

JUDICIAL COUNCIL MEETING
Minutes of February 27, 1998, Meeting

The Judicial Council of California meeting began at 8:45 a.m. on Friday, February 27, 1998, at the Administrative Office of the Courts office in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

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

Absent: Justice Marvin R. Baxter, Senator John L. Burton and Assembly Member Martha M. Escutia.

Others present included: Mr. William C. Vickrey; Judge John A. Flaherty, Senator Lockyer, Mr. Eric Bishop, Ms. Elsa Ortiz Cashman, Mr. Neil Cossman, Ms. Mary Lou Des Rochers (*by telephone*), Mr. Essam Elmahgoop, Ms. Georgiana Flaherty, Ms. Beth Jay, Ms. Elizabeth McCartney, Ms. Stephanie Moore, Mr. Paz Perry, Mr. David Sweet-Cordero, Mr. Uri Yayal, Ms. Shannon Raintree, Ms. Ellen Rosenthal and Mr. Mark Wapnik (*by telephone*); **staff:** Ms. Martha Amlin, Mr. Starr Babcock, Ms. Jessica Fiske Bailey, Ms. Francine Batchelor, Mr. Michael Bergeisen, Ms. Wendi Berkowitz, Ms. Karen Cannata, Ms. Eileen Chadwick, Ms. June Clark, Ms. Eunice Collins, Ms. Lesley Duncan, Mr. Michael Fischer, Mr. Mel Gibson, Ms. Pat Haggerty, Ms. Kate Harrison, Ms. Katharine Holland, Ms. Lynn Holton, Ms. Fea Jacobson, Ms. Melissa Johnson, Mr. Dennis Jones, Ms. Fran Jurcso, Mr. Ray LeBov, Mr. Barry Lynch, Ms. Karen Mohrhoff, Ms. Ellen Mize, Mr. Martin Moshier, Ms. Judy Myers, Mr. George Nichols, Ms. Nzinga Nyagua, Ms. Taryn Ravazzini, Ms. Kiri Torre, Ms. Kady Von Schoeler, Ms. Tracy Vesely, Ms. Terrie F. Wilfong, Mr. Anthony Williams, Mr. Jonathan Wolin, Mr. Joseph R. Wong, Ms. Edna Yee, and Ms. Pat Yerian; **media representatives:** Mr. Philip Carrizosa, *L.A. Daily Journal*; Mr. David Kline, *L.A. Metropolitan News*, and Mr. Greg Mitchell, *The Recorder*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Agenda, Reports, and Recommendations, dated February 27, 1998, which was sent to members in advance of the meeting.)

COUNCIL ITEMS 1–2a WERE APPROVED AS CONSENT ITEMS, PER THE SUBMITTERS’ RECOMMENDATIONS.

ITEM 1 Judicial Council—Sponsored Legislation: Juror Appreciation Week

The Orange County Superior Court, on behalf of the California Association of Trial Court Administrators (CATCA) and the Jury Education Management Forum (JEM), requested that the council co-sponsor a legislative concurrent resolution with CATCA and JEM to declare the second full week in May of each year “Juror Appreciation Week.”

The co-sponsors believe that an annual statewide juror appreciation week will be an opportunity and incentive for California courts to pay special recognition to all the citizens who serve as trial jurors. They also believe it will provide an opportunity to educate Californians on the important role that jurors play in the judicial system, as well as to improve the public’s perception of the courts.

Council action:

The Judicial Council approved including a proposal to sponsor a concurrent resolution establishing Juror Appreciation Week in the council’s 1998 Sponsored Legislation Program.

ITEM 2 Judicial Council—Sponsored Legislation: Trial by Written Declaration for Traffic Infractions

In 1983, Vehicle Code section 40902 was amended to require that trial by written declaration be made available to defendants who resided more than 100 miles from the jurisdiction where the ticket was issued. In 1993, the statute was amended to delete the 100-mile requirement and require all courts to offer a trial by written declaration for traffic infractions to defendants who reside outside the jurisdiction in which the violation occurred. The Judicial Council supported the legislation that made those changes to the statute.

Only a handful of courts have adopted local rules of court for traffic infraction trials by written declaration, and these rules differ widely regarding applicability, due dates, time limits, bail, trial de novo, and evidence.

The Traffic Advisory Committee is developing a statewide rule of court and uniform procedures for trials by written declaration. However, the committee has recognized that the current statute might not clearly authorize the Judicial Council to adopt statewide rules and

forms. The Traffic Advisory Committee requests that the council clarify the matter and seek legislation to give the council express authority to draft statewide rules under the statute.

Council action:

The Judicial Council approved including legislation that gives the council authority to adopt statewide rules and forms for trial by written declaration for traffic infractions in the council's 1998 Sponsored Legislation Program.

ITEM 2a Rule on Qualifications of Counsel in Death Penalty Appeals and Habeas Corpus Proceedings (Cal. Rules of Court, new rule 76.6)

Legislation that became effective January 1, 1998, requires both the Judicial Council and the Supreme Court to adopt rules on the qualifications of counsel for capital appeals and habeas corpus. (SB 513 [Lockyer]; Gov. Code, § 68655.) New rule 76.6 of the California Rules of Court was adopted by the Supreme Court on February 3, 1998, and now requires adoption by the council.

Council action:

The Judicial Council adopted rule 76.6 of the California Rules of Court on qualifications of counsel in death penalty appeals and habeas corpus proceedings, effective February 27, 1998.

ITEM 3 Telephone Appearances Rule (Cal. Rules of Court, rule 298)

Ms. Mary Lou Des Rochers, of the Civil and Small Claims Advisory Committee, presented the report via telephone assisted by Ms. Wendi Berkowitz of AOC staff. Mr. Mark Wapnik of CourtCall participated by phone to answer questions about equipment or call procedures.

Ms. Des Rochers said that amendments to rule 298 of the California Rules of Court proposed by the Civil and Small Claims Advisory Committee give counsel the option of appearing by telephone in conferences and nonevidentiary law and motion and probate hearings. The amendment also requires that counsel intending to appear by telephone provide notice to the court, other counsel, and parties appearing in propria persona, and directs the court to give notice if it intends to require the personal appearance of counsel.

