

JUDICIAL COUNCIL MEETING

Minutes of April 24, 1998, Meeting

The Judicial Council of California meeting began at 8:40 a.m. on Friday, April 24, 1998, at the Administrative Office of the Courts office in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Justices Roger W. Boren, Carol A. Corrigan, and Richard D. Huffman; Judges Paul Boland, Albert Dover, Lois Haight, Brenda Harbin-Forte, Ana Maria Luna, Melinda A. Johnson, Michael B. Orfield, Eleanor Provost, and Kathryn D. Todd; Mr. Maurice Evans, Ms. Glenda Veasey, and Mr. Brian C. Walsh; and **advisory members:** Judge Dwayne Keyes, Commissioner Nori Anne Walla, Ms. Sheila Gonzalez, Mr. Joseph A. Lane, Mr. Stephen V. Love, and Mr. Ronald Overholt.

Absent: Justice Marvin R. Baxter, Judge J. Richard Couzens, Senator John L. Burton, Assembly Member Martha M. Escutia, and Mr. Sheldon H. Sloan.

Others present included: Mr. William C. Vickrey; Judge Steven E. Jahr; Mr. Tom Borris, Mr. Art Ramstein, and Dr. William Merz; **staff:** Ms. Martha Amlin, Mr. Starr Babcock, Ms. Francine Batchelor, Mr. David Berkman, Ms. Jessica Fiske Bailey, Mr. Michael Bergeisen, Ms. Eunice Collins, Ms. Jane Evans, Mr. Michael Fischer, Ms. Denise Friday, Ms. Kate Harrison, Ms. Katharine Holland, Ms. Lynn Holton, Ms. Kate Howard, Ms. Melissa Johnson, Mr. Dennis Jones, Ms. Fran Jurcso, Mr. Ray LeBov, Ms. Mary Liddy, Mr. Barry Lynch, Ms. Carolyn McGovern, Ms. Carolyn McCormick, Mr. Martin Moshier, Ms. Vicki Muzny, Ms. Judy Myers, Ms. Diane Nunn, Ms. Hazel Reimche, Ms. Karen Ringuette, Ms. Dale Sipes, Mr. Hampton Smith, Ms. Marlene Smith, Ms. Kiri Torre, Ms. Arline Tyler, Ms. Tracy Vesely, Ms. Kady Von Schoeler, Ms. Cara Vonk, Mr. Anthony Williams, Mr. Jonathan Wolin, and Mr. Joseph Wong; **media representatives:** Mr. Philip Carrizosa, *L.A. Daily Journal*, Mr. Greg Mitchell, *The Recorder*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Agenda, Reports, and Recommendations, dated April 24, 1998, which was sent to members in advance of the meeting.)

Minutes of the February 4, and February 27, 1998, Meetings

Council action:

Justice Richard D. Huffman moved that the Judicial Council approve the minutes of the February 4 and February 27, 1998, meetings.

The motion passed.

Special comment:

Chief Justice Ronald M. George welcomed new member Judge Ana Maria Luna to the council.

Council Committee Presentations

Reports on committee activities were included in the binders of Agenda, Reports, and Recommendations, dated April 24, 1998.

COUNCIL ITEM 1a-1g WERE APPROVED AS CONSENT ITEMS, PER THE SUBMITTERS' RECOMMENDATIONS.

ITEM 1a RULES, FORMS, AND STANDARDS

Family Law Rules and Forms Governing Child Support Proceedings: (Cal. Rules of Court, new rule 1280.5, New Forms: *Statement for Registration of California Support Order—Family Law* (Form 1285.82), *Proof of Personal Service* (Form 1285.84), *Proof of Service by Mail (Family Law)* (Form 1285.85), *Notice Regarding Payment of Support (Governmental)* (Form 1299.55), *Ex Parte Motion by District Attorney and Declaration for Joinder of Other Parent (Governmental)* (Form 1299.58), *Notice of Motion and Declaration for Joinder of Other Parent in Governmental Action (Governmental)* (Form 1299.61), *Responsive Declaration to Motion for Joinder of Other Parent/Consent Order of Joinder (Governmental)* (Form 1299.64), *Stipulation and Order for Joinder of Other Parent (Governmental)* (Form 1299.67); Amended Forms: *Wage and Earnings Assignment Order (Family Law—Domestic Violence Prevention—Uniform Parentage)* (Form 1285.70), *Order of Genetic (Parentage) Testing* (Form 1298.045), *Statement for Registration of California Support Order (Governmental)* (Form 1298.30), *Notice of Wage and Earnings Assignment (Governmental)* (Form 1299.25), *Request for Hearing Regarding Notice of Wage and Earnings Assignment (Family Law—Governmental)* (Form 1299.28); and Revoked Form: *Allocation of Withheld Amount Subject to Multiple*

