

## **JUDICIAL COUNCIL MEETING**

### **Minutes of August 27, 1999, Meeting**

The Judicial Council of California meeting began at 8:50 a.m. on Friday, August 27, 1999, 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 Richard D. Aldrich, Marvin R. Baxter, Carol A. Corrigan, and Richard D. Huffman; Judges James Allen Bascue, J. Richard Couzens, Albert Dover, Brenda Harbin-Forte, Steven E. Jahr, Melinda A. Johnson, Ana Maria Luna, Michael B. Orfield, and Ronald L. Taylor; Mr. Michael Case, Mr. Maurice Evans, Ms. Pauline W. Gee, and Mr. Sheldon H. Sloan; and **advisory members:** Justice William M. Wunderlich, Commissioner David L. Haet, Ms. Sheila Gonzalez, Mr. Joseph A. Lane, Mr. Stephen V. Love, and Mr. Frederick Ohlrich.

**Absent:** Judge Paul Boland, Senator Adam Schiff, and Assembly Member Sheila James Kuehl.

**Others present included:** Mr. William C. Vickrey; Justice Norman Epstein, Judges David Danielsen, Leonard P. Edwards, Judith Donna Ford, Ray L. Hart, Donna J. Hitchens, Darrell Lewis, Ronald B. Robie; Mr. Ron Barrow, Ms. Lorna Choy, Mr. John Collins, Mr. Craig Cornett, Mr. Neil Cossman, Mr. Jason Doiy, Ms. Sharon Ezekiel, Mr. Jay Folberg, Ms. Judy Garlow, Mr. Andy Guilford, Mr. Jose Octavio Guillen, Ms. Caroline Huffman, Ms. Beth Jay, Mr. Stephen Johnson, Mr. David Long, Mr. Chris Lynch, Ms. Eraina Ortega, Ms. Diane Quinta, Ms. Lynn Robie, Ms. Inger Sagatun-Edwards, Mr. Arthur Sims, Ms. Denise Teraoka, Mr. Gerald F. Uelmen, Ms. Martha Uelmen, Ms. Mary Viviano, Mr. Atsashi Yano, and Ms. Laurie D. Zelon; **staff:** Ms. Martha Amlin, Ms. Heather Anderson, Mr. Starr Babcock, Ms. Jessica Fiske Bailey, Mr. Michael Bergeisen, Mr. Roy Blaine, Mr. James Carroll, Ms. Jenie Chang, Ms. Carol Chappell, Ms. June Clark, Ms. Deborah Collier Tucker, Ms. Francine Collier, Ms. Eunice Collins, Ms. Angie Cristobal, Ms. Mary Jo Ejercito, Mr. Benny Gee, Ms. Jacquelyn Harbert, Ms. Kate Harrison, Ms. Fran Haselsteiner, Ms. Whitnie Henderson, Ms. Lynn Holton, Ms. Bonnie Hough, Ms. Melissa Johnson, Mr. Dennis Jones, Ms. Pat Kilkenny, Mr. Ray LeBov, Ms. Stephanie Leonard, Ms. Katy Locker, Mr. Bob Lowney, Ms. Kate Lucchio, Mr. Dag MacLeod, Mr. Ben McClinton, Mr. Frederick Miller, Mr. Martin Moshier, Ms. Vicki Muzny, Ms. Judy Myers, Mr. Gaidi Nkruma, Ms. Diane Nunn, Ms. Cynthia Passon, Ms. Bettina Redway, Ms. Isolina Ricci, Ms. Karen Ringuette, Ms. Evelyn Rowan, Mr. Victor Rowley, Mr. Richard Schauffler, Mr. Frank Schultz, Ms. Linda Sharp, Ms. Dale Sipes, Ms. Marlene Smith, Ms. Kim Taylor, Ms. Marcia Taylor, Ms. Rochelle Terrell, Ms. Kiri Torre, Ms. Liz Vazquez-Avila, Mr. Anthony Williams, Mr. Gary Williams, Mr. Jonathan Wolin, and Ms. Pat Yerian; **media representatives:** Ms. Rinat Friea, *The Recorder*; Mr. David Kravits, *The L.A. Daily Journal*, and Mr. Art Ramstein, *California Service Bureau*.

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 binders of Reports and Recommendations dated August 27, 1999, which were sent to members in advance of the meeting.)

*Special comment:*

Chief Justice Ronald M. George welcomed new members of the council: Hon. Leonard Edwards, Judge of the Superior Court of California, Santa Clara County; Hon. Donna J. Hitchens, Judge of the Superior Court of California, San Francisco County; Hon. Ronald Robie, Judge of the Superior Court of California, Sacramento County; Mr. John J. Collins, State Bar representative; and advisory members Hon. David J. Danielsen, incoming California Judges Association President and Judge of the Superior Court of California, San Diego County; Mr. Ron Barrow, Clerk of the First Appellate District; Mr. Arthur Sims, Executive Officer, Superior Court of California, Riverside County. The new members will start their terms of service on September 15, except for Judge Danielsen, whose term begins October 1.

### **Council Committee Presentations**

Reports on committee activities were included in the binders of Reports and Recommendations dated August 27, 1999.

*Executive and Planning*

Justice Richard D. Huffman, Chair, reported that the Executive and Planning Committee met once in person and three times by phone since the last council meeting, primarily to review items for this meeting, determine their readiness for council action, and set the agenda.

He said that on August 12, pursuant to the rule of court authorizing the committee to take action on behalf of the council between meetings and to accelerate distribution of money to the trial courts, the committee approved the allocation of fiscal year 1999–2000 trial court funds as recommended by the Trial Court Budget Commission. The committee took this action based upon the criteria adopted by the full council earlier this year.

Justice Huffman reported that on August 16 the committee voted to recommend that the council approve the fiscal year 2000–2001 Judicial Council budget (item 9 on today’s agenda) totaling \$110,995,000. The committee reviewed the staff report closely to ensure that increases in staffing or budget were:

- justified;
- in response to needs identified by the trial and appellate courts;
- not duplicative of services currently provided to courts by the counties; and
- consistent with the percentage growth of the request submitted on behalf of the trial courts.