Ms. Des Rochers said that courts would be permitted to contract with a private teleconferencing provider, which may charge a fee for its services. These providers have expressed a willingness to install and maintain the equipment, free of charge to the courts. Ms. Des Rochers noted that the council originally considered a recommendation on this rule in November 1997. At that time, council members expressed concern that the proposed rule did not include requirements that counsel notify the court or other parties if counsel intended to appear by telephone. She stated that the current proposal includes the notice requirements now contained in rule 827.

Ms. Des Rochers noted that the council in November 1997 asked staff to consider the effect of the statute establishing “900” phone numbers to ensure that the proposed rule does not conflict with statute. Ms. Des Rochers reported that there would be no conflict between current law and the proposed rule on “900” numbers.

Justice Boren stated that the Rules and Projects Committee of the Judicial Council supports the recommendation of the Civil and Small Claims Advisory Committee.

Judge Couzens asked whether the rule prohibits a court from using competing telephone systems or a law office from providing the same service through its own system.

Ms. Berkowitz replied that the rule does not. Judge Couzens expressed concern that the rule is not clear on that point. He suggested adding the following language to the rule: “A court by local rule may designate that a particular telephone system shall be used for telephonic appearances.”

Mr. Walsh asked the reasoning behind adding this language. Judge Couzens replied that the court may not want to be forced into making special appearance times and procedures for people who want to use their own system. He noted that the current rule does not specifically allow that a court may designate that a particular system be used and thereby exert more control over the circumstances of telephone conferences.

Judge Provost asked about the provision in subsection (d) of rule 298 that requires counsel to give five court days’ notice. She stated that the previous version had required two days. She noted that under rule 827, which applies to municipal courts, the requirement is two days’ notice. Subsection (e) of rule 298 provides that if the court wants a personal appearance it must give one court day of notice, but under rule 827 the court must give 24 hours’ notice. She asked the wisdom of using different language and time frames for notice requirements for superior and municipal courts.

Ms. Des Rochers replied that the committee is reviewing rule 827 and will propose recommendations to set the same time standard so that courts that are coordinated are bound by consistent rules for superior and municipal courts. The group also considered repealing rule 827 but rejected that idea because municipal courts need to have a rule governing this topic.

Ms. Berkowitz noted that the committee was sensitive to the council’s directive to have a rule in place promptly. The committee’s original charge, based on statutory language, was to develop a rule for superior court. After the council’s November meeting, when the committee discussed including the terms of rule 827, the committee realized that the rule relates to both superior and municipal court. The committee felt that if the changes were going to affect the municipal court, the proposal should be sent out for comment. This would result in a delay of implementation of the rule relating to superior court. The committee felt it made more sense to adopt a superior court rule, not disrupt what municipal courts are doing, and determine, based on the experience with the superior court rule, whether to adopt a similar rule for municipal court.

Judge Provost commented that the council requires joint rules by July 1, 1998, under rule 991 relating to trial court coordination.

Chief Justice George said that making these rules uniform should be an immediate priority of the committee. Otherwise the council would be in the untenable position of compounding the problem rather than resolving it.

Ms. Berkowitz commented that currently the council does not have the statutory mandate (although it might have the statutory authority) to adopt a rule for municipal court. Government Code section 68070 relates only to superior court, and it is questionable whether the council has authority to adopt similar rules for municipal court.

Chief Justice George asked whether there was something that prohibits the council from amending rule 827 in a similar way to proposed rule 298. Mr. Bergeisen, AOC General Counsel, stated that if the council were in agreement with the structure and content of the proposed rule, the Civil and Small Claims Advisory Committee could develop a similar revision for rule 827, circulate it for comment, and recommend action to the council in a very short time frame. Chief Justice George suggested that revisions to rule 827 could be adopted by the council via circulating order so that the council would avoid perpetuating and compounding the problem of the multiplicity of rules.

Judge Boland expressed concern that, according to Government Code section 68070.1, counsel may not insist on appearing by phone in trial-setting conference unless there is a local rule permitting them to do so. He raised the point that in counties such as Los Angeles the initial status conference is also the trial-setting conference. If the council adopts this rule, it is critical that the council inform courts that a local rule or policy is needed to fully implement the rule.

Judge Harbin-Forte asked whether the council should be concerned that courts would be generating revenues for private companies. She also asked whether the fee structure differs, depending on whether or not a court is sharing revenues with private companies. Mr. Wapnik replied that if courts are not sharing revenues the price is lower for the attorneys.

Ms. Berkowitz stated that the committee and staff discussed how best to protect the interest of the council and to not prohibit as a matter of rule what some courts are doing. If courts request an opinion from the AOC on whether or not it is appropriate for courts to be sharing in the fee, staff would recommend against courts' sharing in the revenue. The committee chose not to prohibit it because some courts are currently sharing revenues. The legal issue is a subject of debate. The committee and staff did not want to flat out prohibit it but did not want to encourage it either.

Judge Provost asked about the intent of section (g) on page 8 of the rule, which prescribes the equipment that a court must use. She asked whether the rule prohibits a judge from using the speaker phone currently in chambers or attorneys from setting up conference calls on their own.

Ms. Berkowitz noted that many concerns would be addressed by deleting provision (g), which specifies certain equipment necessary for telephone conferencing.

Judge Couzens asked whether there would be a charge to counties if the provider charges attorneys for the calls. Mr. Wapnik stated that the court would pay nothing. He stated that CourtCall is prepared to offer the service to all counties in California; however, the economic arrangement made with each court would take into account that some counties would have fewer calls than others. Judge Provost expressed concern that the charge to attorneys would be lower in counties where the service was used more.

Judge Couzens asked whether more than one provider met the standards stated in section (g). Ms. Berkowitz stated that three currently did. She noted that the committee sent out a survey to determine how many counties are allowing telephone appearances. Forty-five counties allow for telephone appearances. Of those 45, 22 are using one of the three service providers and 23 are using their own systems.