***Assignment Orders (Family Law—Domestic Violence Prevention—
Uniform Parentage) (Form 1285.70A)***

Enactment of Statutes 1997, chapter 599 (Assem. Bill 573) in September 1997, implemented the major child support provisions mandated by federal welfare reform and required the creation of new forms and procedures as well as modification of some existing forms to assist in the collection of child support in California. This legislation continued the changes instituted by Statutes 1996, chapter 957, commonly referred to as “AB 1058,” which established Child Support Commissioners and the Office of the Family Law Facilitator in each county in the state.

In response to that legislation and to improve child support enforcement, the Family and Juvenile Law Advisory Committee proposes adoption of a new rule and number of new forms, and recommends modification of some existing forms to comply with the statutory requirements along with the revocation of form 1285.70A.

Council action:

The Judicial Council, effective July 1, 1998, made the following revisions to the rules and forms used in child support proceedings:

1. Adopted the following new rule: California Rules of Court, rule 1280.5 (circulated as rule 1280.20), Procedures for clerk’s handling of combined summons and complaint;
2. Adopted the following new forms for mandatory use:
 - a. *Statement for Registration of California Support Order (Family Law)* (Form 1285.82)
 - b. *Notice Regarding Payment of Support (Governmental)* (Form 1299.55)
 - c. *Ex Parte Motion by District Attorney and Declaration for Joinder of Other Parent (Governmental)* (Form 1299.58);
3. Approved the following new forms for optional use:
 - a. *Proof of Personal Service (Family Law)* (Form 1285.84)
 - b. *Proof of Service by Mail (Family Law)* (Form 1285.85)
 - c. *Notice of Motion and Declaration for Joinder of Other Parent in Governmental Action (Governmental)* (Form 1299.61)
 - d. *Responsive Declaration to Motion for Joinder of Other Parent/Consent Order of Joinder (Governmental)* (Form 1299.64)
 - e. *Stipulation and Order for Joinder of Other Parent (Governmental)* (Form 1299.67);
4. Approved modifications to the following family law and governmental forms:
 - a. *Wage and Earnings Assignment Order (Family Law—Domestic Violence Prevention—Uniform Parentage)* (Form 1285.70)

- b. *Order for ~~Blood~~ Genetic (Parentage) Testing* (Form 1298.045)
 - c. *Statement for Registration of ~~Foreign~~ California Support Order (Governmental)* (Form 1298.30)
 - d. *Notice of Wage and Earnings Assignment (Governmental)* (Form 1299.25)
 - e. *Request for Hearing Regarding ~~Notice of Wage and Earnings Assignment~~ (Family Law—Governmental)* (Form 1299.28); and
5. Revoked the following family law form: *Allocation of Withheld Amount Subject to Multiple Assignment Orders (Family Law—Domestic Violence Prevention—Uniform Parentage)* (Form 1285.70A)

ITEM 1b Revised Statewide Notice to Appear Forms: *Traffic Notice to Appear (TR-110)*, *Traffic/Nontraffic Notice to Appear (TR-130)*, *Nontraffic Notice to Appear (TR-120)*, and *Continuation of Citation (TR-106)*, and *Manual*

Vehicle Code section 40500(b) authorizes the Judicial Council to prescribe the Notice to Appear forms. The last revision of the Notice to Appear forms was January 1, 1990. The forms are used for infraction and misdemeanor violations, and they serve as complaints.

The Traffic Advisory Committee has revised the forms to reflect current legislation and to make the forms more understandable to the general public.

Council action:

The Judicial Council, effective immediately, adopted:

- 1. The Notice to Appear forms: *Traffic Notice to Appear (TR-110)*, *Traffic/Nontraffic Notice to Appear (TR-130)*, *Nontraffic Notice to Appear (TR-120)*, and *Continuation of Citation (TR-106)* for statewide mandatory use; and
- 2. The policies and procedures contained within the revisions to the *Notice to Appear and Related Forms Manual*.