Additionally, the committee discussed a request by the members of the Los Angeles County Judicial Executive Oversight Committee to defer discussions of that county's trial court coordination plan until a committee created to work on court unification in that county had a chance to meet and try to resolve issues.

Justice Huffman said that on Wednesday, August 25, because of insufficient information, the committee denied the request to take review of Los Angeles County's new trial court coordination plan off the council's October agenda. The committee requested more information by September 17.

Additionally, the committee approved sending a letter to the Presiding Judge of the Superior Court of Orange County, reminding the court that no public funds, including local fees, could be used for nonstenographic preparation of court records except in limited civil cases, misdemeanors, and infractions.

Justice Huffman stated that the committee spent most of August 25 discussing over 400 nominations received for membership on 13 Judicial Council advisory committees and nominations received for membership on the Legal Services Trust Fund Commission. The committee's recommendations will be forwarded to the Chief Justice for his selection and appointment. The terms of new committee members will begin on November 1.

#### *Policy Coordination and Liaison*

Justice Marvin R. Baxter reported that the Policy Coordination and Liaison Committee had met twice since the last council meeting. He said that on August 12, the committee adopted positions on three bills relating to family law. The committee also voted to cosponsor, with the California State Association of Counties, legislation to conform existing law to the Trial Court Funding Act of 1997.

Justice Baxter stated that the committee reviewed a legislative proposal regarding trial court employees at its meeting on August 26. The legislation is being proposed by the two major employee organizations representing court employees and seeks to clarify issues related to the transition to unification.

Justice Baxter reminded council members that the council's Serranus Web site displays a status chart that tracks council-sponsored legislation and legislation on which the committee has taken a position on behalf of the council.

#### *Rules and Projects*

Judge Brenda Harbin-Forte reported that the Rules and Projects Committee met twice since the last council meeting. She stated that the committee reviewed advisory committee workplans to ensure that they were consistent with council policies and priorities. She noted that all workplans were approved upon receipt of supplemental information in some cases.

## **Item 1      Tactical Plan for Court Technology**

Hon. Judith Ford, Chair of the Court Technology Advisory Committee, presented the report, assisted by Ms. Pat Yerian, Director of the AOC's Information Systems Bureau (ISB), and Mr. Victor Rowley, ISB Manager and committee staff. Judge Ford stated that the committee believed it was impracticable and cost prohibitive to continue to implement technology independently in each of the 58 counties. The committee recommended approval of a statewide plan that meets local technology needs, ensures the consistency and availability of information, and leverages statewide technology resources.

Judge Ford said that the committee proposed the Tactical Plan for Court Technology, a coordinated multiyear funding and implementation plan that supports innovation, maintains flexibility, and focuses on providing for the technology needs of the courts in a cost effective manner.

Judge Ford pointed out three major policy implications of the plan:

1. Local courts would be limited in their technology choices and would surrender some of the autonomy they previously enjoyed;
2. Coordination and collaboration between courts would be required in order to meet statewide technology objectives; and
3. Technology would be managed from the statewide perspective.

Judge Johnson expressed concern that technologically sophisticated courts would not receive funding for at least three years, which implies either that they have the resources necessary to implement the plan or that they do not yet need to implement the plan. Mr. Rowley clarified that the plan support the maintenance of existing useful efforts and systems created or used by local courts. The tactical plan would be implemented at the time that courts request funding to replace existing systems. The larger courts in particular may have sufficient additional resources in baseline budgets to proceed with some of the tactical plan implementation earlier than the stated time frame.

Judge Albert Dover asked what the relationship was between the Trial Court Budget Commission's (TCBC) budget development process and the tactical plan for court technology. He noted that the TCBC proposal on the council's agenda today includes money for technology. He asked whether the tactical plan would be the controlling mechanism for technology funding and whether the Court Technology Advisory Committee would recommend action to the council on budget decisions related to court technology.

Mr. William Vickrey stated that the goal is for the Court Technology Advisory Committee (CTC) to recommend to the TCBC allocations of baseline and incremental budgets, using the tactical plan's criteria and guidelines. The TCBC would make final recommendations to the council based on CTC input. The TCBC's role is to sort out the priorities on all budget-related issues and recommend allocations based on available funding, which might be less than recommended by the CTC.

Judge Steven Jahr said that the Court Technology Advisory Committee may advise the council on funding sources outside the TCBC's scope. He echoed Judge Dover's comments, stating that the plan should detail and rationalize the relationship between the Court Technology Advisory Committee and the TCBC. Ms. Yerian concurred and indicated that CTC and TCBC staff are meeting to develop an approach to integrate the tactical plan into the budget development and allocations processes.

Judge Michael Orfield asked whether the plan includes coordination of vendors. Mr. Rowley replied that the plan includes coordinated procurement, which will result in cost savings because of economy of scale.

*Council action:*

Ms. Sheila Gonzalez moved that the Judicial Council approve in concept a Tactical Plan for Court Technology that has the following six objectives:

- Integrates the technology strategic planning process with the budget development and allocation processes;
- Sets statewide priorities for technology funding that limit local spending alternatives;
- Coordinates all sources of funding for technology;
- Achieves economies by mandating collaborative approaches and common solutions to technology issues;
- Provides a multiyear implementation plan; and
- Maintains flexibility to encourage technological innovation among trial courts.

The motion passed.

## **Item 2      Implementation of Trial Court Performance Standards**

Mr. Frederick Ohlrich, Chair of the Court Executives Advisory Committee, presented the report, assisted by Mr. Jose Octavio Guillen, member, and Ms. Francine Collier, committee staff. Mr. Ohlrich stated that in 1995, the Judicial Council adopted section 30 of the California Standards of Judicial Administration on trial court performance. The standard consists of performance standards to be used by trial courts for internal evaluation, self-assessment, and self-improvement. There are 22 standard categories in five major areas of court performance: (1) access to justice; (2) expedition and timeliness; (3) equality, fairness, and integrity; (4) independence and accountability; and (5) public trust and confidence. The accompanying measurement system consists of 68 measures for courts to use in gathering feedback on its performance in the 22 standard categories.

