsible for the cost of such benefits. *Id.*

In this case, Respondents admit that the County did not file any appeal. CT at 580 (Response to Special Interrogatory No. 7). Based on any plain reading of the statues, section 77201.1(b)(4) does not apply because the County never took

the requisite appeal. Said differently, section 77201(c)(1), which is the provision relied upon by the trial court, is not applicable to the County because the County cannot meet the requirement imposed by the express limitation in section 77201.1(b)(4). Furthermore, even if the County had filed an appeal, it is at best unclear whether the County would have a continuing obligation to pay "local judicial benefits" because section 77201.1(b)(4) does not contain any provision stating that a county shall continue to be responsible for the cost of such benefits. An strict reading of the express language of the subsection would indicate that no such obligation exists.

Nonetheless, the trial court found that this express limitation should not be read to mean that the adjustment is conditioned on a county having taken an appeal, but instead should be read to mean that any adjustment to a county's MOE under section 77201.1(b)(4) must reflect the results of an appeal. CT at 1254. These are not the words chosen by the Legislature, however. The Legislature chose to use words signifying that any continued adjustment to a county's MOE and any corresponding obligation to pay "local judicial benefits" is conditioned expressly on a county having taken an appeal, not on how any appeal may have turned out.

In this regard, it also is important that the Legislature also chose to add this specific language to section 77201.1(b)(4) after omitting it from both the original version of the provision and the amended version that was operative from July 1, 1998 until July 1, 1999. *Compare* 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997, ch. 850, § 46 *with* 1998 Cal. ALS 406, 1997 Cal. AB 1590, Stats. 1997, ch. 406, §§ 3-5. Its choice of these precise words clearly was intentional, and the ordinary meaning of the words should not be disregarded. The trial court's interpretation that the adjustments referenced in section 77201.1(b)(4) should be read to reflect the results of an appeal rather than being conditioned on whether an appeal was taken violates the principles of statutory construction that hold that the law assumes "every part of a statute serves a purpose and nothing is superfluous" and "the expression of one thing in a statute ordinarily implies the exclusion of other things." *In re J.W.*, 29 Cal. 4th at 209.

In addition, the trial court's interpretation of section 77201.1(b)(4) to require continued payment of "local judicial benefits" beyond fiscal year 1997-98 defeats the general purposes and policies of the Act, which are to equalize and consolidate responsibility for funding trial court operations at the state level, make the State solely responsible for funding trial court operations, and eliminate the counties' responsibility for funding trial court operations. 1997 Cal. ALS 850,

1997 Cal. AB 233, Stats. 1997 ch. 850, § 2; Cal. Gov't Code §§ 77100, 77101, 77200, 77201(a). In contrast, limiting a county's obligation to continue to pay "local judicial benefits" to the first fiscal year of the new state funding scheme -- which, from the lack of any provision similar provision in the final version of section 77201.1(b)(4), obviously would appear to be the Legislature's intent -- is entirely consistent with the express purposes of the Act. It certainly would have been reasonable for the Legislature to conclude that a transition period for phasing out such benefits was appropriate, while at the same time allowing the counties adjustments for the other reasons allowed by the Act. Nor is it at all unreasonable to conclude that the Legislature simply sought to limit the number of counties that continue to make adjustments to their MOE payments and to give some finality to the adjustment process. This Court should reject the trial court's strained interpretation of section 77201.1(b)(4) and adopt the obvious and plain meaning of the words used by the Legislature, a meaning that also promotes the express purposes of the Act.

C. There Is No Conflict Between the Plain, Common Sense Reading of Section 77201.1 and the Uncodified Provision Cited By the Trial Court.

The trial court also found that there is a conflict between the plain, common sense reading of section 77201.1 advanced by Appellant and the uncodified

provision 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997 ch. 850, § 3(g)(1), which states "no personnel employed in the court system as of July 1, 1997, shall have their salary or benefits reduced as a result of this act." CT at 1254. The trial court was wrong. Again, the stated purpose of the Act was to equalize and consolidate funding of trial court operations at the state level and to have the State assume sole responsibility for trial court operations, including the salaries and benefits paid to trial court judges across the State. Cal. Gov't Code §§ 77003(a)(1), 77200. Giving section 77201.1 its plain, common sense meaning would not result in the reduction of the salary or benefits paid to any trial judge. Only the source of the judges' salaries and benefits, not the amount of those salaries or benefits, was changed by the Act; the trial judges were to have received the same salary and benefits, albeit paid by the State rather than the counties. In fact, the County's payment of duplicate benefits and/or supplemental compensation has had the opposite effect, not at all intended by the Legislature, of substantially increasing the remuneration paid to trial judges in the County.