ITEM 1c Juvenile Law and Adoption Rule and Forms: (1) New Rule and Forms Governing Kinship Adoption Agreements (Cal. Rules of Court, rule 1180); Judicial Council Forms: *Kinship Adoption Agreement (AD-310); Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement (AD-315); Response to Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement (AD-320); Order: Enforcement, Modification, or Termination of Adoption Petition (AD-325); and Waiver of Reunification Services (JV-195); (2) Findings and Request for Assistance Under the Interstate Compact on the Placement of Children (ICPC) (JV-565) and Interstate Compact on the Placement of Children (ICPC) Priority—Findings and Orders (JV-567); (3) Petition for Adoption (AD-100); Consent and Agreement to Adoption (AD-110); Order of Adoption (AD-115); and Attachment to Petition for Adoption—Adoption of an Indian Child (AD-120); (4) Name Change of Division I, under the California Rules of Court Title Five; and (5) Technical Change to Paternity—Waiver of Rights (Juvenile Dependency) (JV-505) Form*

The Juvenile Law Subcommittee of the Family and Juvenile Law Advisory Committee proposed adoption of the kinship rule and forms to conform to Assembly Bill 1544 (Stats. 1997, ch. 793). The legislation requires that the council adopt a rule and forms for kinship adoption agreements, effective July 1, 1998. Approval of the forms relating to the Interstate Compact on the Placement of Children (ICPC) and adoption forms will improve the processing of cases affecting children.

Council action:

The Judicial Council, effective July 1, 1998:

1. Adopted new rule 1180 on kinship adoption agreements and the following new mandatory forms: *Kinship Adoption Agreement (AD-310), Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement (AD-315), Response to Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement (AD-320), Order: Enforcement, Modification, or Termination of Adoption Petition (AD-325), and Waiver of Reunification Services (JV-195)* to conform to recent statutory changes;
2. Approved new optional forms relating to the Interstate Compact on the Placement of Children: *Findings and Request for Assistance Under the Interstate Compact on the Placement of Children (ICPC) (JV-565) and Interstate Compact on the Placement of Children (ICPC) Priority—Findings and Orders (JV-567)*;
3. Approved new forms for optional use in adoptions of children who are not under the

jurisdiction of the juvenile court: *Petition for Adoption* (AD-100), *Consent and Agreement to Adoption* (AD-110), *Order of Adoption* (AD-115), and *Attachment to Petition for Adoption—Adoption of an Indian Child* (AD-120);

4. Renamed Division I, under the California Rules of Court Title Five, as “Rules Pertaining to Proceedings Involving Children and Families”; renamed Division 1a as “General Rules” and Division 1b as “Family Law Rules”; and added new Division 1c “Juvenile Court Rules”; and
5. Approved making a technical change to the form *Paternity—Waiver of Rights (Juvenile Dependency)* (JV-505).

**ITEM 1d Technical Amendments to California Rules of Court and Forms:
Rules 845, 1020(e), 1025, 1029, and 2008 and Forms *Information Sheet on Waiver of Court Fees and Costs* (982(a)(A)) and *Facsimile Transmission Cover Sheet* (2009)**

The Rules and Projects Committee recommended several technical amendments to the California Rules of Court and Judicial Council forms. These amendments were not circulated for comment because they are technical and not controversial. They involve conforming rules and forms to statutory changes and updating them to reflect current practices or to correct drafting errors.

Council action:

The Judicial Council:

1. Repealed rule 845 regarding fee for filing out-of-state-deposition, effective July 1, 1998;
2. Amended rule 2008 to delete requirement that the fax cover sheet be included with service by fax, effective May 1, 1998;
3. Amended form 2011, *Facsimile Transmission Cover Sheet*, regarding fax filing, to eliminate references to the pilot program, and renumber as 2009, effective July 1, 1998;
4. Amended rule 1020(e) regarding terms for advisory committee members, to allow terms for the Trial Court Presiding Judges Advisory Committee to begin on January 1, effective July 1, 1998;
5. Amended rule 1025 regarding the Court Profiles Advisory Committee’s function, duties, and membership, to be consistent with current practice, effective July 1, 1998; Amended rule 1029 regarding the function, duties, and membership of the Governing Committee of the Center for Judicial Education and Research, to refer to education for the “judicial branch” rather than the “judiciary,” effective July 1, 1998; and

6. Amended form 982(a)(A), *Information Sheet on Waiver of Court Fees and Costs*, to reflect 1998 increases in the federal poverty guidelines, and renumbered as form 982(a)(17)(A), effective May 1, 1998.