Mr. Ohlrich emphasized that these standards provide tools for self-assessment and measurement and are not designed for comparisons between courts. The tools include checklists and inventories and fall into three categories: (1) indirect (e.g., whether people can hear in the courtroom); (2) periodic, which are organizational in scope (e.g., reliability of document processing); and (3) continuous (e.g., customer satisfaction). He

reported that the Court Executives and Trial Court Presiding Judges Advisory Committees discussed the standards. The committees acknowledge that although implementing the standards is well worth the effort, it entails significant staff resources and expense. Therefore, the committees recommended not making the standards mandatory.

Mr. Guillen, Court Executive for the Superior Court of Napa County, shared his court's experience in implementing the standards. He described it as a race without a finish line.

Justice Aldrich commended the Los Angeles Municipal Court for implementing the standards and voluntarily using all 68 measures to assess its performance.

*Council action:*

Justice Aldrich moved that the Judicial Council:

*Retain Existing Standard*

1. Retain section 30 of the Standards of Judicial Administration on the Trial Court Performance Standard (TCPS) measurement system.
2. Encourage the trial courts to implement Levels One and Two of the streamlined TCPS measurement system for self-assessment and for guidance in local strategic planning efforts.

*Implementation of Streamlined System*

3. Authorize the Administrative Office of the Courts to seek funding for the automated survey system, as a means of encouraging courts to implement levels one and two of the streamlined system, as follows:
  - a. In fiscal year 1999–2000 money is budgeted to implement the system in six trial court systems;
  - b. In fiscal year 2000–2001, the AOC will seek funding for the remaining court systems;
  - c. In fiscal year 2001–2002, the AOC will encourage the trial courts to implement level two.
4. Direct the AOC to evaluate the program after each stage beginning in fiscal year 2000–2001.
5. Provide trial courts with orientation programs on implementation of TCPS at Court Executives and Trial Court Presiding Judges Conferences.
6. Authorize the Center for Judicial Education and Research (CJER) to explore incorporating education on the TCPS measurement system at the appropriate training sessions.

*Technical Assistance to Trial Courts*

7. Authorize distribution of the handbook, *The Essentials of Trial Court Performance—A Handbook for California Courts, December 1998* to all trial courts to assist in their ongoing assessment of performance.
8. Direct the AOC to maintain a database of experiences to facilitate the exchange of information and provide the data necessary to conduct a long-term evaluation of the program for all trial courts as they implement the standards.

The motion passed.

### **Item 3      Report of the Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System**

Professor Jay Folberg, Chair of the Subcommittee on Alternative Dispute Resolution and the Judicial System, presented the report assisted by Hon. Darrel Lewis, Vice-chair; Professor Gerald F. Uelmen, member; and Ms. Heather Anderson, committee counsel. Professor Folberg stated that the subcommittee was charged with studying the effects of alternative dispute resolution (ADR) on courts, litigants, and the public and making recommendations to expand the positive effects of private ADR and ameliorate the negative ones. The subcommittee also was asked to identify the entity having the authority to develop ethical standards for ADR providers, recommend ethical standards, and propose needed changes to the standards for court referrals to attorneys and retired judges. He noted that the subcommittee focused on the domain of the judicial branch and civil proceedings only, favored mediation, and aimed to maximize party choice.

Ms. Anderson reviewed key positive and negative effects of ADR on litigants and the public, noting that the effects will vary depending on the type of ADR process. In general,

- ADR provides greater choice in dispute resolution methods;
- It is potentially easier and faster than traditional litigation;
- It is potentially a less costly means for resolving disputes;
- Private ADR may create a two-tier justice system;
- Predispute, binding arbitration takes away protections of trials in public court; and
- Inappropriate court referrals may burden litigants.

Ms. Anderson summarized positive and negative effects of ADR on the courts:

- It may reduce court workload;
- High-quality programs can increase public satisfaction with the court system;
- Private ADR may contribute to early retirement of judges and lower public support for the judicial system; and
- Inappropriate referrals or low-quality court programs can damage public perception of the courts.

Professor Folberg outlined the subcommittee's recommendations aimed at expanding the positive effects of ADR and ameliorating the negative ones. The subcommittee proposed rules, legislation, standards of judicial education, and outreach activities designed to:

- Provide litigants with more ADR information;
- Encourage voluntary mediation programs;
- Develop a mandatory mediation pilot program;
- Educate judges and court staff about ADR; and
- Coordinate ADR resources and activities statewide.

Professor Uelmen reported that he chaired a subcommittee that focused on ethical standards and enforcement. He said that ethical standards for various types of ADR



providers are established by many different sources, including the Legislature, Supreme Court, Judicial Council, local courts, and professional associations and providers. He stated that the subcommittee recommended that temporary judges, referees, and court-appointed arbitrators:

- Certify their compliance with Canon 6D of the California Code of Judicial Ethics;
- State their past service as an expert witness or attorney for any party to the dispute; and
- If they are former judicial officers, be a member of the State Bar in order to serve as a referee or arbitrator in the judicial arbitration program.

Professor Uelmen reported that the subcommittee also had several recommendations related to mediators and evaluators in court-related programs. It recommended that courts that maintain a panel or list of mediators be required to adopt ethical standards. Additionally, the subcommittee recommended the creation of a task force to draft model standards for mediators in court-related programs. Professor Uelmen reported the subcommittee generally did not develop recommendations in the area of private and community providers, as it is not within the domain of the judicial branch. However, the subcommittee did recommend adoption of a canon banning acceptance of gifts by former judges who are providing ADR services.

Judge Darrel Lewis reported on the subcommittee's concerns and recommendations for court referrals to retired judges and attorneys. He said that the principal area of concern is nonconsensual references, mostly of discovery matters. The perception is that matters are being inappropriately referred in routine cases, that the selection of the private judge is unfair and nepotistic, and that charges are not distributed reasonably. The subcommittee also discussed inappropriate referrals to judicial arbitration.