D. Section 69894.3 Does Not Authorize the County's Payment of "Local Judicial Benefits."

The trial court further found that California Government Code section 69894.3 authorizes the County's payment of "local judicial benefits" despite the

aforementioned express provisions of the Act. CT at 1255. As the trial court noted, section 69894.3 originally was enacted in 1959 and provides, in pertinent part, as follows:

> Employees of the superior court in each county having a population of over 2,000,000 shall be entitled to step advancement, vacation, sick leave, holiday benefits and other leaves of absence and other benefits as may be directed by rules of the court. Where statutes require implementation by local ordinances for the extension of benefits to local officers and employees, these may be made applicable by rule to court personnel, including but not limited to jurors, and judges.

Cal. Gov't Code § 69894.3.

This general provision is a slim reed upon which to support a conclusion that otherwise is directly contrary to the Act. Applying this 1959 statute to the present statutory scheme would lead to an interpretation that runs counter to both the legislative purpose of the Act and its legislative history. Indeed, it would appear to be in conflict with, if not superceded by the Act. *See* 1997 Cal. ALS 850, 1997 Cal. AB 233, Stats. 1997, ch. 850, § 1; Cal. Gov't Code § 77200 (stated purpose of Act is to require State to "assume sole responsibility for the funding of trial court operations"); Cal. Gov't Code § 77201(a) ("[c]ommencing on July 1, 1997, no county shall be responsible for funding court operations."). In this regard, two other principles of statutory construction are relevant. Where there

appears to be a conflict between statutes that cannot be reconciled, "later enactments supersede earlier ones," and "more specific provisions take precedence over more general ones." *Collection Bureau of San Jose v. Rumsey*, 24 Cal. 4th 301, 310 (2000) (internal citations omitted); *see also Santa Clara Valley Transp. Auth. v. Public Utilities Comm'n*, 124 Cal. App. 4th 346, 360 (2004); *Guardian North Bay, Inc. v. Superior Court*, 94 Cal. App. 4th 963, 972 (2001).

Applying these principles to the instant matter, it is obvious that the Act supercedes the 1959 statute because it is later in time. *Collection Bureau of San Jose*, 24 Cal. 4th at 310. Likewise, the Act takes precedence over the 1959 statute because its provisions governing "salaries, benefits, and public agency retirement contributions for superior court judges" are much more specific and narrowly focused than the 1959 statute's broader pronouncement about "employees'" entitlement to "other benefits." *Compare* Cal. Gov't Code § 77003(a)(1) *with* Cal. Gov't Code § 69894.3.

The trial court concluded that section 69894.3 is not in conflict with or superceded by the Act because the Legislature considered whether the provision should be repealed in light of the Act and decided not to do so. CT 1255. The trial court based its conclusion upon a report by the California Law Revision Commission ("the Revision Commission") and related working documents. *Id.* at

1256. After a thorough review of these documents, however, it is evident that the trial court erred. The records of the Revision Commission do not support any such conclusion. Rather, they only indicate an ongoing struggle between those charged with issuing tentative recommendations regarding provisions that have been rendered obsolete and those who might stand to gain if a particular provision remains untouched.

The Revision Commission is authorized by California Government Code section 71674 to make recommendations to the Legislature regarding amendments to remove obsolete provisions of law. In November 2001, the Revision Commission made a tentative recommendation that section 69894.3 be repealed as a result of the passage of the Act. The Revision Commission went so far as to list the provision as one to be included on its list of provisions it tentatively recommended for repeal. CT at 1115 (November 2001 California Law Revision Commission Tentative Recommendation). In the text of the same report, the Revision Commission again tentatively recommended repeal of section 69894.3, recognizing that it is superceded by the Act. *Id.* at 1127-1128. The report states: "Issues involving judicial benefits are still unsettled, but *Section 69894.3 is proposed for repeal because most of the provisions appear to be superseded by*

the Trial Court Employment Protection and Governance Act and the Trial Court Funding Act." *Id.* (emphasis added).