Council action:

Judge Couzens moved that the Judicial Council, effective July 1, 1998:

1. Amend rule 298 regarding telephone appearances in conferences and nonevidentiary law with the following changes:
 - a. On lines 20–22, on page 8, delete the requirement for specific equipment; and,
 - b. Add subsection (i) “A court, by local rule, may designate that a particular telephone system shall be used for telephone appearances.
2. Adopt the advisory committee comment to rule 827, noting that rule 827 does not apply to telephone appearances by counsel in superior court cases.
3. Direct the Civil and Small Claims Advisory Committee on an expedited basis to consider amendments to rule 827 or another rule relating to municipal court to bring telephone appearances in municipal court into conformity with the procedures in rule 298.

The motion passed.

ITEM 4 Trial Court Budget Commission Revised Rules (Cal. Rules of Court, rules 1020 and 1026)

Mr. William Vickrey presented the report, assisted by Mr. Michael Fischer of AOC staff. Mr. Vickrey stated that AB 233 requires, among other things, that the council submit a budget that meets the needs of the trial courts in a way that promotes access to the courts throughout the state. The council is also required to promulgate a rule about developing a budget and about relevant deadlines.

He stated that the Executive and Planning Committee met in December 1997 to review the rule governing the Trial Court Budget Commission (TCBC). The committee raised concerns about the size of the TCBC, regional advocacy, and court administrators' participation. Additionally, the committee discussed concerns raised by the Legislature and the Governor's Office, including the absence from the current budget and allocation procedures of (1) identification of outcomes, (2) analysis of compelling needs for funding, and (3) short- and long-term planning.

The proposed rule on the TCBC (Cal. Rules of Court, rule 1026) assumes lump-sum budgeting, the resolution of the base budget by court executives and the AOC Finance Bureau staff, and a shift to program budgeting.

Mr. Vickrey stated that the proposed revisions to rules 1020 and 1026 result in:

- handling TCBC nominations in the same manner as for other advisory committees (nominations reviewed by the Executive and Planning Committee and selections made by the Chief Justice) to ensure diversity in experience, perspective, and court size and location;
- clarifying the role of the TCBC to focus on incremental requests, the growth portion of the budget;
- establishing criteria for reviewing budget requests;
- defining the base budget as the authorized budget of the current year;
- directing the TCBC to submit an annual report on the fiscal condition of the state;
- decreasing the size of the TCBC; and
- providing court administrators with a vote on the commission.

Mr. Vickrey said staff proposed further revisions to the rule based on comments received from courts during the comment period. These revisions ensure geographic participation from Los Angeles, large counties, intermediate-size counties, and small counties.

Mr. Vickrey noted that the Chief Justice has indicated he will appoint members of the existing commission to the newly constituted TCBC.

Judge Todd stated her disagreement with the portion of the revised rule that changes the membership selection process to enable the Chief Justice to make all the appointments and presiding judges to make none. Judge Todd said that the proposed membership changes assume that the TCBC will not be able to abide by the new legislation. She added that it was a misrepresentation to state that of the 40 comments received, 22 generally supported the

revisions and 9 opposed them. She noted that most of the 22 were from individuals, and the 9 comments in opposition to the rule were on behalf of groups. Judge Todd moved adoption of the recommendation on page 19, section (j)(1) with the following changes:

- delete the words “by the Chair of the Judicial Council” on line 3;
- delete sections (A) and (B); and
- insert paragraph (g) from the current rule on page 23 of the recommendation and substitute the phrase “or executive oversight committees with the authority and responsibility of the presiding judges” for the sentence “One-half of the members from each region shall be superior court judges and one-half shall be municipal court judges.”

Justice Huffman offered a substitute motion. He moved the adoption of the recommendations, with the deletion of subdivisions A and B on page 19, and the addition of an immediate effective date.

Justice Boren stated that the Rules and Projects Committee of the Judicial Council supported the substitute motion.

Judge Boland said that there is a compelling case for revising the charge of the TCBC to include court executives as voting members of the commission and to require the commission to act in the best interests of the public and court system as a whole. He stated that there was a less compelling case to change the composition, nomination, and appointment process of the commission. He said that judges will follow the law and that changing the membership is premature.

Justice Huffman said that supporting the restructuring of the TCBC does not indicate a lack of trust in presiding judges. He stated that the change is necessary because of the council’s new responsibility for the funding of trial courts.

Ms. Gonzalez expressed support for the substitute motion. She noted that, of the comments received, those commentators who disagreed with the change in the nomination and appointment process also disagreed with adding court executives as voting members of the commission. She stated her belief that the Chief Justice would make appointments to the commission that are diverse and include a variety of perspectives and types of court.

Judge Johnson commented that committees selected in the regular appointment process function differently than those appointed in a representative style. She stated her support for the substitute motion.

Mr. Overholt stated that the basic goal after passage of the Trial Court Funding Act is equity of funding throughout California. Representative membership on the TCBC is in conflict with that, even with the revision in rule 1020(e) stating that the commission must act in the interests of the whole state. He expressed concern that, without a change in the appointment process, the funding level of a court would be based on its representation on the TCBC. He stated that

he favored the latest revisions to the appeals procedures that appear on page 18. He noted that they will add a level of comfort to trial courts.

Judge Couzens asked whether any county appealing a decision of the TCBC would be able to appear before the council. Mr. Vickrey stated that a county would appear before the council via written materials included in TCBC's periodic reports to the council.

Judge Couzens suggested using the words "base," "baseline," or "baseline budget" consistently in the rule. This suggestion was accepted as a friendly amendment.

Ms. Gonzalez said it was important to have a procedure for trial courts to appear before the TCBC in person. Otherwise, only those counties with representation on the commission have the opportunity to be heard and to present a case. She advocated developing a process that allowed in-person appearances before the TCBC but limited the number of minutes and items allowed in appearances.

Judge Harbin-Forte recommended amending the appeal procedures to state that a trial court may appeal to the TCBC. She noted that this would not preclude the TCBC from allowing in-person appearances.

Ms. Gonzalez noted that the current TCBC does not allow appearances.

