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President's Column

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President's Column

Tam Schumann

The overwhelming concern shared by all courts in the United States today is the financial impact on the courts from these difficult economic times. In my role as president of AJA, I have attended meetings of the Conferences of the Chief Justices, the Conference of State Court Administrators, and the National Association for Court Management. All of these entities have addressed the problems of running a court with less available resources.

I would like to share the current approach California has taken in an area that directly affects its judiciary—the voluntary waiver of a portion of our salary to prevent court-employee layoffs. My understanding is that several other states have considered this approach. I hope by sharing the California experience and research that it will assist you if your state entertains a similar idea.

In California, judicial salaries are set by the legislature. By statute, our salaries cannot be reduced without our consent or without going through the normal legislative procedure regarding the setting of salaries. In short, even though we have a fiscal crisis, any immediate reduction in our pay must be done voluntarily. The notion of the judiciary waiving a portion of our salary arose when the California Administrative Office of the Courts decided that to cut costs and preserve jobs, courts in California would be closed one day out of each month. On those closed days, our employees would be considered as being on furlough and would be unpaid. The feeling was that as leaders of our courts, we should also voluntarily reduce our pay so that all court employees, regardless of whether they wear a black robe or not, would take the same percentage cut in pay. That percentage equals 4.62% of our salary. Needless to say (and as we are all basically lawyers), there were a lot of questions:

1. Does the 1-day court closure require legislation?

Yes. Legislation was required to make the one-day closure a legal holiday so that any time requirements for criminal and civil cases would not be impacted. See Cal. Gov't Code § 68106(b) (adopted effective July 28, 2009).

2. Does the waiver of a portion of our judicial salary have to be legislated?

Yes. Legislation was required to ensure that even though we will not be working several days in the fiscal year, we would still be considered as serving full-time so that calculation of our retirement benefits, supplemental-judicial benefits, or any other job-related benefits would not be impacted. See Cal. Gov't Code § 68106(b)(3).

3. Procedurally, how do we go about making the waiver?

A form was filled out and sent to the AOC. The waiver can

be month-to-month, quarterly, annually, or any other period, but not less than a month.

4. Do we still work on the closed day?

Judges who participate in the waiver program are not required to work. Those who do not participate would have to consult with their presiding judges to determine whether they are to be at the courthouse on closure days.

5. If we work on closure days, are we covered by liability insurance and absolute immunity?

Yes. California's liability-insurance program for judges covers all judicial acts regardless of when performed.

6. What are the tax consequences of the voluntary waiver?

The informal information provided by the IRS has been that the waived salary would not be included in the gross income for taxation purposes. Tax Court holdings have been that where an employer and employee agree to a reduction of salary, the reduction amount is not included in the gross-income amount.

7. Where will the waived monies go?

They will not go to the specific court to which the judge making the waiver is a member. The funds instead go to the state's fund for allocation to all trial courts.

8. Is there a way a judge can make a donation to his or her own court?

Yes, through a charitable contribution. For tax purposes, the contribution will be considered to have been made from net income but can be made in any amount for any period of time.

9. Will there be a public record of who has exercised the voluntary waiver or made a charitable donation?

Yes, the names will be made available upon request, including from the media. (And stating the obvious, names of those who do not are clearly discoverable by the mere fact of omission.)

The bottom line is that each judge has to make the decision as to whether he or she will participate or not. This is not a clear decision as such considerations as morale of court staff and exposure to an election challenge must be weighed and balanced by our own financial hardship. The California court-closure program began Wednesday, September 16, and will continue on the third Wednesday of each month through June 2010.

I know we would welcome any information from our membership as to how their states have approached the running of their courts in this time of fiscal difficulties.

