

**JUDICIAL COUNCIL MEETING**  
**Minutes of April 28, 2000, Meeting**

The Judicial Council of California meeting began at 9:10 a.m. on Friday, April 28, 2000, at the Administrative Office of the Courts Judicial Council Conference Center in San Francisco, California, on the call of Chief Justice Ronald M. George, Chair.

**Judicial Council members present:** Chief Justice Ronald M. George; Justices Richard D. Aldrich, Carol A. Corrigan, and Richard D. Huffman; Judges James Allen Bascue, J. Richard Couzens, Leonard P. Edwards, Donna J. Hitchens, Steven E. Jahr, Melinda A. Johnson, Ana Maria Luna, Ronald B. Robie, and Ronald L. Taylor; Mr. Michael Case and Ms. Pauline W. Gee; and **advisory members:** Judge David John Danielsen, Mr. Ron Barrow, Mr. Stephen V. Love, Mr. Frederick Ohlrich, and Mr. Arthur Sims.

**Absent:** Justice Marvin R. Baxter, Judge Paul Boland, Commissioner David L. Haet, Senator Adam B. Schiff, Assembly Member Sheila James Kuehl, Mr. John J. Collins, and Mr. Sheldon Sloan.

**Others present included:** Mr. William C. Vickrey; Judges Ray L. Hart, Frederick Paul Horn, and Elaine M. Watters; Ms. Beth Jay and Ms. Karen Jahr; **staff:** Ms. Jessica Fiske Bailey, Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. Roy Blaine, Mr. James Carroll, Ms. Roma Cheadle, Ms. Eunice Collins, Mr. Blaine Corren, Ms. Lesley Duncan, Ms. Tina Hansen, Ms. Lynn Holton, Ms. Kate Howard, Ms. Melissa Johnson, Mr. Dennis Jones, Mr. Peter Kiefer, Mr. Ben McClinton, Mr. Frederick Miller, Ms. Vicki Muzny, Mr. Patrick O'Donnell, Mr. Frank Schultz, Ms. Dale Sipes, Ms. Alice Vilardi, Mr. Tony Wernert, and Mr. Jonathan Wolin; **media representatives:** Mr. Paul Elias, *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 Reports and Recommendations dated April 28, 2000, which was sent to members in advance of the meeting.)

**Approval of Minutes of March 17, 2000**

*Council action:*

Justice Carol A. Corrigan moved that the Judicial Council approve the minutes of the March 17, 2000, meeting.

The motion passed.

## **Council Committee Presentations**

### *Executive and Planning Committee*

Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee met once since the last council meeting. At that meeting they reviewed nominations for an interim Trial Court Presiding Judge Executive Committee to be appointed through December 31, 2000. The committee voted to forward recommendations to the Chief Justice for his selection and appointment.

Justice Huffman stated that the committee received a report from staff summarizing data received from the trial courts regarding the implementation of California Rules of Court, rule 980 (Cameras in the Courtroom). The report stated that staff intends to:

- Terminate the data collection. Staff will send a letter to the trial courts which summarizes the results of the data collection, thanks the courts for sending their rule 980 forms to the AOC, and notifies them that they are no longer required to do so.
- Make data available to courts and public on the court and public web sites..
- Leave rule 980 and Forms MC-500 and MC-510 as they are. Staff does not currently recommend any changes to the rule or revisions to the forms.

The committee also reviewed items submitted to the council, determined readiness for council action, and set today's agenda.

Finally, Justice Huffman said that the committee reviewed a report on a Judicial Council site visit to Imperial and San Diego Counties in March. He stated that six council members and five staff members visited the San Diego County and Imperial County trial courts. He noted that the visit included tours of the Calexico and El Centro branches (in Imperial County); a video arraignment from the state prison in Calipatria; and several in-custody hearings. The participants learned that the Imperial County courts are facing inadequacies in court facilities, security, and numbers of court interpreters.

Justice Huffman said that the San Diego County court visit included a discussion of the juvenile court's dependency court recovery project and domestic violence court; a visit with the court's executive committee; an update of the implementation of the one-day/one-trial program; and a discussion of court employee classifications.

Justice Huffman said that the visit was extremely informative.

### *Rules and Projects Committee*

Judge Steven E. Jahr, Chair of the Rules and Projects Committee, reported that the committee met twice since the last council meeting. On April 15, the committee met to review the rules and forms proposals on the council's April 28 meeting agenda. As indicated in the written report in the meeting binder, the committee recommends approval of all the proposals on the council's meeting agenda.

At that meeting, the committee also reviewed the work of the Task Force on Jury Instructions. The Task Force has produced a volume of civil instructions and a volume of criminal instructions, which will be distributed for public comment next week. The committee endorsed circulating the instructions for a 90-day comment period.

Judge Jahr stated that on March 24, the committee met to review a new rule on the Trial Court Presiding Judges Advisory Committee, and revised rules on the duties of presiding judges and court executives that were approved to circulate for comment.

### *Policy Coordination and Liaison Committee*

Justice Carol A. Corrigan reported on the work of the Policy Coordination and Liaison Committee on behalf of committee chair, Justice Marvin A. Baxter. Justice Corrigan stated that the committee met twice since the last council meeting and took positions on 23 bills relating to civil procedure, criminal law and procedure, domestic violence, family law, juvenile delinquency and dependency, and jury service.