Judge Lewis also reported the subcommittee's recommendations that:

- Discovery references be made only in exceptional circumstances;
- References not be made if the parties cannot pay;
- The court's reference order set a maximum hourly rate and, if requested, an estimated maximum number of hours;
- Courts be required to appoint the referee agreed upon by the parties and have court selection as a backup only; and
- Collect information on the use of discovery referees.

Judge Leonard P. Edwards, incoming member of the Judicial Council, stated that the title and language of the report implies that all ADR was included in the study and recommendations. He recommended that the word "civil" be added to the title and the report to clarify that it refers to ADR in civil proceedings only. He also suggested rewriting part of page 4 to more accurately reflect the focus of the report. Finally, he proposed that the council direct staff to conduct a similar study of ADR in family and juvenile law proceedings.

Justice Huffman noted that the council's role at this time is to receive the report and refer the subcommittee's recommendations to the appropriate council committee or advisory committee.

Judge Dover expressed concern that several of the recommendations seemed to micromanage the Administrative Director. He suggested changing the language on staff recommendations 6, 11, and 17 to read "Direct the Administrative Director to assess the ability of the organization to implement the recommendation and take appropriate action." Justice Huffman said that the staff recommendations as written said the same thing in different language.

Mr. Case expressed concern about the disposition of the recommendations. Some of the recommendations were being referred to the Rules and Projects Committee (RUPRO). He asked whether the proposal would die if RUPRO declined to send a proposal out for comment. He had reservations about deferring policy decisions necessitated by some of the proposals to a smaller subcommittee of the council.

Mr. Vickrey said that legislative proposals would be developed by the Policy Coordination and Liaison Committee and come to the full council for approval. Items that RUPRO sends out for comment would go to the council for feedback and input; items that are rejected would be reported on at a future council meeting by the RUPRO chair. Justice Baxter clarified that the PCLC can take a position on legislation without the full council's approval but needs council approval to sponsor legislation.

Justice William Wunderlich requested that the CJA Ethics Committee be consulted on ethics issues such as the development of a new canon.

*Council action:*

Justice Huffman moved that the council:

1. Direct staff to present to the Rules and Projects Committee for consideration the subcommittee's proposals for new rules 1590, 1590.2, and 1590.3 of the California Rules of Court regarding ADR information packets, time frames for meeting and conferring about ADR, and canceling case management conferences when the parties stipulate to ADR;
2. Direct staff to present to the Rules and Projects Committee for consideration the subcommittee's proposal for new rule 1580.1 of the California Rules of Court regarding lists of ADR providers;
3. Direct the Civil and Small Claims Advisory Committee to further explore options for enhancing the enforceability of mediated settlement agreements;
4. Direct staff to present the subcommittee's proposals to the Policy Coordination and Liaison Committee that the council sponsor legislation enacting Code of Civil Procedure sections 1760–1760.4 and adopting rule 1620 et seq. of the California Rules of Court, which would authorize courts to refer general civil cases to mediation at the first case management conference or similar event, but also permit parties to opt out of such a referral. The proposals also provide that the parties select the neutral person and be responsible for the costs of the process, including the neutral's fees;

5. Direct staff to present the subcommittee's proposal to the Policy Coordination and Liaison Committee that the council sponsor legislation enacting Code of Civil Procedure sections 1780–1780.9, which would create a mandatory mediation pilot project in the Los Angeles Superior Court;
6. Direct the Administrative Director to take appropriate steps to implement the subcommittee's recommendation to develop proposals for additional ADR education programs for judges and court staff;
7. Direct staff to present to the Rules and Projects Committee the subcommittee's proposal to adopt rule 1580.3 of the California Rules of Court requiring courts to designate a court employee who is knowledgeable about ADR to serve as ADR program administrator;
8. Direct the Trial Court Budget Commission to consider recommending to the council that the trial court funding process place a high priority within on requests from trial courts for additional ADR program staffing funding;
9. Direct the Trial Court Budget Commission to consider recommending to the council that the council urge courts to place a high priority on ADR program staffing in the allocation of their court operations funding;
10. Direct staff to present to the Rules and Projects Committee the subcommittee's proposal to adopt rule 1580.2 of the California Rules of Court, which would require courts to submit information on their ADR programs to the council.
11. Direct the Administrative Director to take appropriate steps to designate staff within the AOC to focus on court-related ADR issues, including developing education programs, serving as a clearinghouse, and developing rules of court or standards of judicial administration;
12. Direct staff to present to the Rules and Projects Committee the subcommittee's recommendation to amend existing rules of court relating to temporary judges, referees, and arbitrators in the judicial arbitration program to:
  - a. Require that they disclose any prior public State Bar discipline or court finding of violation of the California Code of Judicial Ethics and certify that they will comply with applicable provisions of Canon 6 of the Code of Judicial Ethics and other ethical requirements,
  - b. Require disclosure of past service as an expert witness or attorney for any party and lengthen the time of the ban on acceptance of gifts to 24 months prior to disclosure, and
  - c. Require that any former California judicial officer be a member of the State Bar in order to serve as a referee or arbitrator in the judicial arbitration program;
13. Direct staff to present to the Rules and Projects Committee the subcommittee's recommendation to adopt rules 1580.1 and 1619 of the California Rules of Court, which would require courts that maintain a panel of mediators or make a list of mediators available to litigants to adopt ethical standards and that the mediators certify compliance with the standards;
14. Direct staff, in consultation with appropriate advisory committees and individuals, to develop a set of model ethical standards for court-related mediation programs for the council's consideration;
15. Direct staff to prepare a legal analysis of the subcommittee's recommendation that the council submit for consideration by the Supreme Court proposed Canon 6G of the

California Code of Judicial Ethics prohibiting former judicial officers who are providing dispute resolution services from accepting gifts from a party, person, or entity whose interests have come before the former judicial officer or, with certain exceptions, from counsel for such party, person, or entity.