In response, the then-presiding judge of the Superior Court for the County of Los Angeles, the Hon. James A. Bascue, sent a letter to the Revision Commission on February 14, 2002 objecting to the tentative recommendation to repeal section 69894.3. CT at 1137 (February 14, 2002 Letter from Judge James Bascue to California Law Review Commission). The Revision Commission published the following comment in response to Presiding Judge Bascue's letter:

GENERAL COMMENT

> We have found, in the process of working through the statutes made obsolete by trial court restructuring, that there are substantial areas of disagreement among stakeholders as to disposition of the statutes. The general attitude of the staff is that, at this phase of the project, if the parties need more time to work out an accommodation, we should give them more time, rather than trying to force the issue. The statutes need to be cleaned up, but leaving them on the books for another year will not be the end of the world.

CT at 1130 (March 4, 2002 California Law Revision Commission Memorandum 2002-14). The Revision Commission further commented:

JUDICIAL BENEFITS

> Provisions relating to judicial benefits are not yet ripe for revision since the stakeholders have not reached agreement on key issues . . . In addition, the following provisions should be removed from the recommendation and bill until the interested parties have resolved

> outstanding issues: . . . Gov't Code § 69894.3. Court personnel in counties over 2,000,000.

CT at 1132.

While the Revision Commission's comments are telling of the inner politics and pressure applied by "stakeholders" to try to retain an obviously substantial, duplicate benefits program,[4] the tabling of a tentative recommendation to remove an obsolete provision of law cannot be equated with a finding that a provision has not been superseded by subsequent legislative action. This Court should declare that California Government Code section 69894.3 is obsolete and does not authorize the continued funding of "local judicial benefits" by Los Angeles County taxpayers.

---

[4] As Judge Charles W. McCoy was quoted in an August 20, 2000 article in the *Los Angeles Times* regarding these benefits:

> Listen to the warning of Judge Charles W. "Tim" McCoy: 'I think it's unlikely they would attempt to take these benefits away from one-third of the judges in the state. I think it would be unlikely and unwise. You can use those two words – unlikely and unwise.'

CT at 402 (Steve Berry and Tracy Weber, *L.A. County Lets Judges Draw Duplicate Benefits and Perks*, Los Angeles Times, August 20, 2000).

III. The Trial Court Erred in Granting Summary Judgment in Respondents' Favor Because the County's Payment of Duplicate Benefits and/or Supplemental Compensation Constitutes an Unlawful "Waste" of Assets.

California Code of Civil Procedure section 526a provides in relevant part that an action may be maintained by a resident taxpayer based on "any illegal expenditure of, waste of . . . funds . . . ." In addition to alleging that Respondents' continued payment of "local judicial benefits" violates the California Constitution and the Act, Appellant also expressly alleged that, under California Code of Civil Procedure section 526a, these benefits and payments constitute an unlawful waste of public assets. The trial court erred in granting summary judgment in Respondents' favor on this claim for several reasons.

First, in determining whether a challenged expenditure constitutes a waste, California courts have inquired into the legitimacy of the underlying action. Illegal, unauthorized, and void and inoperative acts are not protected by the courts as legitimate governmental acts. *Lucas v. Santa Maria Public Airport Dist.*, 39 Cal. App. 4th 1017, 1026-27 (1995) (illegal); *Terry v. Bender*, 143 Cal. App. 2d 198, 211-12 (1956) (unauthorized); *Harnett v. County of Sacramento*, 195 Cal. 676, 682-83 (1925) (void and inoperative). Therefore, any taxpayer funds expended to enact, promote, or engage in such acts constitutes a waste of public

funds. As Appellant has demonstrated, the County is not authorized to pay "local judicial benefits," and its continued payment of these benefits and compensation violates both the California Constitution and the Act. Consequently, the County's payment of these "local judicial benefits" constitutes a waste under California law as well.