Justice Corrigan stated that the committee also approved a summary of recent significant revisions to the mandatory automobile insurance law that took effect on January 1, 2000 for distribution to all presiding judges and court administrators.

Justice Corrigan reported that in March the Chief Justice presented a "State of the Judiciary" address to a joint session of the Legislature. The presentation was followed by the sixth annual Judicial-Legislative-Executive Forum organized to enhance working relationships between the three branches of state government.

## **ITEM 1 RULES, FORMS, AND STANDARDS<sup>1</sup>**

### **Item 1A *Application and Order for Appearance and Examination* (revise Forms AT-138 and EJ-125)**

The Civil and Small Claims Advisory Committee reported that the order for examination form has been a Judicial Council–approved form since 1984. The Superior Court of Los Angeles County has proposed that this form be made mandatory because that would result in greater uniformity in the enforcement of judgments and would provide more certainty for the courts. (A similar small claims form, which became effective January 1, 1998, is already mandatory.)

*Council action:*

The Judicial Council, effective July 1, 2000, revised the *Application and Order for Appearance and Examination* (Forms AT-138 and EJ-125) to make it mandatory.

### **Item 1B *Declaration of Lost Summons After Service* (adopt Form 982(a)(12))**

The Civil and Small Claims Advisory Committee reported that Code of Civil Procedure section 417.30(b) provides that if a summons is lost after service, an affidavit of the person who served the summons may be returned with the same effect as if the summons itself were returned. Some courts have local forms for a declaration to be used to implement this provision, but no Judicial Council form has been adopted or approved for this purpose.

*Council action:*

The Judicial Council, effective July 1, 2000, adopted the *Declaration of Lost Summons After Service* (Form 982(a)(12)).

### **Item 1C *Wage Garnishment Forms (State Tax Liability)* (revise Forms 982.5(11), 982.5(12), 982.5(13), 982.5(14), 982.5(15); adopt Forms 982.5(11S) and 982.5(14S))**

The Civil and Small Claims Advisory Committee recommended revising the current wage garnishment forms related to withholding for taxes, to reflect the appropriate code sections in their lower right-hand corners.

In addition, the inclusion of judgment debtors' social security numbers on the existing application (Form 982.5(11)) and temporary withholding order (Form 982.5(14)) impinge

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<sup>1</sup> For clarity, there is no item 11 or item 10.

upon the debtors' privacy interests. Yet these privacy interests need to be reconciled with the statutory requirement that the application and order provide, "if known, the social security number of the judgment debtor."

*Council action:*

The Judicial Council, effective July 1, 2000:

1. Revised the *Application for Earnings Withholding Order for Taxes* (Form 982.5(11)), *Earnings Withholding Order for Taxes* (Form 982.5(12)), *Notice of Hearing—Earnings Withholding for Taxes* (Form 982.5(13)), *Temporary Earnings Holding Order for Taxes* (Form 982.5(14)), and *Claim of Exemption and Financial Declaration* (Form 982.5(15)) to correct outdated references to code sections; and
2. Adopted the *Confidential Supplement to Application for Earnings Withholding Order for Taxes* (Form 982.5(11S)) and *Confidential Supplement to Temporary Earnings Withholding Order for Taxes* (Form 982.5(14S)) to allow social security numbers to be provided confidentially.

**Item 1D *Spousal Property Petition* (revise Form DE-221)**

The Probate and Mental Health Task Force reported that the *Spousal Property Petition* (Form DE-221) was previously revised in 1997, and the current version became effective January 1, 1998. Subsequently, Probate Code section 13651 was amended to require disclosure on the spousal property petition whether or not there exists a written agreement between the deceased spouse and the surviving spouse for a non-pro rata division of the aggregate value of the community property assets, quasi-community assets, or both. Probate Code section 13651 was further amended to require that, if the petition bases the description of the property to be confirmed to the surviving spouse on such an agreement, a copy of the agreement shall be attached to the petition.

*Council action:*

The Judicial Council, effective July 1, 2000, revised the *Spousal Property Petition* (Form DE-221) to conform to statutory changes.

**Item 1E *Evaluation of the Child Support Commissioner System: Report to the Legislature***

The Family and Juvenile Law Advisory Committee reported that in 1998 the Legislature amended Family Code section 4252 to mandate the Judicial Council to conduct an evaluation of the child support commissioner system and report the results of the evaluation and its recommendations to the Legislature.

This mandate required the council to convene a workgroup to advise the council on establishing criteria to evaluate the successes and failures of the child support commissioner system and establish successful outcomes for that system. Taking into consideration input from the evaluation workgroup, and with the assistance of consultants, the Judicial Council staff established criteria, gathered data, carried out the evaluation, and produced a report to the Legislature.

*Council action:*

The Judicial Council approved a report on the evaluation of the child support commissioner system and directed staff to forward it to the Legislature.

**Item 1F New Forms for Interstate Child Support Actions: *Judgment Regarding Parental Obligations (UIFSA)* and *Ex Parte Application for Transfer and Order (UIFSA)* (adopt Forms 1298.58 and 1298.60)**

The Family and Juvenile Law Advisory Committee reported that currently there are no Judicial Council forms specifically designed for transferring cases to the proper county under the Uniform Interstate Family Support Act (UIFSA) or for obtaining judgments under the UIFSA, as contemplated in the newly enacted Family Code sections 5001 and 5002.