ITEM 1e Electronic Filing and Generation of Judicial Council Forms Pilot Projects (Cal. Rules of Court, rule 981.5)

Judicial Council forms and the rules that govern them are based on a paper document model. New technologies have given the courts the tools required to move from a paper-based to an electronic environment that allows electronic filing and forms generation. The ability to handle inputs and outputs electronically offers benefits and efficiencies to all those involved in the court system—litigants, courts, and counsel.

The Court Technology Advisory Committee proposed a rule change that would allow courts as pilot projects to modify Judicial Council forms for the purpose of electronically receiving, generating, and transmitting only the data elements in a Judicial Council form that are relevant to a particular transaction.

The rule requires that pilot projects be compatible with proposed functional standards for electronic filing, which would be effective January 1, 1999. The rule would be repealed January 1, 2001, at which time the evaluation of the pilot projects would be complete and a permanent rule could be adopted.

Council action:

The Judicial Council, effective July 1, 1998, adopted rule 981.5 to allow courts to modify Judicial Council forms as pilot projects for filing or generation of electronic documents.

ITEM 1f Record on Appeal: Designation of Contents of Clerk's Transcript (Cal. Rules of Court, rule 5(a), (b))

The Appellate Advisory Committee proposed amending rule 5(a) and (b) so that the burden of deciding what documents are related to a hearing, motion, or issue is on the party, not the clerk.

Council action:

The Judicial Council, effective July 1, 1998, amended rule 5(a) and (b) to:

1. Require appellant's and respondent's designations of the contents of the clerk's transcript to describe each document "with particularity," including the title and date of filing or signing; and
2. Provide that a designation of *all* minute orders, *all* minute orders entered between specified dates, or *all* written jury instructions is sufficient designation of those documents.

ITEM 1g

Probate Forms for Guardianships and Conservatorships (New Forms *Petition for Termination of Guardianship* (GC-255), *Order Terminating Guardianship* (GC-260), *Capacity Declaration—Conservatorship* (GC-335); Revoked Form *Declaration of Medical Inability to Attend Court Hearing* (GC-335); Revised Form *Confidential Supplemental Information* (GC-312))

The Probate and Mental Health Task Force proposed changes in the forms used in probate guardianship and conservatorship proceedings to respond to the need to review and update legal forms in this area.

Council action:

The Judicial Council, effective July 1, 1998, approved the following changes to the forms used in probate guardianship and conservatorship proceedings:

1. Adopted the following new forms for optional use: *Petition for Termination of Guardianship* (GC-255), *Order Terminating Guardianship* (GC-260), and *Capacity Declaration—Conservatorship* (GC-335);
2. Revoked the following form (substituting new form GC-335): *Declaration on Medical Inability to Attend Court Hearing* (GC-335); and
3. Revised the following form: *Confidential Supplemental Information* (GC-312).

NOTE: DISCUSSION ITEMS WERE TAKEN OUT OF ORDER AND WERE ADDRESSED IN THE FOLLOWING ORDER: ITEM 4, 5, 3, 2, 6, 7, AND 8. THESE MINUTES WILL PLACE EACH ITEM IN ITS ORIGINAL NUMERICAL ORDER.

ITEM 2 California Rules of Court and Forms to Implement Unified Superior Courts (SCA 4): Repeal Rules 701, 702, 750, 751, 765–770, and 790; Adopt New Rules 100, 100.5, 701–709, and 982.4; and Adopt New Forms: *Application to Call for a Vote to Unify the Municipal and Superior Courts (Form 982.4(1))* and *Notice of Unanimous Written Consent to Unify the Municipal and Superior Courts (Form 982.4(2))*

Cara Vonk, staff attorney to the SCA 4 Implementation Working Group, and Starr Babcock, managing attorney in the Council and Legal Services Division, presented the item. Senate Constitutional Amendment 4 (Proposition 220 on the June 2, 1998, ballot), if passed, will permit judges in each county to vote for voluntary unification of the superior and municipal courts into one countywide superior court. Senate Bill 2139, which is pending as urgency legislation, gives the Judicial Council broad authority to adopt implementing rules of court. The SCA 4 Implementation Working Group proposed rules and forms to implement SCA 4.

Also on the ballot is a constitutional amendment creating an appellate “division” rather than “department” in all superior courts and giving the Chief Justice authority to assign judges according to rules adopted by the Judicial Council “to promote the independence of the appellate division.” The task force proposed two such rules.

Judge Albert Dover suggested deleting from proposed rule 704 subdivision (e), which stated that individual judges’ votes would be made public, since it was inconsistent with the rule’s subdivision (b), which gives the presiding judge discretion over the manner of voting. He stated that local courts should have discretion for implementing SCA 4.