Second, even if the payment of "local judicial benefits" by the County was lawful, it would still be a wasteful, improvident, and completely unnecessary use of County taxpayer dollars as the State has assumed all responsibility for funding judicial benefits through the Act. In *Sundance v. Municipal Court*, 42 Cal. 3d 1101, 1138-1139 (1986), the Supreme Court endorsed and relied upon the concept of "waste" set forth in *City of Ceres v. City of Modesto*, 274 Cal. App. 2d 545, 555 (1969). In *City of Ceres*, a taxpayer sought to enjoin the City of Modesto from expending public funds to install sewer lines in an unincorporated parcel of land. Because the City of Ceres had commenced or was about to commence proceedings to incorporate the parcel and was planning to install its own sewer lines on the parcel, the Court held that the taxpayer could maintain an action to enjoin duplicative efforts by the City of Modesto as an "unconscionable waste" of taxpayer funds. *City of Ceres*, 274 Cal. App. 2d at 556. In so holding, the Court explained that "the construction of permanent sewer lines by [the City of] Modesto

in the disputed territory would result in an unnecessary duplication of municipal services, would serve no useful purpose, and would constitute an unconscionable waste of Modesto's tax funds." *Id.* The court concluded that while a court considering a "waste" claim should not take cognizance of disputes that are political in nature or mere differences in judgment, it should not "close its eyes to wasteful, improvident and completely unnecessary public spending." *Id.* at 555.

In this case, it is undisputed that, since the passage of the Act in 1997, the State has taken over responsibility for payment of salaries and benefits to Los Angeles County Superior Court judges. CT at 562 (Response to RQA No. 2). It is also undisputed that, despite the mandate under the Act that the State fund the salaries and benefits of Los Angeles County Superior Court judges, the County continues to pay benefits and/or supplemental compensation to these same judges. *Id.* (Responses to RQA Nos. 2 and 3 and Response to Special Interrogatory No. 7). For instance, the County continues to fund its "MegaFlex" benefits program which can be characterized either as a typical benefits package offered by an employer to its employees, in which case the County is duplicating the benefits already being provided to the trial judges by the State, or, to the extent any particular trial judge elects not to receive duplicate benefits, purely supplemental compensation. This payment by the County thus results in an "unnecessary duplication" of benefits

and/or compensation, serves "no useful purpose," and constitutes "an unconscionable waste" of the County's tax funds. *City of Ceres*, 274 Cal. App. 2d at 556.

While Respondents argued below that the County provides these benefits in order to attract and retain well-qualified judges to serve the public in a high cost-of-living area (CT at 45 (Defs P&A)), they failed to present any sworn affidavits, board resolutions, or other admissible evidence to this effect, which it was their burden to do. The case of *Los Altos Property Owners Ass'n v. Hutcheon*, 69 Cal. App. 3d 22 (1977) ("*Hutcheon*"), is instructive in this regard. In *Hutcheon*, Los Altos taxpayers sought to enjoin a school district from consolidating the junior high schools within the district. The taxpayers argued that any expenditures made in the furtherance of the consolidation plan constituted a waste because less expensive plans existed and the district adopted a more expensive plan "without a finding of any additional benefit." *Id.* at 30. The Court agreed and held that the taxpayers' "allegations go beyond mere difference in judgment between plaintiffs and defendants, and are sufficient to state a cause of action for waste under section 526a." *Id.*

In the instant matter, Respondents presented no evidence to the trial court of having formally considered or deliberated upon whether there is any "additional

benefit" to paying judges benefits and/or compensation above and beyond what they already are receiving from the State. In addition, other than line items in the County's annual budget, Respondents never produced a single piece of evidence demonstrating that the County's Board of Supervisors specifically authorized, approved, considered, or deliberated on the payment of duplicate benefits and/or supplemental compensation to trial judges in light of the passage of the Act. CT at 528 (PJO Decl. para. 12). Moreover, the record is devoid of any evidence that would support Respondents' assertion that the County affirmatively decided to pay duplicate benefits and/or supplemental compensation in order to attract and retain well-qualified judges to serve a high cost-of-living area. *Id.*; *see also* CT at 535 (Defendants' Responses to Plaintiff's First Set of Form Interrogatories at Response to Form Interrogatory No. 15.1); CT at 45 (Defs P&A).

The trial court erroneously viewed a 1988 report commissioned by the County Chief Administrative Officer as evidence that the County decided to pay duplicate benefits and/or supplemental compensation in order to "attract and retain well-qualified judges to serve the public in the one of the most expensive regions in the state." CT at 1259. Clearly, however, this report was commissioned and completed well before the implementation of the Act. *Id.* at 1174. Thus, any findings in the report could not possibly include consideration of the Act, which

was passed by the Legislature some nine years later to equalize and consolidate the funding of all trial court operations at the state level.