*Council action:*

The Judicial Council, effective July 1, 2000, adopted the following new, mandatory forms:

1. *Judgment Regarding Parental Obligations (UIFSA)* (Form 1298.58) for judgments obtained under UIFSA; and
2. *Ex Parte Application for Transfer and Order (UIFSA)* (Form 1298.60) for the transfer of UIFSA cases to the proper county.

**Item 1G *Order/Notice to Withhold Income for Child Support* (revise Form OMB 0970-0154)**

The Family and Juvenile Law Advisory Committee reported that a recent amendment to the Code of Federal Regulations changed the time period within which an employer must send child or family support amounts withheld from an employee's wages to the payee from 10 days to 7 days. Form OMB 0970-0154, adopted by the Judicial Council on December 2, 1999, incorrectly listed the number of days as 10.

*Council action:*

The Judicial Council, effective July 1, 2000, revised the *Order/Notice to Withhold Income for Child Support* (Form OMB 0970-0154) to change the allowed period for an employer to send withheld child or family support amounts to the payee from 10 days to 7 days.

**Item 1H Family Law Facilitators and Information Centers: Disclosures; Title IV-D Child Support: Training for Clerks (approve Forms 1294 and 1294.5; adopt Cal. Rules of Court, rule 1280.11)**

The Family and Juvenile Law Advisory Committee reported that Family Code section 4252(b) requires that standards for clerk training be adopted to ensure that clerks involved in Title IV-D child support cases receive information and training concerning child support laws and procedures. Family Code sections 10015 and 15010(i) require the Judicial Council to create any necessary forms for litigants using the services of a family law facilitator or family law information center to inform them of the nature and limited scope of those services. New Forms 1294 and 1294.5 and new rule 1280.11 have been created to fulfill those requirements.

*Council action:*

The Judicial Council, effective July 1, 2000:

1. Adopted rule 1280.11 of the California Rules of Court to provide a standard of training for court clerks assigned to Title IV-D child support cases;
2. Approved the *Office of the Family Law Facilitator Disclosure* (Form 1294) to clarify the type and level of services offered to litigants by the family law facilitator; and
3. Approved the *Family Law Information Center Disclosure* (Form 1294.5) to clarify the type and level of services offered to litigants by the Family Law Information Center.

**Item 1J Request to Set Aside Voluntary Declaration of Paternity (adopt Forms 1296.77, 1296.78, and 1296.79; adopt Cal. Rules of Court, rule 1280.10)**

The Family and Juvenile Law Advisory Committee reported that the Judicial Council is required by Family Code section 7575(c)(6) to develop forms and procedures to effectuate Family Code section 7575(c), which provides a process for the setting aside of voluntary declarations of paternity.

The *Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity* and the *Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity* were originally circulated for comment in the summer of 1999. The forms cited Family Code section 2120 in describing certain grounds for bringing the request to set aside a voluntary declaration of paternity. Those forms were adopted in the last cycle

but were subsequently revoked, revised, and recirculated for comment as a result of legislation that removed Family Code section 2120 as a basis for setting aside voluntary declarations of paternity.

*Council action:*

The Judicial Council, effective July 1, 2000, adopted:

1. *Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity (Family Law—Uniform Parentage—Governmental)* (Form 1296.77) to request the setting aside of a voluntary declaration of paternity;
2. *Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity (Family Law—Uniform Parentage—Governmental)* (Form 1296.78) to respond to a request to set aside a voluntary declaration of paternity;
3. *Order After Hearing on Motion to Set Aside Voluntary Declaration of Paternity (Family Law—Uniform Parentage—Governmental)* (Form 1296.79), for the order resulting from the hearing on the setting aside of the voluntary declaration of paternity; and
4. Rule 1280.10 of the California Rules of Court, regarding procedures for hearings to set aside voluntary declarations of paternity when no previous action has been filed. This rule explains the procedure for the creation of a court file upon the filing of a request for hearing when there is no prior action between the parties.

**Item 1K Rules on Appeal—Requests for Judicial Notice (adopt Cal. Rules of Court, rule 14.5)**

The Appellate Advisory Committee reported that a party may request that an appellate court take judicial notice of a certain matter. Sometimes such a request is presented in the text—or even in a footnote—of a brief or an unrelated motion. Requests presented in this manner are difficult for the court to act upon because it is unclear whether the request is intended to be a motion, which would require notice, hearing, and a ruling on the request.

*Council action:*

The Judicial Council, effective July 1, 2000, adopted rule 14.5 of the California Rules of Court to require that a request for judicial notice in a cause pending before the Supreme Court or the Court of Appeal be made by a motion filed separately from a brief or other paper.



**Item 1L Sanction Procedures—Appellate Division of the Superior Court (amend Cal. Rules of Court, rule 135(e))**

The Appellate Advisory Committee reported that currently no rule or procedure governing the appellate division of the superior court exists for requesting or imposing sanctions. As a result, some attorneys have been sanctioned without notice, hearing, or explanation.

*Council action:*

The Judicial Council, effective July 1, 2000, amended rule 135 of the California Rules of Court (costs on appeal in the appellate division of the superior court) to establish a procedure for requesting or imposing sanctions similar to the procedures in other appellate courts.