Judge Brenda Harbin-Forte stated that she hoped local courts would publicize their votes on a matter so important to the public.

Council action:

Judge Dover moved that the Judicial Council, effective only upon and at the same time as adoption by the voters of Senate Constitutional Amendment 4 of the 1995–1996 Regular Session of the Legislature:

1. Adopt new rules 100 and 100.5 of the California Rules of Court to implement the constitutional provision for an appellate “division” in each superior court and to provide guidance on assignment of judges to the appellate division.
2. Repeal rules 701, 702, 750, 751, 765–770, and 790 relating to justice courts.
3. Adopt new rules 701, 702, 703, 704, 705, 706, 707, 708, and 709 to implement the constitutional provision authorizing judges within a county to vote for a unified superior court, including voting and transitional procedures, with the following changes in rule 704:

- a. delete subdivision (e);
 - b. redesignate subdivision (f) to (e);
 - c. change the word “outcome” in subdivision (f) to “results.”
4. Adopt new rule 982.4 and the following two new forms for mandatory use to implement the voting procedure:
- a. *Application to Call for a Vote to Unify the Municipal and Superior Courts* (982.4(1))
 - b. *Notice of Unanimous Written Consent to Unify the Municipal and Superior Courts* 982.4(2))
5. Direct staff to conform forms to modifications made to rule 704.

The motion passed.

NOTE: The recommendations in the report of the SCA-4 Working Group, which were approved by the council, erroneously included among the rules to be repealed rule 795.5. The intent of the council was to repeal the rules relating to justice courts; these rules were made unnecessary by the abolition of justice courts. However, rule 795.5 does not relate to justice courts; it applies to former justice court judges now serving in the municipal court. Therefore, the minutes have been drafted to correctly reflect the intent of the council, which was to repeal only the rules that were obsolete.

ITEM 3 Trial Court Coordination Plans for Los Angeles and Orange Counties for Fiscal Years 1997–1998 Through 1998–1999; Trial Court Coordination Assessments for Selected Counties; Pay Parity for Selected Counties; Proposed Judgeship Allocation Schedule

Judge John A. Flaherty, Chair of the Trial Court Coordination Advisory Committee (TCCAC); Kate Harrison, Assistant Director of the Trial Court Services Division; and Fran Jurcso, staff coordinator for the TCCAC, presented the item. Judge Flaherty noted that, in January 1998, the council provisionally approved trial court coordination plans for Los Angeles and Orange Counties for fiscal years 1997–1998 through 1998–1999, allowing 90 days for the trial courts to document agreements reached and address governance issues. He reported that in February 1998 the council adopted a policy regarding judicial and administrative governance structures acceptable in counties that adopted an alternative (e.g., regional) structure.

Judge Flaherty stated that the TCCAC reviewed additional information supplied by the Los Angeles County and Orange County Trial Court Coordination Oversight Committees, using the same criteria applied to other counties. He stated that the TCCAC recommends approval of both coordination plans.

Additionally, the TCCAC reviewed the progress of implementation of trial court coordination mandates in Los Angeles and Orange Counties and determined that both counties should receive an assessment of “coordination implementation consistent with

CRC [California Rules of Court] 991 mandates.” Judge Flaherty stated that the committee also recommends changes in the overall assessment of progress of Contra Costa, Marin, Santa Barbara, and Yuba Counties.

Finally, Judge Flaherty stated that the TCCAC recommends that the municipal judges in the following counties be granted pay parity effective April 1, 1998: Contra Costa, Los Angeles, Orange, Santa Barbara, and Yuba.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve the trial court coordination plans for Los Angeles and Orange Counties for fiscal years 1997–1998 through 1998–1999 and accept the summaries of those plans as presented in the binder of Agenda, Reports, and Recommendations dated April 24, 1998.
2. Approve the amendments to the overall assessment of progress in implementing trial court coordination mandates for Contra Costa, Los Angeles, Marin, Orange, Santa Barbara, and Yuba Counties.
3. Grant pay parity, effective April 1, 1998, to all municipal court judges in Contra Costa, Los Angeles, Orange, Santa Barbara, and Yuba Counties.

The motion passed.