The trial court also viewed Respondents' narrative statement in their answers to interrogatories as evidence that Respondents both purposefully authorized, approved, considered, and deliberated on the payment of duplicate benefits and/or supplemental compensation to trial judges in light of the passage of the Act and considered whether there is any "additional benefit" to paying these judges benefits and/or compensation above and beyond what they already are receiving from the State. CT at 1260. The trial court was wrong here as well. No such inference can be drawn from the documents submitted by Respondents. Nowhere do the minutes of the Los Angeles County Board of Supervisors submitted by Respondents show that the Board ever considered or deliberated on, let alone voted upon, whether to pay duplicate benefits and/or supplemental compensation in light of the passage of the Act. Although the County's budgets contain line items for the payment of "local judicial benefits," this fact alone does not answer the question of whether the County purposefully decided to pay duplicate benefits and/or supplemental compensation in light of the passage of the Act, as opposed to simply failing to "turn off the tap" on these benefits once the State took over responsibility for payment of trial court judges' salaries and

benefits. Similarly, nowhere in the Minutes submitted by Respondents does the Board ever consider or deliberate upon whether there is any "additional benefit" to paying these judges benefits and/or compensation above and beyond what they already are receiving from the State. In fact, Respondents' so-called "evidence" only proves one thing – the County is still paying out benefits to trial court judges despite the Act mandating that the State assume sole responsibility for trial court funding of judicial benefits. Because Respondents failed to present any evidence at all, much less demonstrate the absence of a genuine dispute of material fact, about the circumstances under which the County came to provide duplicate benefits and/or supplemental compensation to trial judges in the County, the trial court erred in granting summary judgment in Respondents' favor.

Lastly, the trial court erred by not granting Appellant's motion for a continuance under California Code of Civil Procedure section 437c(h). This Court has made clear that "summary judgment is a drastic measure which deprives the losing party of trial on the merits." *Bunzel v. American Academy of Orthopaedic Surgeons*, 107 Cal. App. 3d 165, 169 (1980); *see also Rincon v. Burbank Unified School Dist.*, 178 Cal. App. 3d 949, 952 (1986).

"To mitigate summary judgment's harshness, the statute's drafters included a provision making continuances -- which are normally a matter within the broad

discretion of trial courts -- virtually mandated 'upon a good faith showing by affidavit that a continuance is needed to obtain facts essential to justify opposition to the motion.'" *Bahl v. Bank of Am.*, 89 Cal. App. 4th 389, 395 (2001) (quoting *Aguimatang v. California State Lottery*, 234 Cal. App. 3d 769, 803-804 (1991)). That is, Code of Civil Procedure section 437c, subdivision (h) declares:

> If it appears from the affidavits submitted in opposition to a motion for summary judgment . . . that facts essential to justify opposition *may* exist but cannot, for reasons stated, then be presented, the court *shall* . . . order a continuance to permit affidavits to be obtained or discovery to be had or may make any other order as may be just. (Italics added.)

The drafters' inclusion of the italicized words 'may' and 'shall' leaves little room for doubt that such continuances are to be liberally granted. Indeed, as one court noted, "'an opposing party can compel a continuance of a summary judgment motion' by making a declaration meeting the requirements of section 437c, subdivision (h)." *Bahl*, 89 Cal. App. 4th at 395-396 (citing *Mary Morgan, Inc. v. Melzark*, 49 Cal. App. 4th 765, 770-771 (1996)).

Under the liberal standard created by California Code of Civil Procedure section 437c(h), a continuance should have been granted in this case. In Appellant's counsel's declaration in support of Plaintiff's opposition to Defendants' motion for summary judgment or summary adjudication, counsel

presented facts that warranted a continuance. Specifically, counsel recounted in detail the lengths to which Appellant had gone in discovery to try to obtain answers from Respondents as to whether the County ever actually debated and considered, much less decided, to pay "local judicial benefits" in light of the passage of the Act, or whether the County ever actually debated and considered whether there is any additional public benefit to be obtained by paying duplicate benefits and supplemental compensation above and beyond what trial judges are already paid by the State. CT at 527-529 (Declaration of Paul J. Orfanedes). Counsel also informed the trial court that, despite Appellant's efforts, Respondents did not produce the requested relevant evidence. *Id.* In Appellant's Memorandum of Points and Authorities in Opposition to Defendants' Motion for Summary Judgment Or, in the Alternative, for Summary Adjudication and at the hearing on Respondents' motion for summary judgment or summary adjudication, Appellant further explained to the trial court why a continuance was necessary.