**Item 1M Appellate Writs—Early Finality and Format Requirements (amend Cal. Rules of Court, rules 24(d) and 56(a), (d))**

The Appellate Advisory Committee reported on several proposals made by principal attorneys of the appellate courts to facilitate writ proceedings in the courts. The proposed amendments to rules concerning writs would remedy the following problems:

- *Early finality.* Under the current rules, a Court of Appeal cannot order early finality of a *denial* of a writ after issuance of an alternative writ or order to show cause, even though it may do so after *granting* a peremptory writ. This anomaly restricts the court's discretionary power to make the denial effective immediately, and that may unnecessarily delay the trial court proceedings.
- *Form of the petition.* The rules applicable to writs lack several provisions concerning the form of briefs, making the requirements unclear.
- *Exhibits' volume size needs limits.* Supporting documents are sometimes so large that they fall apart as court personnel try to handle them.
- *Uncertain page references.* Current rules require each exhibit to be numbered consecutively, but if there are many exhibits, references to them are unclear unless multiple volumes are paginated consecutively among *all* the volumes.
- *Expired provision.* One paragraph of rule 56(a) expired by its own terms in 1994.

*Council action:*

The Judicial Council, effective July 1, 2000:

1. Amended rule 24(d) of the California Rules of Court to give a Court of Appeal discretion to order early finality when a writ petition is *denied* after issuance of an alternative writ or an order to show cause;
2. Amended rule 56(a) to require writ petitions to comply with rule 15, insofar as it is practicable to do so, unless rules 56–60 specifically provide otherwise;
3. Amended rule 56(d) to limit each volume of supporting documents to 300 pages;
4. Amended rule 56(d) to require that an exhibit made up of multiple volumes be paginated consecutively as a whole; and
5. Amended rule 56(a) to delete the final paragraph, an expired provision that temporarily granted an exemption from the requirement that the attorney's State Bar number appear on the cover of the petition.

**Item 1N Rule Creating the Probate and Mental Health Advisory Committee (adopt Cal. Rules of Court, rule 6.44)**

The Probate and Mental Health Task Force reported that the Judicial Council, at its October 1999 meeting, approved the creation of a permanent Probate and Mental Health Advisory Committee, which would make recommendations to the council for improving the administration of justice in proceedings involving (1) decedents' estates, trusts, conservatorships, guardianships, and other probate matters; and (2) issues of mental health and developmental disabilities. A rule is required to implement the council's action.

*Council action:*

The Judicial Council, effective November 1, 2000, adopted rule 6.44 of the California Rules of Court to create the Probate and Mental Health Advisory Committee and to establish its area of focus and its membership.

**Item 1P Unfair Competition Cases: Ensuring Compliance With Special Service Requirements (amend Cal. Rules of Court, rules 15, 16, 28, 56, and 105)**

The Appellate Advisory Committee reported that a little-known special service requirement for unfair competition appeals and writs includes the requirement that the party initiating the proceeding serve the Attorney General of California and the local district attorney within three days of filing the appeal or writ. This section has been interpreted to require service of the opening brief but not the notice of appeal. The proposed amendments would (1) increase compliance with the special service requirements set forth in section 17209 of the Business and Professions Code; (2) ensure

that courts other than hearing these types of writs and appeals have parallel provisions; and (3) assist the appellate courts in identifying unfair competition proceedings.

*Council action:*

The Judicial Council, effective July 1, 2000, amended:

1. Rule 16 of the California Rules of Court to require that each brief and each petition in unfair competition cases be served on the Attorney General of California and on the local district attorney;
2. Rules 28, 56(b), and 105(e) to refer to the special service requirements of proposed rule 16(d); and
3. Rule 15 to identify briefs and petitions as applying to an unfair competition case.

**Item 1Q Filing the Brief in Death Penalty Appeals (amend Cal. Rules of Court, rule 39.57)**

The Appellate Advisory Committee reported that in February 1997, the Judicial Council adopted rules 39.50–39.57 in response to Assembly Bill 195. That legislation implemented expedited preparation of death penalty records and a separate briefing schedule for death penalty cases.

The record preparation process implemented by AB 195 applies to cases in which *trial* commenced on or after January 1, 1997. However, the briefing schedule applies to cases where the *sentence of death* was imposed on or after January 1, 1997. There is an “in-between” category of cases in which the AB 195 briefing schedule applies but the AB 195 record preparation process does not apply. It is problematic to apply the briefing scheduling to these in-between cases.

*Council action:*

The Judicial Council, effective July 1, 2000, amended rule 39.57 (time for filing briefs in death penalty cases) of the California Rules of Court to apply to capital cases that commenced on or after January 1, 1997.

**Item 1R Defendant’s Statement of Assets (adopt Form CR-115)**

The Criminal Law Advisory Committee reported that Senate Bill 1768 (Kopp) amended Penal Code section 1202.4 to require a convicted criminal defendant to file a financial statement to assist crime victims in collecting restitution. The legislation requires the Judicial Council to create a form interrogatory for the convicted criminal defendant to file with the court “for the purposes of facilitating the disclosure.”

*Council action:*

The Judicial Council, effective July 1, 2000, adopted the *Defendant's Statement of Assets* (Form CR-115).