16. Direct staff to present the subcommittee's recommendation to the Policy Coordination and Liaison Committee that the council sponsor legislation to amend the existing statutes relating to references to:
  - a. Clarify that discovery references should be made only in exceptional circumstances,
  - b. Require that a court determine the parties' ability to pay and prohibit a court from making a nonconsensual reference if the court cannot make such a finding,
  - c. Clarify that courts may not consider counsel's ability to pay the referee's fees when determining whether the parties are able to pay the fees,
  - d. Require that the court's reference order include the maximum hourly rate the referee may charge and, if requested by a party, estimated maximum number of hours,
  - e. Require the referee's report to include information about the total hours spent and the total fees charged by the referee,
  - f. Require courts to appoint the referee agreed upon by the parties and create a procedure for the selection of a referee when the parties have not agreed,
  - g. Require courts to forward copies of all discovery reference orders to the office of the presiding judge, and
  - h. Require the Judicial Council, by rule, to collect information on the use of discovery references and the fees charged to parties and to report to the Legislature on these issues;
17. Direct the Administrative Director to take appropriate steps to conduct a study of the judicial arbitration program to assess, among other things, resolution rates for the program and whether certain classes of cases appear to be more amenable to resolution through this program;
18. Direct AOC staff to add the word "civil" to the title and the report to clarify that it refers only to ADR in civil proceedings and to rewrite part of page 4 to more accurately reflect the focus of the report; and
19. Direct AOC staff to conduct a similar study of ADR in family and juvenile law proceedings.

The motion passed.

#### **Tab 4      Court/County Loan Policy**

Mr. Martin Moshier, Director of the AOC's Finance Bureau, presented the report, assisted by Mr. Frank Schultz, Finance Bureau Manager. Mr. Moshier stated that legislation requires courts to receive council approval before seeking a county loan. He summarized criteria on which court loan requests would be approved:

- The need is due to an unforeseen emergency;
- Other local court resources are not available to address the need;
- Use of other local or state resources is not appropriate to the situation;

- This is the only/best alternative available to the court under the circumstances;
- The court has the demonstrable ability to comply with the terms of the loan; and
- The court has the ability to repay the loan.

Mr. Moshier recommended that the council delegate to the Executive and Planning Committee authority to oversee the council-approval process.

*Council action:*

Hon. Brenda Harbin-Forte moved that the Judicial Council delegate to the Executive and Planning Committee authority to approve policies and procedures for courts obtaining approval to seek loans from their counties and to review and act upon such requests, with the purpose of ensuring the fiscal integrity of the courts, and delegate to the Administrative Director of the Courts the responsibility to report these requests to the state Department of Finance.

The motion passed.

**Item 5      Year-End Financial Report on Trial Court Funding for Fiscal Year 1998–1999**

Mr. Frank Schultz, AOC Finance Bureau Manager, presented the report. He stated that based on actual and estimated amounts, the Trial Court Trust Fund is projected to end the fiscal year with a positive fund balance of \$5.5 million. The year-end balance for the Trial Court Improvement Fund is estimated to be \$2.0 million. He noted that to complete the fiscal year with a positive fund balance in the Trial Court Trust Fund, July and August civil filing fees must come in as projected and remaining Maintenance of Effort payments remitted.

For information only; no action necessary.

**Item 6      Fiscal Year 2000–2001 Trial Court Budget Request**

Judge Ray L. Hart, Chair of the Trial Court Budget Commission, presented the report. He stated that on April 29, 1999, the council approved the Trial Court Budget Commission's (TCBC) recommendation to prepare a proposed statewide trial court budget request for fiscal year 2000–2001 consisting of the following categories:

1. Court Operations Program (i.e., consisting of eight distinct operations-based programs);
2. Imposed Costs Program (i.e., negotiated salary increases);
3. Court Interpreters Program; and
4. New Judicial Positions Program.

He noted that an additional category entitled the Court-Appointed Counsel Program is now being recommended. He said that these five categories were established in accordance with previous Judicial Council policy directives, goals, and objectives.

Judge Hart said that all 58 countywide trial court systems helped develop the statewide trial court budget priorities for fiscal year 2000–2001. For the first time since state trial court funding went into effect, the process was designed to gather an understanding of local need as well as consistent, comparable data statewide in support of the final budget requests.

Judge Hart reported on the Case Processing component of the budget. He said that this program contains projected costs for personnel and other resources necessary to assist trial courts in meeting the criminal and civil case adjudication time standards mandated by the Trial Court Delay Reduction Act (Gov. Code, § 68603), and to address criminal, civil, and traffic case processing issues related to felonies, three-strikes, high-grade and low-grade misdemeanors, drug court, non-juvenile traffic-related programs, and small claims. He noted that costs for personnel and other resources to reduce backlog, meet reporting requirements, and move and retrieve case files from the beginning to the end of the process are included in the budget figures as well as information technology system costs that will enhance a court system's ability to manage cases. Such technology includes systems for case tracking; document imaging and scanning; records tracking, retrieval, and reproduction; civil fee collection; criminal warrant issuance; and criminal history updates.

Judge Hart stated that the TCBC's recommendations for most program areas propose funding at a prorated annual amount and address the most critical needs in each subprogram area first. He presented the TCBC recommendation that:

- For the Case Processing Program, the council approve the four-year budget plan totaling \$165 million, including \$109 million to fund technology needs. He said that funding this request will allow courts to address case processing backlogs, thereby decreasing the delay in calendaring cases, and to upgrade and standardize countywide automated systems.
- For the Family and Children budget component, the council approve the four-year budget plan totaling \$59 million, including \$14.8 million to fund technology needs. This will provide staff, technology, and other resources to ensure compliance with the Family Code and council policies.
- For the Increased Public Access component of the budget, the council approve the five-year budget plan totaling \$84.5 million, including \$55 million to fund technology needs.
- For County/State Transition Responsibilities, council approve the two-year budget plan totaling \$48.6 million, including \$13.4 million to fund technology needs. This program addresses the remainder of the anticipated transition costs related to county-provided court support services. Judge Hart said that cost increases can result from counties' charging more for: (1) the county-provided service to fully capture the cost of the service; (2) increased level of a county-provided service; and (3) the increased costs associated with existing levels of service.