More specifically, Appellant and his counsel explained that Appellant had repeatedly requested such clearly relevant evidence in document requests and interrogatories and also sought to depose Los Angeles County Supervisor Don Knabe to obtain precisely such evidence. CT 464-466 (Appellant's Memorandum of Points and Authorities in Opposition to Defendants' Motion for Summary

Judgment Or, in the Alternative, for Summary Adjudication at 17-19) and Reporters Transcript ("RT") at B 2-3, B 17-19, B 37-38. Appellant also explained that Respondents refused to produce any such evidence to Appellant and sought a protective order to prevent the deposition of Supervisor Knabe from going forward, citing "legislative" privilege, among other purposed reasons. *Id.* At an October 20, 2006 hearing on Respondents' motion for a protective order regarding Supervisor Knabe's deposition, Respondents and the trial court acknowledged that Appellant was entitled to evidence on this point. Indeed, the following exchange occurred between the trial court and Respondents' counsel wherein the trial court agreed with Appellant's position that the factual circumstances regarding the County's decision to continue payment of "local judicial benefits" in light of the Act is relevant to this case and discoverable:

> The Court: I believe that - - and I have not read Sundance other than what you cited. I understand what it stands for, but I guess I'm of the view, and it seems to me you acknowledge it - - I realize you're acknowledging it for purposes of discussion and they are entitled to at least some discovery as to how this came to be.

You know, Again, I have not analyzed, I have not looked at the moving papers of the motions. I've gone back and looked at the complaint, just for today's purposes, and I understand this claim of waste and gift of public funds and all of that kind of stuff, and - - how should I put this - - analyze that.

That being said, the idea that the citizens of Los Angeles County, you know, shouldn't - - how should I say this gracefully - - that there - - the idea that - - Let's assume, and I will say this, what it is, is they didn't turn the tap off and nobody did anything and they just went about their merry way, fat, dumb, and happy and continued paying all this money for all these years, the citizens have a right to know that, it seems to me.

Mr. Murray: We are not trying to protect that from them, we want to shout from - -

The Court: Therefore, that says to me that something about the chronological history, or the factual history, or whatever you want to call it, the

11 history of how this came to be, either made, continued,

12 perpetrated is fair game. That's where I'm prepared to

13 go."

RT at A 23-24.

At the same hearing, Respondents suggested Appellant serve another set of interrogatories as an alternative means of obtaining the information. RT at A 21, 26. Appellant thus served a second set of interrogatories on Respondents in another attempt to secure such information, posing the following special interrogatory, among others:

> State whether the BOARD ever met to consider the payment of LOCAL JUDICIAL BENEFITS in light of the enactment of the Lockyer Isenberg Trial Court Funding Act of 1997. If "yes," identify the following: (1) the time, date, and place of the meeting; (2) whether the meeting was held in public or in a closed session; (3) whether a vote was taken and, if so, the result of the vote; and (4) any records concerning or relating to the meeting.

CT at 602 (Special Interrogatory No. 1). In response, Respondents asserted objections on the basis of the attorney-client privilege, the attorney work product doctrine, and the legislative and deliberative process privileges. *Id.* (Response to Special Interrogatory No. 1). The narrative response Respondents provided, while at the same time preserving all their objections, frankly did not answer Appellant's

question. *Id.* at 602-604. Appellant also posed the following special interrogatory as well:

> If the answer to Special Interrogatory No. 1 is "yes," identify all matters appearing in the record of the proceedings before the BOARD, including whether the BOARD considered any public benefit arising from the payment of LOCAL JUDICIAL BENEFITS and whether the BOARD considered any alternatives to the payment of LOCAL JUDICIAL BENEFITS.

Id. at 605 (Special Interrogatory No. 2). In response, Respondents again asserted objections on the basis of the attorney-client privilege, the attorney work product doctrine, and the legislative and deliberative process privileges. *Id.* (Response to Special Interrogatory No. 2). Respondents did not provide any substantive answer at all to this clearly relevant special interrogatory. *Id.* In fact, with respect to all of Appellant's Second Set of Special Interrogatories, Respondents either objected and provided the same, non-responsive narrative or objected and did not respond at all. *See generally*, CT at 599-624[5]

---

[5] The only records produced by Respondents in response to Appellant's Second Set of Special Interrogatories are budgetary documents that make limited reference to "local judicial benefits" but nowhere demonstrate that the County ever affirmatively decided to pay such benefits in light of the passage of the Act or whether the County affirmatively decided there was an additional public benefit to be obtained by doing so. The records provided no insight from which any meaningful conclusions could be drawn.