Mr. Overholt stated that including language in the rule about appearances sends a clear message to the TCBC.

Chief Justice George asked Judge Jahr to comment on the revisions. Judge Jahr stated that the TCBC debated whether to provide for personal appearances. He said the proposed modification is prudent, and if desired, the council might include in the subdivision that the TCBC has the discretion to develop an appearance process. He noted that he would be troubled by a mandatory appearance arrangement.

Judge Couzens expressed his concern that without an appearance process an aggrieved county would have no avenue to appear before the council. He suggested that at least a writ of certiorari process be provided.

Mr. Vickrey suggested directing staff to include such a procedure in the rewrite of administrative budget rules.

Mr. Walsh stated that the council is moving away from direct court representation. He commented that it was good to strike a balance between a fear of the counties' losing a voice and the provision of voice through an appeals process. He noted that such a process should allow all courts the right to appear, not just those courts represented on the TCBC.

Mr. Love commented that the TCBC would fail if all trial courts could appear before the TCBC on any issue with which they disagree. Ms. Gonzalez said trial courts should not be

allowed to appear on every issue but the appeals procedure should allow for appearances. Local courts want to be able to present their budget.

Judge Orfield said he felt strongly that courts should have the ability to present a case personally to the TCBC and also that the council should let the TCBC research the issue and bring back to the council a rule or procedure to act on. The council should not tell the TCBC what to include in or omit from an appeals procedure. Justice Boren clarified that the proposed appeals procedure provision (h) as written does not provide for the appeals procedure that is developed to come to the council for action.

Council action:

Justice Huffman moved to adopt, effective immediately, revised rules 1020 and 1026 of the California Rules of Court, governing the Trial Court Budget Commission as presented in the binder of Agenda, Reports, and Recommendations dated February 27, 1998, with the following changes:

1. Revise the rule 1026 provision on appeal procedures on page 18 to read:
“(h) [Appeal procedures] The Trial Court Budget Commission shall establish a procedure to allow a county trial court system to appeal to the TCBC any recommendation affecting that trial court system before the recommendation is presented to the Judicial Council.”
2. Delete sections A and B of the membership provisions of rule 1026 on pages 19 and 20.
3. Use the words “base,” “baseline,” or “baseline budget” consistently in rule 1026.

The motion passed.

ITEM 5 Trial Court Coordination

Judge John A. Flaherty presented the report, assisted by Ms. Fran Jurcso of AOC staff. He noted that the Trial Court Coordination Advisory Committee (TCCAC) was bringing several issues to the council for action.

One issue, he said, dealt with governance of courts without a single presiding judge. He stated that the council directed the committee to propose policies, consistent with rule 991(c) of the California Rules of Court (relating to administrative structures under coordination), that provide guidance to those counties that have submitted coordination plans with a regional instead of a countywide governance structure.

Judge Flaherty noted that rule 991 allows for alternative governance structures in counties submitting a regional plan and does not require a single executive officer until 1999. He stated that the committee recommends a policy for alternatively structured counties that includes three models each for judicial and administrative governance. The committee also recommends that the policy state that governance oversight committees must act by majority vote.

Mr. Vickrey asked if the policy addresses whether budgets are submitted by region. Judge Flaherty stated that the TCCAC recommends that oversight committees have countywide responsibility for budget and fiscal operations.

Judge Flaherty commented that 41 of 58 counties have a single presiding judge. Of the remaining 17, many more will have a single presiding judge by July 1, 1998.

Mr. Vickrey asked that the committee review rule 991, suggest revisions based on recent council action, and clarify policies on governance structures, including those counties submitting plans with regional structures.

Council action:

Justice Huffman moved that the Judicial Council adopt the following policy on trial court governance structures:

1. The trial courts of a county may elect one of the following three models to provide judicial governance:
 - a. A single presiding judge for all trial courts in the county;
 - b. An executive oversight committee that has countywide responsibility for the following:
 - i. Creation of a process to ascertain the expertise and interest of all judges and subordinate judicial officers in particular case or court assignments;
 - ii. The training of judges and subordinate judicial officers, in accordance the expressed interest and the needs of the court, in order to facilitate new case or court assignments;
 - iii. Development of a uniform, countywide case-processing system to enable maximum utilization of judicial officers;
 - iv. Actual use of all judges and subordinate judicial officers within a county in a manner that maximizes the utilization of judicial officers and is consistent with judicial expertise, interest, and training, and that recognizes the caseloads in all courts within the county; and
 - v. Unification of local rules so that cases can be litigated using the same rules at any court in the county; or
 - c. An executive oversight committee for all the trial courts of that county that has all the authority and responsibility of a presiding judge as prescribed in statutes and rules of court as allowed by Government Code section 68114.5.
2. The trial courts of a county submitting a regional plan may elect one of the following three models to provide administrative governance:
 - a. A single court executive officer for all trial courts in the county;
 - b. An executive administrative entity that has countywide responsibility for all budget and fiscal operations, all personnel policies and procedures, and all integrated information systems and other technologies;
 - c. An executive administrative committee for the trial courts of that county that has all the authority and responsibilities of the superior court executive officer and

municipal court administrator, as prescribed by statutes and rules of court.

3. Any oversight committee must determine issues by a majority vote.

The motion passed.

Judge Flaherty noted that the council in early February conditionally approved the trial court coordination plans for Los Angeles and Orange Counties. The committee recommends an extension of provisional approval until the next council meeting in April for Los Angeles and Orange Counties so they can react to the policies just adopted on acceptable governance structures.

The Chief Justice asked when provisional approval of the plans for Los Angeles and Orange Counties is likely to become actual. Judge Flaherty responded that Orange County is moving in the right direction and that Los Angeles is waiting for the council's vote on governance structure before submitting its response to the committee's prior inquiries.

Council action:

Justice Huffman moved that the Judicial Council authorize an extension of the provisional approval of court coordination plans for Los Angeles and Orange Counties, only for the purpose of providing additional time for the Trial Court Coordination Advisory Committee to make a final recommendation regarding approval or rejection of those plans, for presentation at the April 24, 1998, council meeting.

The motion passed.