**Item 1S Petition for Modification: Conduct of Hearing (amend Cal. Rules of Court, rule 1432(f))**

The Family and Juvenile Law Advisory Committee reported that rule 1432(f) of the California Rules of Court addresses the conduct of a modification hearing in juvenile dependency court. The rule currently provides that the court has discretion to decide section 388 petitions based on declaration and documentary evidence or on testimony unless the request is for removal of the child from the home of a parent or guardian or removal is to a more restrictive level of placement. The committee proposed an amendment to add an exception limiting the court's discretion where there is a due process right to confront and cross-examine witnesses.

*Council action:*

The Judicial Council, effective July 1, 2000, amended rule 1432(f) of the California Rules of Court to add an exception limiting the court's discretion to decide petitions under Welfare and Institutions Code section 388 on the basis of documentary evidence, to conform to the holding of *In re Matthew P.* and require a juvenile court to hold a contested hearing when there are due process considerations.

**Item 1T Adoption Forms: *Petition for Adoption, Petitioner Consent and Agreement to Adoption, Order of Adoption, and Consent to Termination of Parental Rights and Certification—Adoption of an Indian Child* (revise Forms ADOPT-200, ADOPT-210, ADOPT-215, and ADOPT-225)**

The Family and Juvenile Law Advisory Committee proposed amendments to adoption forms to address two issues:

1. Adoptive parents are not always aware of the financial and medical resources that are available to them for the care of their adoptive children.
2. Siblings who are subject to juvenile court proceedings are not always placed in the same home together; often they are adopted by different parents.

In addition, current Form ADOPT-225 contains an incorrect citation. The proposed revisions make technical changes to provide adoptive parents with information about the Adoption Assistance Program, to ensure that adopted children can remain in contact with their biological siblings, and to correct the citation.

*Council action:*

The Judicial Council, effective January 1, 2001, revised:

1. *Petition for Adoption* (Form ADOPT-200);
2. *Petitioner Consent and Agreement to Adoption* (Form ADOPT-210);
3. *Order of Adoption* (Form ADOPT-215); and
4. *Consent to Termination of Parental Rights and Certification—Adoption of an Indian Child* (Form ADOPT-225).

**Item 1U Miscellaneous Technical Changes to Rules and Forms (amend Cal. Rules of Court, rules 828, 1432, and 1452; revise Forms CH-120, CH-140, CH-150, SC-120, 982(a)(6), 1286.50, and 1299.16)**

AOC staff proposed changes to correct errors in rules and forms, identified by advisory committees, court personnel, members of the public, and staff. The errors resulted from changes in statutes and inadvertent omissions.

*Council action:*

The Judicial Council, effective July 1, 2000:

1. Amended rule 828(b)(5) of the California Rules of Court to require the clerk to send a copy of Form TR-235, *Officer's Declaration*, to the arresting officer's agency when a defendant makes a request for trial by written declaration;
2. Amended rule 1432(e) to correctly cross-reference rule 1407;
3. Amended rule 1452 to correctly cross-reference Welfare and Institutions Code sections 301 and 360;
4. Revised the *Order to Show Cause and Temporary Restraining Order (CLETS)* (Form CH-120) and *Order After Hearing on Petition for Injunction Prohibiting Harassment (CLETS)* (Form CH-140) to correct the warning notice on the second page of each form so that it is in bold print;
5. Revised the *Instructions for Lawsuits to Prohibit Harassment* (Form CH-150) to correctly state that the defendant must be served five days before the hearing;
6. Revised the *Defendant's Claim and Order to Plaintiff (Small Claims)* (Form SC-120) to include a declaration that no plaintiff is in the military service;
7. Revised the *Request for Entry of Default* (Form 982(a)(6)) to (a) include a reference to a "legal document assistant," (b) correct the reference to "clerk's judgment" to read "entry of default," and (c) delete an obsolete notice on the bottom of the form;
8. Revised the *Declaration for Default or Uncontested Dissolution or Legal Separation (Family Law)* (Form 1286.50) to correctly cross-reference Form 1285.55, *Property Declaration (Family Law)*; and
9. Revised the *Notice of Entry of Judgment and Certificate of Service by Mail (Governmental)* (Form 1299.16) to conform to the requirement of Family Code section 17430(d) that the social service agency, rather than the court, serve the notice of entry of judgment.

**Item 1V Technical Revisions to Domestic Violence Forms (revise Forms DV-110, DV-130, and MC-220)**

AOC staff reported that the Legislature, in Senate Bill 218, amended Penal Code section 12021(g) to require on all protective order forms a specific notice, in bold print, regarding the mandatory relinquishment of firearms by the restrained person. The statute also requires the Judicial Council to provide on all protective orders notice that, among other things, the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect.

*Council action:*

The Judicial Council, effective July 1, 2000, revised the *Order to Show Cause and Temporary Restraining Order (CLETS) (Domestic Violence Prevention)* (Form DV-110), *Restraining Order After Hearing (CLETS) (Domestic Violence Prevention)* (Form DV-130), and *Protective Order in Criminal Proceeding (CLETS) (Penal Code, § 136.2)* (Form MC-220).