- For Jury Issues, the council approve the four-year budget plan of funding the costs associated with incrementally increasing juror per diem rates to the Judicial Council goal of \$40 per day for second and subsequent days of service (\$49 million), and implementing the One-Day/One-Trial system (\$18 million). Funding includes \$2.3 million to fund technology needs.
- For Negotiated Salary Increases (NSIs), the council fund \$100.69 million for fiscal year 2000–2001, which will address: (1) a \$27.42 million planning adjustment to address unfunded fiscal year 1998–1999 NSIs and pay equity adjustments; (2) a \$30.58 million planning adjustment to address projected unfunded fiscal year 1999–2000 NSIs and pay equity adjustments; and (3) a \$42.69 million budget request for the projected implementation costs of fiscal year 2000–2001 NSIs and pay equity adjustments. He noted that this category includes confirmed, contractually binding, negotiated salary increases and associated benefits and pay equity for all court staff and court security personnel.
- For the Court Interpreters component of the budget, the council approve \$4.8 million for the interpreters program for fiscal year 2000–2001 to fund increased rates (\$265 per day) for certified and registered court interpreters statewide (\$3 million), with no increases for noncertified and nonregistered court interpreters, and for anticipated workload growth (\$1.8 million).
- For the New Judicial Positions portion of the budget, the council fund 30 judgeships totaling \$3.85 million for fiscal year 2000–2001, pending the final recommendations of the Court Profiles Advisory Committee’s review of judgeship needs.

Justice Huffman stated that the Executive and Planning Committee reviewed the TCBC’s report to the council several times. At the committee’s request, explanatory narrative was added to the report, and technology was separately noted. He reported that the committee supported the recommendations as presented.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Approve the recommended fiscal year 2000–2001 budget request summarized below:
  - Court Operations*
    - a. Case Processing:
      - i. Approve the four-year budget plan to address the Case Processing Program needs totaling \$165 million. Funding for this program includes \$109 million to fund technology needs.
      - ii. Starting with fiscal year 2000–2001, fund the program at a prorated annual amount of \$41.3 million, funding the most critical needs for staffing, technology, and other resources in each subprogram (i.e., recognizing the proportion of total need each subprogram represents: criminal case processing subprogram (45 percent); civil case processing subprogram (39 percent); and traffic case processing subprogram (16 percent)). Funding for this program includes a prorated annual amount of \$27.3 million to fund technology needs.
    - b. Family and Children

- i. Approve the four-year budget plan to address the Family and Children Program needs totaling \$59 million. Funding for this program includes \$14.8 million to fund technology needs.
  - ii. Starting with fiscal year 2000–2001, fund the program at a prorated annual amount of \$14.8 million, funding the most critical staffing, technology, and other resource needs in each subprogram, (i.e., recognizing the proportion of total need each subprogram represents: Family Law subprogram (57 percent); Juvenile subprogram (33 percent); Probate and Guardianship (8 percent); and Mental Health subprogram (2 percent)). Funding for this program includes a prorated annual amount of \$3.7 million to fund technology needs.
- c. Increased Public Access
- i. Approve the Five-Year Budget Plan to address the Increased Public Access Program needs totaling \$84.5 million. Funding for this program includes \$55 million to fund technology needs.
  - ii. Starting with fiscal year 2000–2001, fund the program at a prorated annual amount of \$16.9 million. Funding for this program includes a prorated annual amount of \$11 million to fund technology needs.
- d. County/State Transition Responsibilities
- i. Approve the two-year budget plan to address the County/State Transition Program needs totaling \$48.6 million. Funding for this program includes \$13.4 million to fund technology needs.
  - ii. Starting with fiscal year 2000–2001, fund the program at a prorated annual amount of \$24.3 million. Funding for this program includes a prorated annual amount of \$6.7 million to fund technology needs.
- e. Jury Issues
- i. Approve the four-year budget plan to address the Jury program needs totaling \$67 million to:
    - Fund the costs associated with incrementally increasing juror per diem rates to the Judicial Council goal of \$40 per day for second and subsequent days of service (\$49 million); and
    - Fund the costs associated with the implementation of the One-Day/One-Trial system (\$18 million). Funding includes \$2.3 million to fund technology needs.
  - ii. Starting with fiscal year 2000–2001, fund the program at a prorated annual amount of \$16.75 million (\$12.25 million to increase the juror per diem to \$19 per day and \$4.5 million to address costs associated with the conversion to One-Day/One-Trial). Funding for this program includes a prorated annual amount of \$0.55 million to fund technology needs.

*Negotiated Salary Increases*

- a. Fund the NSI program in the amount of \$100.69 million for fiscal year 2000–2001, which will address: (1) a planning adjustment in the amount of \$27.42 million, to address unfunded fiscal year 1998–1999 NSIs and pay equity adjustments; (2) a planning adjustment in the amount of \$30.58 million, to address projected unfunded fiscal year 1999–2000 NSIs and pay equity adjustments; and (3) a budget request for the projected implementation costs of fiscal year 2000–2001 NSIs and pay equity adjustments in the amount of \$42.69 million.



- b. Establish a two-part funding structure for this program, to address subsequent years' budget requests, which will include: (1) a request for a planning adjustment to fully fund the annualized costs associated with the prior year's NSIs and pay equity adjustments; and (2) a budget request that funds the implementing year's NSI and pay equity costs.

*Court Interpreters*

- a. Approve funding for the interpreters program in the amount of \$4.8 million for fiscal year 2000–2001 as follows:
  - i. \$3 million to fund increased rates statewide for certified and registered court interpreters to \$265 per day with no increases for noncertified and nonregistered court interpreters; and
  - ii. \$1.8 million to fund anticipated workload growth.