Ms. Harrison presented a recommendation to amend the Proposed Judicial Allocation Schedule adopted by the council in January 1998, in light of the council’s recent approval of the trial court coordination plans of Kern, Los Angeles, and Orange Counties. Additionally, staff recommended that the ranking for the Yolo County Superior/Municipal Court be changed to reflect the court’s consolidation status. She reported that when the court’s ranking was initially determined, the full complement of municipal and superior court judicial positions was not included in the calculation. As a result, the court was erroneously ranked number one. She noted that staff has spoken with the court administrator about the error, and the administrator has no objection to the change.

Council action:

Judge Paul Boland moved that the council approve the Amended Judgeship Allocation Schedule as follows:

1. Add one judgeship for the East Kern Municipal Court.
2. Remove all references to provisional approval related to the Orange County and Los Angeles County Superior Courts' recommended judgeships.
3. Recalculate the ranking for the Yolo County Superior/Municipal Court to include the court's full complement of superior and municipal judicial positions.

The motion passed.

Justice Huffman referred to a letter distributed to council members from the Administratively Consolidated Trial Courts of Alameda County. He stated that the letter raises questions about the definition of "fully coordinated" as it relates to trial court coordination implementation and asked Judge Flaherty to comment on the issues raised.

Judge Flaherty stated that there is a difference between "fully coordinated" and "meeting CRC 991 mandates." He said that the council approved the following definition of "fully coordinated" at its meeting on December 15:

1. There is a uniform set of rules in place;
2. There is a single presiding judge; and
3. There is a single court administrator.

Justice Huffman asked for the source of the requirement for a single presiding judge and a determination that a court is not fully coordinated if governed by an oversight committee. Judge Flaherty responded that rule 991 does not use the terms "fully coordinated" or "consistent with rule 991." Those are standards the council adopted and that are reflected in council meeting minutes.

Justice Huffman recommended that the council direct the Trial Court Coordination Advisory Committee to review the impact of changing the council's policy on requiring a county to have a single presiding judge in order to be considered "fully coordinated," so that counties with countywide coordination structures could be governed by an oversight committee and still be considered "fully coordinated."

Mr. Ronald Overholt expressed concern about sending the issue back to the committee without further direction. He noted that the committee believes that a single presiding judge is an absolute for an assessment of “fully coordinated”; however, he was not sure that the council was clear on the issue.

Justice Huffman noted that in the council minutes of February 27, 1998, Mr. Overholt asked whether council policy allows only regional courts to reach full coordination if governed by an oversight committee, and if so, whether a double standard would develop. In the minutes Judge Flaherty responded that regardless of whether a county submits a regional or countywide plan, council policy requires the election of a single presiding judge for a court to be assessed as fully coordinated.

Council action:

Justice Huffman moved that the council direct the Trial Court Coordination Advisory Committee to review the impact of changing the council’s policy on requiring a county to have a single presiding judge in order to be considered “fully coordinated” to allow counties with countywide coordination structures to be governed by an oversight committee to also be considered “fully coordinated.”

The motion passed.

ITEM 4 Pro Tem Judge Use in the Judicial Needs Determination Process

D. Kent Pedersen, Vice-chair of the Court Profiles Advisory Committee (CPAC), presented the report, assisted by Denise Friday, staff coordinator for the committee. In November 1996, the Judicial Council approved CPAC’s working principles for assessing trial court judicial needs. The working principles were developed to facilitate the consistent evaluation of judicial needs across courts. In January 1998, the Executive and Planning Committee requested that CPAC develop, for council review and approval, a policy on the use of pro tem judges, as applied in the judicial needs assessment.

Mr. Pedersen said that working principle 8 states that “[u]se of pro tems by a court to assist with caseload and judicial vacancies will be considered in assessing judicial need.” Mr. Pedersen reported that, in applying this principle to its assessment of judicial need, CPAC considers (1) whether a court has sufficient access or opportunity to use pro tems and (2) the level and degree of pro tem use by a court. He stated that working principle 8 is applied as a comparative measure in identifying total *critical* need statewide. As such, CPAC’s policy does not require that a court’s request for new judicial positions be denied if the court does not use pro tem judges.

He noted that working principle 8 is one of 16 factors considered in the peer review assessment process and is not a threshold over which trial courts must step to qualify for new judgeships. He said that the information derived from applying principle 8 helps the committee determine whether a court is maximizing the use of its judicial resources. He noted that local factors do not permit some courts to use pro tems, while other courts use pro tems with great success.

Justice Huffman expressed concern that in applying the principle CPAC would negatively rank courts that did not use pro tems or that used them in a limited manner. He noted that there are many good reasons courts do not use pro tems—for example, limited facilities. He stated that courts with legitimate reasons for not using pro tems should not be ranked negatively.