**ITEM 2 Designation of Testing Entity for Court Interpreters (Gov. Code, § 68562(b))**

The current two-year contract with Cooperative Personnel Services to provide testing for certified and registered court interpreters will expire June 30, 2000. At present, there are no other viable testing entities with the capacity to administer the court interpreter examinations for the Judicial Council. To ensure that it can continue to offer qualifying examinations for persons interested in becoming court interpreters, the Judicial Council must designate a testing entity for the next two fiscal years. This lead time will also give universities and students time to schedule preparatory classes for upcoming test dates.

Legislation effective January 1, 1993, requires the Judicial Council to implement a comprehensive court interpreters program, including the provisional authorization of an entity to certify interpreters pending its approval of more permanent testing entities.

*Council action:*

The Judicial Council:

1. Designated Cooperative Personnel Services (CPS) as a testing entity to certify court interpreters, effective July 1, 2000, through June 30, 2002, subject to the establishment of a mutually satisfactory agreement between the Administrative Office of the Courts and CPS; and
2. Delegated future selection of testing entities to the Administrative Director of the Courts.

### **ITEM 3 Criteria for 2000–2001 Drug Court Mini-Grant Awards**

The Collaborative Justice Courts Advisory Committee reported that the California Office of Criminal Justice Planning (OCJP) has provided grant funding to drug courts in California for four years through the Edward Byrne Program and has committed to a fifth year of funding for fiscal year 2000–2001. The Administrative Office of the Courts administers this grant, distributes the funds to trial courts throughout the state, and evaluates the effectiveness of the recipient programs. Prior to the 1999–2000 review process, the Judicial Council approved general criteria for the award. The Collaborative Justice Courts Advisory Committee proposed that the criteria approved in 1999 be used to evaluate the fiscal year 2000–2001 grants.

*Council action:*

The Judicial Council approved the following criteria for fiscal year 2000–2001 Drug Court Mini-Grant Awards:

- Viability of the program and its current level of financial need;
- Consistency with the California Standards of Judicial Administration and other drug court guidelines;
- Involvement of a local steering committee;
- Successful completion of statistical and financial reporting requirements for previous mini-grant funding periods (if applicable); and
- Completeness and comprehensiveness of the application.

### **ITEM 4 Allocation in Fiscal Years 2000–2001 and 2001–2002 for the Complex Civil Litigation Pilot Program**

The Trial Court Budget Commission reported that the funding currently identified for the Complex Civil Litigation Pilot Program is not adequate to fund all six participating courts at the projected program levels.

*Council action:*

The Judicial Council allocated an additional \$100,800 for the Complex Civil Litigation Pilot Program for each of two fiscal years, 2000–2001 and 2001–2002.

## ITEM 5 CIVIL AND SMALL CLAIMS: RULES AND FORMS CHANGES

### Item 5A Uniform Statewide Rules in Preempted Fields (amend Cal. Rules of Court, rules 201, 313, 324, 325, 376, 379, 391, 501, and 981.1; adopt rule 388)

Judge Elaine M. Watters, Chair of the Civil and Small Claims Advisory Committee's Subcommittee on Uniform Rules, presented the report, assisted by Mr. Patrick O'Donnell, advisory committee counsel. Judge Watters stated that with rule 981.1 of the California Rules of Court, which takes effect July 1, 2000, the Judicial Council will preempt all local court rules in civil cases in the fields of pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and the form and format of papers. She stated that uniform statewide rules will supercede local rules that are inconsistent with state rules or other local rules, are redundant, or violate statute.

Mr. O'Donnell noted that the process of identifying the best rule to adopt statewide was thorough and diligent. Fourteen commentators submitted suggestions, most of which were proposed amendments to established statewide rules of court.

Judge Ana Maria Luna expressed concern about the effect of rule 324 (tentative ruling procedure) on sole practitioners who may or not be able to contact the court or receive telephonic notice to find out what the tentative ruling is. Mr. O'Donnell stated that he was a litigator in a three-attorney office before joining the agency and that there are many viable ways of working within a tentative ruling system in a small practice. For example, the attorney can inform counsel ahead of time that he or she plans to appear. He acknowledged that this system is not perfect, but it is definitely workable.

Mr. Michael Case stated that he was the single objector to this rule on the Rules and Projects Committee and that, even though a similar rule has been in effect since 1992 and a number of counties think well of the rule, he shares Judge Luna's concerns. He noted that the tentative provision on rulings is particularly burdensome for those who handle multiparty cases. In those cases, the attorney has a one-hour window to check for the tentative ruling and to contact all the attorneys involved in the dispute.

#### *Council action:*

Judge Luna asked that rule 324 be voted on separately from the other rules in the motion made by Justice Huffman.

The chair agreed with the request.

Judge Melinda A. Johnson expressed concern that rule 324 intrudes on a court's fast track management system. She also commented on rule 379, which states that a court cannot require advance copies of materials on ex parte applications. She stated that this rule would seriously limit a judge's ability to hear cases because he or she would often delay a



hearing in order to read the materials. While uniformity is important, Judge Johnson stated that it is less important than making sure that the judge has the information necessary to make a decision. Mr. O'Donnell responded that the committee had discussed this issue repeatedly. The committee believed that the basic process of ex parte proceedings required an immediate relief incompatible with a requirement for advance copies of materials.