Judge Flaherty stated that the committee recommends approval of the court coordination plans of El Dorado, Inyo, Kern, Mariposa, and Santa Barbara Counties.

Noting that the council voted not to approve the plan previously submitted by Kern County on February 4, 1998, Judge Boland asked what critical step the county took to meet criteria for court coordination. Judge Flaherty responded that, among other things, the county now has a joint executive officer.

Council action:

Judge Couzens moved that the Judicial Council approve the fiscal year 1997–1998 through fiscal year 1998–1999 trial court coordination plans of El Dorado, Inyo, Kern, Mariposa, and Santa Barbara Counties and accept the summaries of those plans as presented in the binder of Agenda, Reports, and Recommendations dated February 27, 1998.

The motion passed.

Judge Flaherty stated that the committee recommends that the council approve its assessment of the progress of court coordination within each county or region according to each county's approved plan. He reported that the committee determined the level of coordination as being "fully implemented coordination," "coordination implementation consistent with California Rules of Court, rule 991," or "coordination implementation in progress."

Mr. Overholt asked what would be a county's process for notifying the committee of significant progress and change so that incentive funding will be allocated on current information. Judge Flaherty replied that counties should provide documentation to the committee staff at the AOC, who would present it to the committee for its consideration.

Mr. Overholt asked whether the action just taken by the council regarding governance allows only regional courts to reach full coordination if governed by an oversight committee. He expressed concern that a double standard would develop. Judge Flaherty stated that, regardless of whether a county is submitting a regional or countywide plan, council policy requires the election of a single presiding judge, in order for a court to be assessed as fully coordinated.

Council action:

Judge Dover moved that the Judicial Council approve the Trial Court Coordination Advisory Committee assessments of progress in implementing the trial court coordination mandates for each county that has an approved plan as presented in the binder of Agenda, Reports, and Recommendations dated February 27, 1998.

The motion passed.

Judge Flaherty noted that the council at its February 4, 1998, meeting requested that the AOC prepare a legal opinion on pay parity and trial court coordination. Specifically, the council expressed concern that a policy providing pay parity for judges in counties that are not fully coordinated or that are not coordinated consistent with rule 991 would be in conflict with the pay parity requirements stated in Government Code section 68547. Judge Flaherty noted that the AOC's legal opinion asserts that courts must be able to demonstrate that they have maximized the utilization of judicial officers and have an approved plan before they can receive pay parity.

Judge Flaherty stated that the committee contacted courts that had received a preliminary assessment of “coordination implementation in progress” in the elements of judicial coordination and provided them the opportunity to further clarify and update the status of their judicial coordination efforts. As a result of this review, the committee has determined that some of these courts have not yet implemented their plans to the degree that provides for the maximum utilization of judicial resources. The committee recommends that pay parity for those currently in compliance be retroactive to January 1, 1998, since the required level of judicial coordination has been in place in those courts since that time.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve a policy that grants pay parity to a municipal court judge who has served on assignment in superior court on any day when both of the following apply:
 - a. A cross-assignment has been issued by the Chief Justice, and the judge’s workload is assigned pursuant to a judicial and administrative coordination plan approved by the Judicial Council according to procedures set forth in rules of court and consistent with Government Code section 68112; and
 - b. The Judicial Council has certified that cases in the court’s jurisdiction are assigned according to a uniform countywide or regional system for assignment of cases among superior and municipal courts that maximizes the utilization of all judicial officers in that county or region.
2. Approve eligibility for pay parity for municipal court judges as recommended, retroactively to January 1, 1998.
3. Approve the use of the *Pay Parity Certification Form* as presented as Attachment 2 in the binder of Agenda, Reports, and Recommendations dated February 27, 1998, with one change: substitute “signatory” for “Judicial Council” in the second bullet.

The motion passed.

Special comment:

Judge Dover complimented Judge Flaherty on the wonderful job he has done as chair of the Trial Court Coordination Task Force. Members of the council gave Judge Flaherty a standing ovation. Judges Dover and Flaherty acknowledged the work of Ms. Jurcsos and, before her, Ms. Vesely in supporting the work of the committee and the council’s goals.

ITEM 6 Judicial Branch Budget Criteria and Program Priorities

Mr. Dennis Jones, Deputy Director of the AOC, and Mr. Martin Moshier, Director of the AOC Finance Bureau, presented the item. Mr. Jones said that the recommendations restate the consensus reached by the council at its planning workshop over the previous several days.

Mr. Moshier reiterated the method and criteria for developing trial court base budgets for the next two fiscal years. Mr. Walsh asked whether base budgets would include any increases.

Mr. Moshier stated that the hope is that they would increase commensurate with any raises given to state employees.

Council action:

Judge Harbin-Forte moved that the council adopt the following criteria to guide the development of trial court base budgets for fiscal years 1998–1999 and 1999–2000:

1. Base budgets will *not* be developed using prior year expenditures, top-step salaries, and baseline restoration.
2. Base budgets will be predicated on the level of funding appropriated by the Legislature.
3. Base budgets for each countywide trial court system will be developed in accordance with the following method in the budget development process for the fiscal year 1999–2000 budget:
 - a. The total of the following:
 - i. Fiscal year 1997–1998 TCBC allocation received;
 - ii. Budget Change Proposals approved and funded by the Legislature in fiscal year 1998–1999;
 - iii. Employee salary and benefit increases negotiated, approved, and implemented by the courts in fiscal year 1997–1998 to the extent funding is available;
 - iv. Annualized fiscal year 1997–1998 deficiency funding approved by the Legislature; and
 - v. Full year funding for continuing programs or activities that were only partially funded in fiscal year 1998–1998.
 - b. *Minus* one-time or non recurring expenditures.

The motion passed.