Mr. Pedersen responded that lack of use of pro tems would not automatically result in a negative rating. Use of pro tems is simply a factor the committee considers.

Justice Huffman stated that the Judicial Council has not decided whether courts should be using pro tems and that this was a policy issue for council, not committee, determination. He stated that he supported considering a court's use of pro tems as a factor in reviewing how a court is dealing with workload but does not support considering a court's non-use of pro tems as a negative.

Judge Michael B. Orfield said this would mean that the committee would not be free to disagree with a local court's management decision not to use pro tems. Ms. Glenda Veasey noted that local courts could also choose not to use pro tems without having a valid policy reason.

Mr. Stephen V. Love commented that, in this scenario, courts that use pro tems extensively could be penalized for this in judicial needs assessments, and if they eliminated pro tems, they might appear to have a more critical need for new judgeships.

Council action:

Justice Huffman moved that the Judicial Council direct the Court Profiles Advisory Committee to consider a court's use of pro tem judges as a positive factor in its assessment of trial court need, but not as a negative factor if a court has determined not to use pro tems.

The motion passed.

ITEM 5 Recommendations Regarding Balance of Fiscal Year 1997–1998 Allocation of One Percent Reserve

Judge Steven E. Jahr, Chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Jonathan Wolin, manager of the Trial Court Funding Unit of the Trial Court Services Division. Judge Jahr reported that in March 1998, the council approved an allocation schedule for fiscal year 1997–1998 for the one percent reserve and deficiency funding. The council deferred until the April meeting action on one aspect of the reserve—the \$2 million earmarked for allocation to courts that have fully coordinated—and instructed staff to provide additional information to the TCBC regarding the courts’ critical funding needs. The council also voted in March to retain 10 percent of the \$5.87 million of the unmet needs reserve (approximately \$600,000) until its April meeting.

Judge Jahr reported that the TCBC discussed alternative methods of allocating the \$2 million earmarked for courts that have fully coordinated and the \$600,000 from the unmet needs reserve. He noted that these funds will be used by courts to fund their operations through June 30, 1998. No money from these funds will go toward discretionary costs.

Judge Jahr reported that the TCBC recommends allocating the \$2 million of coordination incentive funds to each of the 22 court systems that have received a Judicial Council–approved overall assessment of “fully coordinated” as of February 27, 1998, and the remaining \$600,000 reserve to meet the critical needs of each court system, beginning with the system with the smallest budget, until the reserve is exhausted.

He stated that the AOC staff recommends allocating the entire \$2.6 million to meet the identified nondiscretionary needs of each county court system, beginning with the system with the smallest budget, until the funding is exhausted.

Ms. Sheila Gonzalez said that it would be negatively received by coordinated courts to give money to courts not fully coordinated. She commented that, through coordination, courts could save money, thereby lowering their need for additional funding to support nondiscretionary costs.

Justice Huffman stated his support for the staff option. He said that the council has used progress on coordination as an incentive in other areas—for example, in judicial needs assessments. He noted that the council is the body responsible for keeping courts functioning. He also stated that larger courts can absorb the losses better than smaller courts.

Judge Melinda A. Johnson asked whether any court has indicated they will close their doors without additional funding. Mr. Wolin replied that three courts have so indicated.

Mr. Joseph A. Lane stated that fully coordinated courts would probably have a harder time absorbing deficiency costs than courts not fully coordinated.

Council action:

Mr. Brian C. Walsh moved that the Judicial Council:

1. Allocate the \$2 million coordination incentive funding retained in the one percent reserve to each of the 22 court systems that have received a Judicial Council–approved overall assessment of “fully coordinated” as of the February 27, 1998, council meeting, based on the number of authorized and funded judgeships.
2. Allocate the remaining \$600,000 reserve to meet critical needs of each court system, beginning with the system with the smallest budget, until the reserve is exhausted, after adjusting for allocations first made from the \$2 million reserve.
3. Authorize staff to make appropriate arithmetic adjustments to the allocation schedule in the event that the council determines at its April 24, 1998, meeting that additional court systems are “fully coordinated.”

The motion passed.