Judge Jahr expressed his support for proposed rule 324. He noted that local courts can promulgate local rules that are consistent with the statewide rule but are more elaborate. For example, courts can provide a longer time period for a party to contact the court and the opposing parties to inform them of the intention to appear.

*Council action:*

Justice Huffman moved that the Judicial Council, effective July 1, 2000, amend rule 324 of the California Rules of Court to clarify the effect of the rule and to allow courts to make tentative rulings available not only by telephone but also by other methods.

The motion passed.

*Council action:*

Justice Huffman moved that the Judicial Council, effective July 1, 2000:

1. Amend rules 201 and 501 of the California Rules of Court to provide that, at the option of the person filing papers, a fax number and an e-mail address may be included on the first page of the papers;
2. Amend rule 313 to clarify the proper manner of paginating a memorandum;
3. Amend rule 325 to require that demurrers be set for hearing on a date no later than 35 days following the filing of the demurrer;
4. Amend rule 376 to require the use of mandatory forms for all motions to be relieved as counsel;
5. Amend rule 379 to require that the party making an ex parte application include in a declaration that the opposing party has been notified of the relief sought;
6. Adopt a new rule 388 that would list the documents that must be filed in order to obtain a default judgment on declarations;
7. Amend rule 391 to clarify the purpose and procedures for the preparation of orders after a hearing; and
8. Amend rule 981.1 to clarify the rule and create a temporary exemption for local rules relating to class actions, eminent domain proceedings, and receivership proceedings until January 1, 2002.

The motion passed.

**Item 5B Motion to Be Relieved as Counsel (adopt Forms MC-051, MC-052, and MC-053)**

Mr. O'Donnell reported that presently no Judicial Council forms exist for attorneys to use in motions to be relieved as counsel of record. Attorneys are supposed to prepare, file, and serve their own motion papers in accordance with rule 376 of the California Rules of Court. However, motions to be relieved as counsel sometimes must be heard several times before the requisite notice is given to the client and sufficient other information is provided to the courts. To deal with this problem, the Civil and Small Claims Advisory Committee proposed that a mandatory set of Judicial Council forms be adopted for use in all motions to be relieved as counsel in civil cases.

The council discussed whether the order relieving counsel should be required to include a specific future hearing date if no such date is presently scheduled. Proposed rule 376, subdivision (e) provides that the court "shall" set a future date if no such date is set.

*Council action:*

Judge Jahr moved that in the third sentence of rule 376 (e) of the California Rules of Court, the word "shall" be replaced by "may."

The motion passed.

*Council action:*

Judge Johnson moved that the Judicial Council, effective July 1, 2000, adopt:

1. *Notice of Motion and Motion to Be Relieved as Counsel—Civil* (Form MC-051);
2. *Declaration in Support of Attorney's Motion to Be Relieved as Counsel—Civil* (Form MC-052); and
3. *Order Granting Attorney's Motion to Be Relieved as Counsel—Civil* (Form MC-053).

The motion passed.

Ms. Pauline W. Gee asked if these forms will be translated. Staff replied that the translation of these and other forms has been discussed, but no schedule has been developed for it. Ms. Gee responded that, given the consequence for the client, these forms should be given priority in the translation schedule.

**ITEM 6 Allocations for Previously Provided Probation Services and Underreporting of Fiscal Year 1996–1997 Expenditures**

Judge Ray L. Hart, chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Mr. Jonathan Wolin, committee staff. Judge Hart stated that, pursuant to the Trial Court Funding Act, as of July 1, 1998, counties have had the option of either charging their respective court systems for court operations services previously provided free of charge or discontinuing such services altogether. As a result, at that time many

counties began charging courts for the provision of various services, including probation-department-provided mediation, evaluation, and investigation in family, probate and guardianship, and mental health cases. In fewer instances, counties chose to discontinue probation provision of these services, and thus operational responsibility was transferred to affected court systems.

These costs are nondiscretionary trial court expenses for the provision of mandatory services. The TCBC recommended allocating \$2.7 million, on a one-time basis, to 26 courts for fiscal year 1999–2000 to fund services previously provided by counties.

Justice Huffman asked what the source of the one-time funding was. Mr. Wolin responded that the \$2.7 million was from the 1 percent reserve balance. After the \$2.7 million is allocated, \$8.9 million will remain in the fund.

Judge Hart also presented the TCBC recommendation about the underreporting of fiscal year 1996–1997 expenditures. He said that courts have identified errors in reporting fiscal year 1996–1997 expenditures, upon which authorized base budgets were established.

Justice Huffman asked what the source of the permanent funding was. Mr. Wolin answered that the permanent funding was from balances in the Trial Court Improvement Fund. Justice Huffman clarified that the permanent funding would be added to the baseline budgets of those courts.

Judge Johnson asked whether the entire probation department in San Mateo County was being charged to the court (as was written on the attachment to the report in the council binder). Mr. Wolin stated that staff needed to clarify that reference. Judge Edwards stated that he read the attachment to mean that the probation department is providing all probate-related investigation services. Judge Hart agreed with that assessment.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Approve the allocation of funding in the amounts of \$2,719,987, on a one-time basis, to 26 courts for the costs of probation-provided mediation, investigation, and evaluation services in the areas of family, probate and guardianship, and mental health cases, for fiscal year 1999–2000.
2. Approve permanent allocations in the amounts of \$95,359 to the baseline budget of the Superior Court of Mariposa County and \$240,573 to the baseline budget of the Superior Court of San Diego County, to fund underreported costs from fiscal year 1996–1997.
3. Approve the policy that all outstanding reporting errors must be reported to the Administrative Office of the Courts by December 31, 2000.