*New Judicial Positions*

- a. Fund 30 judgeships in the amount of \$3.85 million for fiscal year 2000–2001, pending the final recommendations of the Court Profiles Advisory Committee's review of judgeship needs.
2. Direct AOC staff to forward copies of the Budget Change Proposals (BCPs) to the Judicial Council as soon as they are completed.
3. Direct AOC staff at the October Judicial Council meeting to provide an overview of the recommended budget priorities and allocation process for fiscal year 2000–2001 as well as the implications and impacts these priorities and the allocation process may have on the fiscal year 2001–2002 budget.
4. Request a Judicial Council issues meeting be held in December 1999, two years since the inception of trial court funding. The meeting should review:
  - a. the development of trial court funding including funding levels
  - b. progress toward equalizing funding
  - c. stability of funding
  - d. unresolved policy issues (e.g., staff salary increases, "Rule 810" definitions, need for staffing standards)
  - e. budget development procedures
  - f. allocation procedures
5. The meeting should include staff recommendations for refinements that would make the process more efficient and effective and clarify priorities. In addition, consistent with the responsibilities in applicable rules of court, staff should present a budget schedule for the next year and provide an overview of the budget procedure manual. Staff may wish to consider inviting John Hudzik back to participate in the issues meeting.

The motion passed.

**Item 7      Policy to Direct Allocations of Funds for One-Time and Ongoing Program Costs**

Mr. Vickrey presented the item. He reported that as a result of prudent management of trial court funds during fiscal year 1998–1999, the Trial Court Budget Commission (TCBC) was successful in both reestablishing the full One Percent Reserve (i.e., \$18

million for fiscal year 1999–2000) and in establishing an additional reserve of \$12 million in uncommitted funds (i.e., \$8 million in one-time funding and \$4 million in ongoing funding).

Mr. Vickrey said that the council allocated \$3 million in fiscal year 1998–1999 in ongoing funding to begin to address the chronic underfunding and funding inequities in trial court operating budgets in the 58 counties. The council recognized that, as it took several years for the funding disparities to occur among the 58 counties, it would take several years to fully equalize funding.

He noted that the Executive and Planning Committee directed the TCBC to prepare a proposed schedule for the allocation of the uncommitted \$12 million reserve for council consideration. The council is being asked to approve guidelines for the TCBC to follow in developing a proposal.

Ms. Gonzalez expressed concern with using the ratio of staff to authorized judicial positions as a criterion for receipt of the one-time funding. She noted that many courts have not received judicial positions for years but have received staff. These courts have developed programs and court services that do not rely on judges—for example, self-help centers—and should not be penalized for this creativity.

*Council action:*

Judge J. Richard Couzens moved that the Judicial Council:

1. Direct the TCBC to recommend to the council at its October 22 business meeting an allocation schedule for \$8 million in one-time funding to address one-time unification transition costs (e.g., automation modifications, personnel studies, local training, etc.) and the critical unfunded mandates for countywide trial court systems that have unified to the maximum extent allowable by law, and for those countywide trial court systems that will have voted to unify by January 3, 2000. The proposed allocation schedule should be based on the following:
  - a. Allocate an amount per judge to each of the 53 unified countywide trial court systems;
  - b. Allocate an amount per judge to the two countywide trial court systems that are awaiting pre-clearance as required by the Federal Voting Rights Act;
  - c. Withhold an amount per judge for the three remaining nonunified countywide trial court systems, until January 3, 2000, for allocation to those court systems should they vote to unify by January 3, 2000; and
  - d. Set a maximum and a minimum allocation amount when establishing the proposed allocation schedule for the 58 countywide trial court systems.
2. Direct the TCBC to recommend to the council at its January 26, 2000 business meeting, an allocation schedule for the withheld amounts to be allocated as follows:
  - a. The authorized amount set aside at the October 1999 Judicial Council meeting to those countywide trial court systems that have voted to unify by January 3, 2000.
  - b. The authorized amount set aside at the October 1999 Judicial Council meeting for countywide trial court systems that have not voted to unify by January 3, 2000, to

- all other unified court systems in the same manner described in (a.) above.
3. Direct the TCBC to present information to the council at its business meeting on August 25, 2000, collected from all countywide trial court systems receiving a portion of this funding regarding how that one-time funding was used to address one-time unification transition costs and critical unfunded mandates for countywide trial court systems that have unified to the maximum extent allowable by law.
  4. Direct the TCBC to recommend to the council at its October 22, 1999 meeting an allocation schedule that permanently allocates \$4 million in ongoing funding using the following criteria:
    - a. Using approximately one-half of the \$4 million to address the chronic underfunding and funding inequities in the smallest 38 countywide trial court systems;
    - b. Using approximately one-half of the \$4 million to address the chronic underfunding inequities in the largest 20 countywide trial court systems;
    - c. For both groups, using the same four criteria approved by the council to permanently allocate the \$3 million in ongoing funding in fiscal year 1998–1999, as follows:
      - i. Workload-to-staff ratio: The ratio of filings per staff member provides a comparison based on the annual average workload of staff.
      - ii. Workload-to-funding ratio: The ratio of filings per \$1,000 of each countywide court system’s authorized budget provides an estimate of the workload that each court system processes for every \$1,000 budget increment.
      - iii. Ratio of staff to Authorized Judicial Position (AJP): The ratio of staff to AJP provides a point of comparison among the 58 countywide trial court systems;
      - iv. Cost per AJP: The cost per AJP ratio provides a point of comparison among the 58 countywide trial court systems.
    - d. Direct the TCBC to present information to the council at its meeting on August 25, 2000, collected from all countywide trial court systems receiving a portion of this funding regarding how that ongoing funding was used to enhance service to the public.

The motion passed

## **Item 8      Fiscal Year 2000–2001 Appellate Court Budget Request**

Mr. Dennis Jones, Chief Deputy Director, presented the report. He noted that the request covers both the Supreme Court and Courts of Appeal. He said that the Supreme Court requests four new positions and a 1.9 percent increase to cover additional operating expenses and maintenance such as replacing or restoring furniture and files. The request does not include facilities, court-appointed counsel, and salary adjustment costs. Mr. Jones reported that information on renovation costs to obtain suitable chambers for justices working in the Third District Court of Appeal in Sacramento will be provided to the Executive and Planning Committee in the future.