ITEM 6 Designation of Testing Entities for Court Interpreters (Gov. Code, §68562(b))

Joseph Wong, staff coordinator to the Court Interpreters Advisory Panel, presented the item, assisted by Kate Harrison, Assistant Director of the Trial Court Services Division. Mr. Wong stated that statute requires the Judicial Council to implement a comprehensive court interpreters program (Sen. Bill 1304; Stats. 1992, ch. 770; Gov. Code § 68560 et seq.). Among other provisions, section 68562 authorizes the council to approve one or more entities to certify interpreters. The statute also authorizes the council to provisionally authorize an entity to certify interpreters pending its approval of testing entities responsible for certifying interpreters on an ongoing basis. The council has provisionally approved Cooperative Personnel Services (CPS) to administer the examinations for court interpreter certification in eight designated languages from 1993 through June 30, 1998.

Mr. Wong noted that since the initial search for testing entities began in 1995, only two viable alternatives have been available for consideration: membership in the Consortium for State Court Interpreter Certification (Consortium) and continuing council approval of CPS. Mr. Wong noted that there are benefits and disadvantages of each alternative.

Council action:

Ms. Veasey moved that the Judicial Council:

1. Approve Cooperative Personnel Services (CPS) as the testing entity; approve the continuation of its testing program for certification of Spanish-language interpreters and interpreters of all other languages designated by the Judicial Council; and allow CPS to offer English fluency examinations to interpreters in nondesignated languages, effective July 1, 1998, through June 30, 2000. If the AOC and CPS do not enter into a written agreement to administer a testing program, the approval shall terminate on the date on which the Administrative Director of the Courts provides written notice to the council that the AOC and CPS will not enter into such an agreement.
2. Approve the Consortium for State Court Interpreter Certification as a testing entity to certify Spanish-language interpreters and interpreters for all other languages designated by the Judicial Council, and to join the Consortium to enhance the existing testing and certification program, effective May 1998. Membership in the Consortium does not require renewal; therefore a termination date is not required. If the AOC and the Consortium do not enter into a written agreement for the Consortium to administer a testing program, the approval shall terminate on the date on which the Administrative Director of the Courts provides written notice to the council that the AOC and the Consortium will not enter into such an agreement.

The motion passed.

Item 7 Compliance Review of Testing Entities for Certifying Court Interpreters for the Deaf and Hearing-Impaired

Dr. William Merz, staff consultant, and Marlene Smith and Arline Tyler, former staff analyst and staff coordinator for the Access and Fairness Advisory Committee, presented the item. Ms. Smith stated that, in November 1996, the Judicial Council provisionally approved two testing entities to certify court interpreters for deaf and hearing-impaired individuals: Registry of Interpreters (RID) and the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASD). The council requested that RID and CCASD present the council in November 1997 with a progress report that demonstrates each organization's compliance with the council-approved *Guidelines for Approval of Certification Programs for Interpreters for Deaf and Hearing-Impaired Persons*.

Dr. Merz noted that both certifying entities have demonstrated technical competence with the minimum standards enumerated in the council's guidelines. Dr. Merz recommends that both organizations continue their certification programs.

Judge Dover noted that this item reflected a real success story for the council. In 1991, The Judicial Council established a committee to develop guidelines in this area. The

guidelines created very high standards for certification programs and is serving as a model for the country. The council is being asked to approve two entities that meet the council's high standards for certifying interpreters for the deaf and hearing-impaired. The result is that the Judicial Council's goal of providing access and fairness and eliminating bias in the courts for deaf and hearing-impaired persons is being met.

Council action:

Judge Dover moved that the Judicial Council:

1. Accept the report on compliance prepared by Dr. William Merz as presented in the binder of Agenda, Reports, and Recommendations dated April 24, 1998; and
2. Give final approval to the two testing entities, Registry of Interpreters for the Deaf (RID) and the California Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc. (CCASD), for certifying court interpreters for the deaf.

The motion passed.

CIRCULATING ORDERS APPROVED SINCE LAST BUSINESS MEETING

Circulating Order CO-98-03: Recommendations Regarding Fiscal Year 1997–1998 Allocation Schedule for the One Percent Reserve and Deficiency Funding

Circulating Order CO-98-04: Judicial Council Report to the Legislature on the Mandatory Insurance Law

Circulating Order CO-98-05: Amendments to Rule on Qualifications of Attorneys Appointed in Capital Appeals and Habeas Corpus Proceedings (Cal. Rules of Court, rule 76.6)

For information only; no action required.

JUDICIAL COUNCIL APPOINTMENT ORDERS SINCE LAST BUSINESS MEETING

For information only; no action required.

The meeting was adjourned at 11:25 a.m.

Respectfully submitted,

William C. Vickrey
Secretary