Council action:

Mr. Sloan moved that the Judicial Council adopt the following criteria for budget submissions for the Judicial Council and Administrative Office of the Courts, trial courts, and appellate courts for the fiscal year 1999–2000 budget development process :

1. Budget proposals submitted by all components of the judicial branch should be based on the Judicial Council strategic plan or established council program priorities.
2. The Judicial Council/AOC, appellate courts, and each countywide trial court system shall submit budget proposals to their intermediate review body that in the aggregate do not exceed 10 percent of their base budget.
3. The Judicial Council/AOC, appellate courts, and each countywide trial court system shall submit not more than 7 budget proposals to their intermediate review body.
4. Each countywide trial court system shall submit at least 2 budget proposals in priority areas established by the Judicial Council.
5. The Trial Court Budget Commission should not submit more than 20 Budget Change

Proposals to the Judicial Council.

The motion passed.

Council action:

Ms. Veasey moved that the Judicial Council:

1. Adopt the following program priorities for the fiscal year 1999–2000 trial court budget development process:
 - a. Jury System Improvements
 - i. Increase juror fees to \$16 per day, beginning with the second day of service, to offset the costs of meals, travel, and other incidental expenses;
 - ii. Increase the mileage rate to \$.28 per mile for each mile actually traveled one way in attending court as a juror, beginning with the second day of service, for those jurors traveling more than 50 miles to the court;
 - iii. Reimburse jurors for parking expenses incurred as a result of jury service, beginning with the second day of service;
 - iv. Reimburse jurors for child and/or dependent care expenses incurred as a result of jury service, beginning with the second day of service; and
 - v. Make a transition to a one-day, one-trial system, beginning in the fiscal year 1999–2000.
 - b. Court Technology
 - i. Update local strategic technology plans;
 - ii. Enhance communication through electronic means (e.g., e-mail, electronic filing, connectivity);
 - iii. Improve case management systems;
 - iv. Enhance systems to meet adopted information standards (JBSIS); and
 - v. Ensure technical currency (e.g., scheduled replacement of equipment and software.)
2. Encourage the appellate courts to continue to develop initiatives on the following priority programs:
 - a. Education for appellate justices and court staff, and
 - b. Public outreach

The motion passed.

Council action:

Judge Provost moved that the Judicial Council direct the Administrative Director to:

1. Continue to pursue the activities discussed during the February 1998 planning meeting, as well as other activities in support of the council's Long-Range Strategic Plan and policy directives;
2. Exercise his discretion in prioritizing and implementing planned and unanticipated projects, programs, and activities consistent with the Judicial Council strategic plan; and
3. Present the council with those issues where in his judgment the council should be aware of significant fiscal, policy, or program consequences.

The motion passed.

Council action:

Judge Harbin-Forte moved that the Judicial Council direct the Administrative Director to take the following actions regarding the fiscal year 1998–1999 Court Improvement Fund Statewide Projects account:

1. Transfer \$1 million to the Improvement Fund Reserve account.
2. Make \$1 million available to courts for activities that will facilitate the smooth transition to state funding (e.g., fiscal system).
3. Make allocations in necessary amounts in support of the following activities:
 - a. Complex litigation programs under the supervision of the Complex Litigation Task Force;
 - b. Pilot trial courts to develop community outreach programs;
 - c. Pilot programs for family court conferencing;
 - d. Pilot programs for self-help resource centers ;
 - e. Establishment of a statewide interactive self-help Web site; and
 - f. Support of local court planning efforts.

The motion passed.

Council action:

Ms. Veasey moved that the Judicial Council reaffirm its intent to augment technology activities in the trial courts, including case management systems and locally implemented court education and training for judicial officers and court staff (e.g., orientation programs, continuing education, mandated training) from funds appropriated to the Judicial Administration Efficiency and Modernization Fund.

The motion passed.

Council action:

Justice Huffman moved that the Judicial Council direct the Court Interpreters Advisory Panel to:

1. By August 1998, forward to the Trial Court Budget Commission recommendations on the funding and activities necessary to address the statewide unavailability of interpreter services through means the panel might identify, such as:
 - a. Increasing the rate of compensation to match the federal rate;
 - b. Addressing outstanding travel issues; and
 - c. Providing a higher level of coordination in the delivery of services.

The motion passed.

Council action:

Judge Dover moved that the Judicial Council follow the three-year plan for court technology, as follows:

1. Authorizing the expenditure of funds from the Judicial Administration Efficiency and Modernization Fund in fiscal year 1998–1999 to hire a consultant to develop a statewide implementation plan incorporating all 58 counties. If funds are unavailable in 1998–1999, the council authorizes this expenditure in 1999–2000 from the same fund.
2. Making technology one of the court's two program priority items for budget development in fiscal year 1999–2000.
3. Continuing in fiscal year 2000–2001 to pursue the identified initiatives in fiscal year 1999–2000 and strongly considering technology needs in the budget development process and the allocation of funds from other sources.

The motion passed.

Special comment:

Chief Justice George presented Senator Lockyer, author of the landmark trial court funding legislation and former member of the Judicial Council, with a plaque of commendation for his work to achieve state funding of the trial courts.

ITEM 7 Judicial Compensation

Judge Boland, Vice-chair of the Policy Coordination and Liaison Committee, presented the item. He said that the committee recommends supporting the concept of the need for adjustments in judicial compensation to ensure that highly qualified, career-minded judicial officers with diverse experience continue to be attracted to and retained on the bench.

Judge Boland noted that the gap between state judicial salaries and those of the federal bench and others in California's public sector legal community continues to grow. He said that

California's judicial salaries have fallen behind. He reported that in some counties the county district attorney and senior staff are compensated several thousands of dollars more than the trial court judge before whom they appear. County executive officers and court executive officers in some counties also earn significantly more than trial court judges. Additionally, California judges are paid substantially less than private sector attorneys from whose ranks judges are often selected.

Council action:

Judge Couzens moved that the Judicial Council:

1. Find that the disparity in compensation between California judges and the public, private, and federal sectors of the legal community has grown so significant that it threatens the state's ability to attract and retain the best possible candidates for the judiciary.
2. Support the concept of the need for adjustments in the judicial compensation that will lead ultimately to approximate parity with the federal bench, in order to ensure the continued ability to attract and retain highly qualified, diversely experienced, career-minded judicial officers.

The motion passed.