Mr. Jones said that the appellate courts requested a small increase in positions for operations support, caseload growth, and continuation of a research attorney pilot program. Additionally, the courts' request includes maintenance costs, replacement of essential equipment, electronic filing activities, and settlement conference programs. He stated that the courts also requested funding for facilities to support four Capital Outlay Budget Change Proposals.

Justice Huffman noted that the Executive and Planning Committee reviewed the budget, and expressed concern that the budget request did not sufficiently justify the increases for facilities or two writ attorney positions. He observed that when additional justice positions were created recently, an additional attorney position, which could be used as a writ position, was received for each judgeship. The request for additional attorneys may be duplicative.

Mr. Joseph Lane reported that the Appellate Presiding Justices Committee approved the budget as presented. He expressed concern that the council might be micromanaging the court of appeal budgets.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Approve the proposed Supreme Court budget of \$31,338,000 for submission to the Governor;
2. Approve in concept, but defer consideration of, the \$11.8 million in Capital Outlay Budget Change Proposals until more information is developed by the Department of General Services concerning actual costs to provide adequate space to accommodate additional judges and staff; to the extent that proposed changes would affect the Supreme Court courtroom, the changes would first be approved by the Supreme Court;
3. Approve the remainder of the Court of Appeal budget request of \$150,307,000 and ask that additional information be provided to the Executive and Planning Committee regarding the Budget Change Proposal for two writ attorney positions in the Second District;
4. Approve delegation to the Administrative Director to make technical changes to the budgets as necessary.

The motion passed.

## **Item 9      Fiscal Year 2000–2001 Judicial Council Budget Request**

Mr. Jones presented the report. He said the request is based on the following factors:

- The AOC is not replacing the counties as a service provider. The agency would have to add 80 full-time personnel staff and 600 facility staff to provide this level of assistance.

- The agency provides services requested by the trial courts. The budget request is based on one year's input from the trial courts on assistance they want or services they need.
- The Trial Court Presiding Judges and Court Executives Advisory Committees and a select group of court administrators provided input on the request.
- Growth in the budget should be consistent with growth in the trial court budget. The general fund growth excluding facilities is about 8 percent in funding and positions. The general fund growth exclusive of facilities in the trial court budget is about 9 percent in funding.

*Council action:*

Ms. Sheila Gonzalez moved that the Judicial Council:

1. Approve the proposed Judicial Council fiscal year 2000–2001 budget of \$119,674,000 for submission to the Governor, which includes:
  - \$50,009,000 for grants and reimbursements pass-through funding;
  - \$10,000,000 for Equal Access funding for the State Bar Association; and
  - \$59,665,000 for Judicial Council/Administrative Office of the Courts operating costs.
2. Authorize the Administrative Director to make technical changes to the budget as necessary.

The motion passed.

**Item 10 Equal Access Fund—Council Role, Membership Issues, and Nominations**

Presenters for this item were Mr. Andrew Guilford, President-elect of the State Bar of California; Ms. Judy Garlow, Director of the Legal Services Trust Fund Commission; Ms. Laurie D. Zelon, Chair of the Access to Justice Commission; and Mr. Ben McClinton and Ms. Bonnie Hough, AOC staff attorneys. Chief Justice George introduced Mr. Chris Lynch, Chair of the Legal Services Trust Fund Commission, and Ms. Mary Viviano, Staff Director of the Access to Justice Commission.

Presenters noted that improving access to the courts is one of the six goals of the Judicial Council's long-range strategic plan. Additionally, in 1996 the council, passed a resolution that it and the State Bar of California would work cooperatively to broaden access to the courts for unrepresented and low- or middle-income persons.

Mr. Ben McClinton noted that the Budget Act of 1999 allocated \$10 million to an Equal Access Fund "to improve equal access and the fair administration of justice." Oversight for the fund is to be provided by the Legal Services Trust Fund Commission (LSTFC), composed of members selected by the State Bar and the Chair of the Judicial Council.

Ms. Judy Garlow said that over the last 15 years, the LSTFC and State Bar staff have distributed more than \$200 million in grants for legal help to the poor. Commission and AOC staff will periodically report to the council on the grants and grant process. The

council will not make decisions about who gets grants, but rather will review the procedures and criteria that the LSTFC uses to ensure that the funds are properly granted and used.

Council members expressed their enthusiasm and support for the project.

*Council action:*

Judge Dover moved that the Judicial Council approve the following proposals concerning the appointment and membership of the one-third of the Legal Services Trust Fund Commission to be appointed by the Chair of the Judicial Council. [*Note: The State Bar Board of Governors approved these proposals on August 21, 1999.*]

1. The commission membership is increased to 21 voting members and 3 nonvoting judge members;
2. The State Bar Board of Governor's 14 members will appoint 14 members — 10 attorney members and 4 public members;
3. The Chair of the Judicial Council will appoint 7 voting members — 5 attorney members and 2 public (nonattorney) members;
4. The 2 public members appointed by the Chair of the Judicial Council will include one court administrator and one other type of public member useful to the commission's work;
5. The Chair of the Judicial Council will appoint 3 nonvoting judge members, one of whom will be an appellate court judge;
6. The Chair of the Judicial Council will initially appoint members to staggered terms of one, two, and three years and will create three-year terms as the first terms expire;
7. The terms of the Judicial Council members on the commission will begin this year on the first day of the State Bar's annual meeting (October 1). The terms will end on the last day of the annual meeting held in the last year of each term; and
8. The commission will adopt procedures allowing nonvoting judge members participation rights similar to those accorded advisory members of the Judicial Council (see Cal. Rules of Court, rule 6.3).

The motion passed.

**Circulating Order — CO-99-07: Amending Rule 1(c)—Statutory Increase of Filing Fee on Appeal (AB 1115)**

For information only; no action necessary.

The meeting was adjourned at 11:55 a.m.

Respectfully submitted,

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William C. Vickrey  
Secretary