The motion passed.

**ITEM 7 Interim Policy for Carryover of State Budget Funds From Fiscal Year 1998–1999 to Fiscal Year 1999–2000**

Judge Hart, chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Mr. Jonathan Wolin, committee staff. Judge Hart stated that the council has the authority, under the Trial Court Funding Act, to authorize trial courts to carry over unexpended funds from one fiscal year to the next. Judge Hart offered the TCBC-recommended policy for carryover funds.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Approve the attached interim policy for the carryover of state budget funds from fiscal year 1998–1999 to fiscal year 1999–2000; and
2. Approve the policy that if a court system is determined to be less than fully coordinated, it can carry over from one fiscal year to another unexpended 2 percent automation funds, but cannot carry over any other unexpended state trial court funds.

The motion passed.

**ITEM 8 Creation of an Incentive for Courts to Establish a Local Reserve From the 1 Percent Reserve**

Judge Hart, chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Mr. Jonathan Wolin, committee staff. He stated that the council is statutorily required to maintain a reserve in the Trial Court Improvement Fund equal to 1 percent of the annual appropriation for the trial courts. Historically, this reserve is spent annually and a new reserve established at the beginning of the next year.

Judge Hart noted that most trial court systems do not maintain reserves for emergencies such as cash-flow shortages and for unforeseen expenditures to avoid interrupting court operations. He said that approximately \$8.9 million remains in the Trial Court Improvement Fund reserve after approval of the two previous items on this agenda, to be used on a one-time basis. The TCBC developed a recommendation that would create an incentive for courts to maintain a locally managed reserve.

Justice Huffman, on behalf of the Executive and Planning Committee, expressed concern about the agenda item. He said the committee was not given material on the item to review prior to the council meeting. He stated that the council needed information on how the fund would be administered and on the comments received on the proposal before it could decide on the issue. Justice Huffman suggested that the item be deferred to a future council meeting.

Mr. William C. Vickrey stated that it was prudent and important to use available funds to enable local courts to establish local reserves and, in the future, to develop a carryover

policy that would permit the establishment of a 3 percent reserve at the local level to cover emergencies (for example, late budgets). This should be part of each court's base budget.

Judge Jahr asked whether the council would jeopardize the funds if they were not allocated by the end of the fiscal year. Judge Hart said he did not believe so.

Judge James Allen Bascue suggested that this issue be considered by the Court Executives Advisory Committee.

Judge Ronald B. Robie commented that no incentive was required for a court to accept money. The issue was how to structure a policy to encourage the establishment of the reserve.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Approve, in principle, the concepts of creating a trial court local reserve and taking funds from the existing reserve, encouraging the use of carryover funds for that purpose; and
2. Defer to a future council meeting the specific proposal presented by the Trial Court Budget Commission on the creation of an incentive for courts to establish a local reserve from the 1 percent reserve.

The motion passed.

## **ITEM 9 Kern County Trial Courts' Coordination Status**

This item was deleted from the agenda.

## **ITEM 10 Appeals—Amicus Curiae Briefs by the Attorney General and Time Limits (amend Cal. Rules of Court, rules 14(b)–(c) and 105(b))**

Mr. Ben McClinton, staff counsel to the Appellate Advisory Committee, presented the report. He stated that in California, the Attorney General cannot file an amicus curiae brief in an appellate court without obtaining the permission of the Chief Justice or a presiding judge. The Attorney General asserts that some courts are, without cause, refusing to allow his office to file amicus briefs. Mr. McClinton also noted that the current rules do not specify any time limits in the Courts of Appeal for filing an amicus brief or an answer.

The Appellate Advisory Committee recommended a rule change to allow the Attorney General to file an amicus curiae brief in an appellate court without obtaining the permission of the Chief Justice or presiding judge only if the Attorney General is filing in his or her own name and not on behalf of the state or agency.

Justice Huffman expressed concern that the rule change would allow one branch of government to gain control over another branch's schedule, in effect depriving the Supreme Court and Courts of Appeal of the ability to control their calendars.

Chief Justice George noted that, as a practical matter, only 1 of the 18 appellate courts disallows the filing of amicus curiae briefs, and in that court a brief submitted outside the specified time frame is not accepted. Furthermore, he stated his preference that the council respond to the Attorney General's concerns rather than open itself up for the possibility of legislation on the issue.

*Council action:*

Judge J. Richard Couzens moved that the Judicial Council, effective July 1, 2000, amend rules 14(b)–(c) and 105(b) to:

1. Allow the Attorney General to file an amicus curiae brief without obtaining the permission of the Chief Justice or a presiding judge; and
2. Specify time limits in the Courts of Appeal for the Attorney General to file an amicus brief and for a party to file an answer to it.

The motion passed.

### **Circulating Order Approved**

Circulating Order CO-00-04: New elder abuse protective order forms.

For information only; no action necessary.

### **Appointment Orders**

For information only; no action necessary.

The meeting was adjourned at 1:50 p.m.

Respectfully submitted,

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William C. Vickrey  
Secretary