ITEM 8 State-Funded Court Interpreters Program

Mr. Vickrey opened the discussion by stating that court interpreter issues were among the topics that the council adopted as priorities for staff and trial court activity for the next few years. Justice Boren commented that in his visits to courts as part of the council's outreach efforts, court interpreter issues were mentioned by all counties as a significant issue needing a long-term solution.

Mr. Vickrey introduced representatives from various court interpreter associations attending the council meeting.

Ms. Kiri Torre, Director of the Trial Court Services Division, and Mr. Joseph Wong, staff to the Court Interpreters Advisory Panel, presented the item. Ms. Torre stated that the 1990 census found that approximately 224 languages were spoken in California. She noted that California currently has 1,086 certified court interpreters for 8 languages.

Ms. Torre stated that in 1992 legislation was passed that made the council responsible for the California Court Interpreters Program and established the Court Interpreters Advisory Panel. Ms. Torre outlined the function and duties of the Court Interpreters Advisory Panel as stated in Government Code section 68562.

Ms. Torre stated that the Budget Act for fiscal year 1997-1998, in conjunction with the Trial Court Funding Act, established a separate account for funding allowable court interpreter costs and transferred to this account \$32.8 million of the \$1.596 billion appropriated to fund

allowable trial court operations costs. She reported that the Budget Act also requires the council to: (1) set statewide or regional rates and policies for the payment of court interpreters, not to exceed the rate paid to interpreters in the federal system; (2) adopt appropriate rules and procedures for the administration of the separate account; and (3) report quarterly to the Legislature and state's Director of Finance regarding the expenditures from this schedule, projections for annual expenditures for the use of court interpreters in the courts, and the use and administration of these funds.

Ms. Torre noted that in December 1997 the council submitted a deficiency request to the Department of Finance to address expenditures due to growth in workload and to increase rates of compensation for court interpreter services. For fiscal year 1997–1998, deficiency funding of \$3.8 million was approved for court interpreter services due only to growth in workload. The deficiency request for rate increases was denied because by definition it is a controllable cost.

Ms. Torre indicated that staff recommends that funding for the fiscal year 1997–1998 Court Interpreters Program include both the initial appropriation of \$32.8 million and the deficiency appropriation of \$3.8 million and that the deficiency moneys fund the costs associated with growth in workload only. Ms. Torre stated that staff also recommends that the council allocate 90 percent of the total amount to the trial courts, based on the first six months of expenditures for the current fiscal year. The remaining 10 percent would be withheld until the close of the fiscal year, when the money would be allocated based on actual costs.

Ms. Torre also provided a statewide update on the different per diem rates paid to court interpreters. She reported that it has been difficult for many courts to pay interpreters at the recommended Minimum Service Level (MSL) per diem rate of \$90 (half-day)/\$180 (full day) or above the MSL due to the bifurcated funding structure that existed until recently.

Ms. Torre indicated that if the Legislature appropriates the requested funding in fiscal year 1998–1999, staff recommends increasing (1) the per diem rate to the MSL of \$90 (half-day)/\$180 (full day) in all counties below the MSL, (2) the rates in those counties that are then at the MSL by 5 percent, and (3) the rates in those counties that are above the MSL by 3 percent. Staff also recommends funding the full year cost of court interpreter coordinator positions and anticipated growth in interpreter expenses resulting from increased workload. Increased funding of \$4.9 million would be needed to fund the staff recommendations.

Mr. Vickrey noted that staff is also requesting that the Appropriations Subcommittees of the Legislature provide an additional increase of 10 percent for all counties for this line item in fiscal year 1998–1999. This will enable the council to make progress in achieving its goal of establishing per diem rates commensurate with the federal rate, which the council has identified as its goal for fiscal year 1999–2000. The increase in this line item would equal \$4 million. The staff intends to pursue this approach, subject to the council's actions on interpreter issues currently under discussion by the council.

Ms. Torre also stated that staff recommends temporarily adding 6 new members to the 19-member Court Interpreters Advisory Panel: 3 representatives of California-based court

interpreter associations, and 3 judges and/or court executives. Expanding the membership will broaden the variety of perspectives represented on the panel and enrich the discussion on statewide court interpreter policies during the transition to the new state-funded Court Interpreters Program.

Additionally, Ms. Torre reported that staff requests authorization to conduct or contract a study to address issues relevant to the Court Interpreters Program, including interpreter compensation, working conditions, recruitment, certification, and retention.

Mr. Vickrey stated that the proposals presented are staff recommendations. He commented that staff and representatives from the California court interpreter community have had several meetings. Although they often have the same goals for court interpreter compensation, they do not always share the same strategy for improving it. The Bay Area Court Interpreter Association has proposed to increase the per diem rate 10 percent this fiscal year and move to the federal rate of \$250 a day on July 1, 1998. Mr. Vickrey said that for the skill level required and the workload maintained this pay rate is justifiable. But under the current budget circumstances and structure the council will be extremely lucky to get the support of the Legislature and Governor to make the more moderate increases recommended by staff.

Chief Justice George expressed his concern for the difficult conditions court interpreters work under and the council's commitment to better the working conditions and compensation for court interpreters. He reported that in recent visits with individual legislators and with the Governor, and in his annual State of the Judiciary Address to a joint session of the Legislature, he has underscored the need for improvements in court interpreter services. He stated that in some California counties court interpreter services are the number-one concern of the courts. He stated that improving these services is a high priority of the council.

Mr. Walsh asked if the recommended increase in rates takes into account the practice of double booking, in which an interpreter works in more than one court in one day. Ms. Torre noted that it would be difficult to double book, but potentially an interpreter could go from one jurisdiction and earn a half day's pay, then go to another and earn another half day pay in the same morning. She stated that the practice should not happen within a county, but there is no prohibition for it in neighboring counties.

In response to a question about whether disparity in rates would still remain if staff recommendations were adopted, Ms. Torre clarified that the proposal would raise the rates to the MSL for those counties where the pay is below the MSL and then add 5 percent to that rate. A few counties would continue to be paid a higher rate until funding is available to bring all interpreters to a statewide rate.