At the summary judgment hearing, Appellant's counsel also informed the trial court that Appellant had received no privilege log and no itemization of documents that were allegedly withheld under the legislative, deliberative, or attorney-client privileges. RT at B 17. Counsel also indicated that a motion to compel was being contemplated to force Respondents to produce such log. *Id.* at 19. In addition, although the trial court granted Respondents' protective order to prevent Appellant from deposing Mr. Knabe, the trial court did so without prejudice. RT at A 25-27. The whole tone and tenor of the hearing on Respondents' motion for a protective order was that, if the information was not forthcoming, the trial court would revisit the matter. *Id.* Respondents were not forthcoming with the information, and thus Appellant should have had the opportunity to depose Mr. Knabe.

Consequently, the trial court erred in granting summary judgment for Respondents and not granting a continuance to Appellant pursuant to California Code of Civil Procedure section 437c(h), as facts essential to Appellant's opposition had been sought by Appellant but could not be presented to the trial court at the time of Respondents' motion because Respondents continued to withhold discovery from Appellant. This Court should reverse the trial court's

judgment and order the trial court to allow Appellant to seek the clearly relevant discovery that he has every right to obtain.

CONCLUSION

Respondent does not dispute that trial judges in Los Angeles County work hard and deserve fair compensation and benefits. This case is not about depriving the trial judges in Los Angeles County of what they have a right to receive. Rather, this case is about maintaining the integrity of the judicial system and fidelity to the rule of law. In enacting the Lockyer Isenberg Trial Court Funding Act of 1997, the Legislature has saw fit to equalize and consolidate the funding of all trial court operations at the state level and had the State take over sole responsibility for the funding trial court operations, including the salaries and benefits paid to trial court judges. Los Angeles County's payment of "local judicial benefits" runs afoul of both the letter and the spirit of the Legislature's efforts and further constitutes a waste of taxpayer resources. At a minimum, the trial court should have granted Appellant a continuance to enable him to have a full and fair opportunity to gather the evidence he required to properly present his case. For the foregoing substantial reasons set forth herein, this Court should reverse the Order granting summary judgment and remand this case for further proceedings.

Dated: August 8, 2007

Respectfully submitted,

Sterling E. Norris (per)

Sterling E. Norris (SBN 040993)
JUDICIAL WATCH, INC.
2540 Huntington Drive, Suite 201
San Marino, CA 91108-2601
Tel: (626) 287-4540
Fax: (626) 237-2003

Paul J. Orfanedes, Esq.
JUDICIAL WATCH, INC.
501 School Street, S.W., Suite 500
Washington, DC 20204
Tel: (202) 646-5172
Fax: (202) 646-5199

Counsel for Appellant

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 8.520(c)

I certify that pursuant to Rule 8.520(c), the attached brief is proportionally spaced, has a typeface of 14 points or more and contains 10,371 words.

Dated: August 8, 2007

Sterling E. Norris, Esq. PSD

PROOF OF SERVICE

I am employed in the City of Washington, District of Columbia. I am over the age of 18 and not a party to the within action. My business address is 501 School Street, S.W., Suite 500, Washington, DC 20024.

On August 8, 2007, I served the foregoing document described as:

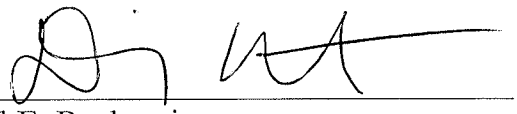
APPELLANT'S OPENING BRIEF

by placing a true and correct copy thereof in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

I caused such envelope to be deposited in the U.S. mail, with postage thereon fully prepaid, at Washington, D.C. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Washington, D.C. in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 8, 2007 at Washington, D.C.



David F. Rothstein

SERVICE LIST

Elwood Lui, Esq. (1 copy)
Jason C. Murray, Esq.
Erica L. Reilley, Esq.
JONES DAY
555 South Flower Street, Fiftieth Floor
Los Angeles, CA 90071-2300

Clerk of California Supreme Court (4 copies)
350 McAllister Street
San Francisco, CA 94102-4797

The Hon. James A. Richman (1 copy)
c/o Clerk of the Court
Superior Court of California, County of Los Angeles
111 N. Hill Street
Los Angeles, CA 90012