Justice Boren asked whether the study will deal with a long-term problem expressed by many small counties: that smaller counties cannot fairly compete with larger counties for interpreter services since, even though the pay might be equal, smaller counties use interpreters less and delays are more frequent. Chief Justice George suggested that smaller courts coordinate efforts where interpreters "ride circuit" and cover certain counties on a set schedule. Staff indicated

that moving small counties to the MSL and paying travel would make it possible to increase access to interpreters for all counties.

Judge Harbin-Forte expressed her support for increasing the pay for court interpreters. She asked whether the recommendation is to raise MSLs to \$94.50 for a half day and \$189 for a full day of interpreting. Mr. Vickrey said that was the intent, but it was worded differently to state the priority of the council to bring all courts up to the MSL even if funding does not allow for the other increases.

Judge Harbin-Forte asked about the reasoning behind the 5 percent increase. Mr. Vickrey responded that the current fixed appropriation does not provide any money for pay increases. He noted that if the council adopts the recommendation, money originally targeted for court operations will be shifted to the court interpreter line item on July 1, 1998, to pay for the increases. He stated that if the Governor's budget passes, an additional 3 percent would be added to the initial increases, thereby raising the full-day MSLs to \$195. To adopt higher increases, he said, the council would need to reduce court operation budgets further, since many counties will be finishing the year with a shortfall. Judge Harbin-Forte clarified that the recommendations were, in staff's opinion, the highest rate the council could adopt currently.

Mr. Vickrey stated that the increases recommended will mean a 50 percent pay increase for some interpreters and a 6 or 8 percent increase for others. He acknowledged that the increase is not a complete solution but is an attempt to minimize the disparity and to move the MSL rate towards the goal of reaching the federal level.

Mr. Vickrey noted that some members of the judiciary will be upset about the shift in money from court operations to interpreter costs when they already feel shortchanged in their operating budgets.

Judge Keyes asked whether court administrators and presiding judges were aware that the council would be shifting money from operations without their having input. Mr. Vickrey responded that interpreter services were funded at the level actually spent in fiscal year 1995–1996 because actual expenditures for fiscal year 1997–1998 for interpreters were not known when the budget was passed. The legislature did not reduce the total funding from fiscal year 1997–1998 with the understanding that the Judicial Council would shift the correct level of funding to the interpreter line when actual expenditures were known. As a result, the courts in fiscal year 1998–1999 will end up in the same net position. (If this shift in money from the operations budget to the court interpreter line were not made, trial courts would have \$3 or \$4 million more at the expense of the interpreter program.)

Judge Dover asked how much the study would cost and what staff resources would be directed to it (compared to other stated priorities) if staff conducted the study. He also asked what the study will show that is different from information previously gathered by the advisory panel. Mr. Vickrey stated that the panel's initial mandate was to examine testing and certification issues. The funding of court interpreters was formerly handled by individual counties. The Trial Court Budget Commission established an MSL to improve service and funding in this

area. He stated that the council is now responsible for setting rates and working conditions, as a result of the passage of the Trial Court Funding Act and the Budget Act. To set rates in a responsible manner, the council will need documentation and information that the staff and panel do not currently have.

Mr. Overholt expressed his support for greater compensation for interpreters and for the recommendations. He asked whether the council is taking an initial step toward setting salaries of employees and contractors. Mr. Vickrey responded that the Budget Act requires the council to set the rates for court interpreters. Mr. Overholt clarified his view that the council should delegate this function to the director with appropriate criteria, as opposed to directly negotiating and setting salaries.

Judge Provost stated that in this time of insufficient funding, she would prefer to increase rates for interpreters rather than fund a part-time interpreter coordinator in counties that rarely use interpreters and therefore have little to coordinate. Ms. Torre stated that the council was being asked to set aside the money for the positions based on an average cost of an interpreter coordinator position and that staff would present a specific proposal on the coordinator positions at a later date. Ms. Torre said that the money was being set aside within the interpreter account and could be shifted to other areas later.

Ms. Gonzalez said that decisions on whether or not to fund an interpreter coordinator position should be left to individual courts; she noted that some courts have a dire need for coordination at a higher level than that of a court who has a clerk who is handling a couple of cases a day that require an interpreter.

Council action:

Justice Boren moved that the council:

1. Establish in fiscal year 1997–98 the Court Interpreters Program that:
 - a. Allocates state funds appropriated in support of court interpreter expenses for fiscal year 1997–1998, including both the initial appropriation of \$32.8 million and the deficiency appropriation of \$3.8 million (totaling \$36.6 million); and
 - b. Ensures that the \$3.8 million in deficiency funding in the current year is allocated to fund only those costs associated with growth in the workload.
2. If funding is appropriated, increase the Court Interpreters Program funding in fiscal year 1998–1999 to:
 - a. Adjust the per diem rates effective July 1, 1998, to:
 - i. Increase all per diem rates to the minimum service level (MSL) of \$90/\$180 (half day/full day);
 - ii. Increase all rates at the MSL by 5 percent; and
 - iii. Increase all other rates currently above the MSL by 3 percent;
 - b. Fund the full year cost of court interpreter coordinator positions consistent with the Budget Act language, which determines the staffing level by the population size of each county; and
 - c. Fund anticipated growth in interpreter expenses in fiscal year 1998–99 that result from increased workload.
3. Expand the membership of the Court Interpreters Advisory Panel to temporarily add three membership slots for the California-based court interpreter associations in addition to three membership slots for additional judges and/or court executives, using the council committee nomination process as set forth in rule 1020 of the California Rules of Court. Four of the six slots would be phased out over a two-year period.
4. Authorize the AOC to conduct or contract a study to address issues relevant to the Court Interpreters Program, including but not limited to interpreter compensation, working conditions, recruitment, testing and certification of interpreters, retention of qualified interpreters, and determining the qualifications and duties of interpreter coordinators. Direct that the study be submitted to the Court Interpreters Advisory Panel for review and comment which will then be submitted to the Judicial Council along with the study.
5. Direct staff to prepare an allocation schedule, consistent with recommendation 1, for submission to the Trial Court Budget Commission for final review and approval.

The motion passed.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

William C. Vickrey
Secretary