

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Executive and Planning Committee
Hon. Richard D. Huffman, Chair
Hon. Marvin R. Baxter,
Chair, Policy Coordination and Liaison Committee
Hon. Dennis E. Murray,
Chair, Rules and Projects Committee
Mary M. Roberts, General Counsel
Michael A. Fischer, Senior Attorney, 415-865-7685

DATE: April 23, 2009

SUBJECT: Interim Procedures for Administration of Court-Funded Supplemental
Judicial Benefits (Action Required)

Issue Statement

The Judicial Council, as part of its goal of ensuring excellence and diversity on the bench, remains committed to establishing equal and appropriate benefits on a statewide basis.

The recently enacted Senate Bill No. 11 (Stats. 2009, ch. 9 (Sen. Bill No. 11 (2009-2010 2d Ex. Sess.) (Steinberg)) (SB 11),¹ among other things, states “[j]udges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits *on the same terms and conditions* as were in effect on that date.” (Gov. Code, § 68220(a); italics supplied.) In light of the extraordinarily severe fiscal condition of the state and the Judicial Council’s obligation to allocate funds to the trial courts and to seek to ensure that the trial courts are managed efficiently, effectively, and responsibly, it is important for the council to establish procedures applicable to courts

¹ The complete text of the act is set forth at pages 8-9. SB 11 becomes effective May 21, 2009, the 91st day after adjournment of the special session at which the bill was passed. (See Const., art. IV, § 8(c)(1)). For ease of reference statutory citations are made to the Government Code section where the provision will be codified effective May 21, 2009.

that funded benefits to judges as of July 1, 2008, and thus are required to maintain those supplemental benefits under SB 11.²

Recommendation

The Executive and Planning Committee and the chairs of the Policy Coordination and Liaison Committee and the Rules and Projects Committee (the committee) recommend that the Judicial Council:

1. Effective May 21, 2009, adopt interim procedures for the administration of court-funded supplemental judicial benefits that are authorized by SB 11. The proposed interim procedures:
 - (a) require recordkeeping of and reporting on supplemental benefits,
 - (b) establish a presumption that cash allowances generally be in the nature of payment for or reimbursement of expenses, and
 - (c) prohibit new court-funded benefits or an increase in any existing court-funded benefits.³

The interim procedures are proposed to further the accountability of and public trust and confidence in the court system.

The text of the proposed interim procedures is attached at pages 6-7.

2. Delegate to the Executive and Planning Committee and the chairs of the Policy Coordination and Liaison Committee and the Rules and Projects Committee authority to receive additional comments on the procedures and to take appropriate action.

Rationale for Recommendation

SB 11 provides that “[j]udges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits *on the same terms and conditions* as were in effect on that date.” (Gov. Code, § 68220(a); italics supplied). The legislation maintains the status quo with respect to supplemental judicial benefits as they existed on July 1, 2008—while providing counties the option to terminate benefits with notice to the Administrative Director of the Courts and the affected judges (Gov. Code, § 68220(b))—and directs the Judicial Council to report back to the Legislature by December 31, 2009, “analyzing the statewide benefits inconsistencies.”

² SB 11 uses the term “supplemental judicial benefits” or “supplemental benefits” as does this report. These benefits are also often referred to as “local judicial benefits” or “local benefits.”

³ The prohibition against courts establishing any new benefit, which is part of paragraph 6 in the proposal, applies generally to all courts and is a restatement of SB 11’s authorization of only those supplemental benefits provided to judges as of July 1, 2008. (Gov. Code, § 68220 (a).)

(Section 6, uncodified.) In addition, SB 11 explicitly provides that the council is not required to increase funding to a court for the payment of supplemental benefits and that neither the state nor the council is obligated to pay for benefits previously provided by a county or court. (Gov. Code, § 68222.)

In contrast to supplemental judicial benefits that are provided and paid by a county, court-funded supplemental benefits present issues relating to the operation and administration of the courts. Given the Judicial Council's authority and responsibility to "regulate the budget and fiscal management of the trial courts" (Gov. Code, § 77206(a)), the council has an important role in assuring that the courts are accountable for the court-funded supplemental benefits provided to judges under this legislation and that court-funded supplemental benefits are both consistent with law and with judicial branch policy.

The Judicial Council has authority and responsibility under the Constitution and the Government Code over the fiscal management of the trial courts, and plays an important role in ensuring the integrity and accountability of the state court system. (See, e.g., Cal. Const., art. VI, § 6(d); Gov. Code, §§ 77206, 68502.5.) In keeping with that authority and responsibility, and to promote public trust and confidence in the court system, it is appropriate for the council to adopt interim procedures for the administration of court-funded supplemental judicial benefits that are authorized by SB 11.

These procedures are directed to court-funded supplemental judicial benefits that are authorized under SB 11; they do not independently authorize the provision of benefits by a court.⁴ The proposed procedures are denominated "interim" because they are adopted pending submission by the council of the report to the Legislature mandated by SB 11 and potential future legislative action concerning supplemental judicial benefits.

The procedures are recommended in light of the extraordinarily severe fiscal condition of the state and the Judicial Council's obligation to allocate funds to the trial courts and to seek to ensure that the trial courts are managed efficiently, effectively, and responsibly.

Alternative Actions Considered

The committee considered the possibility that no interim procedures were necessary, as SB 11 requires only that courts implement the legislation by continuing to provide benefits to judges on the same terms and conditions that were in effect as of July 1, 2008.

⁴ These procedures do not apply to judicial benefits expressly prescribed by other statutes (e.g., Gov. Code, § 69907). The Judicial Council does not have authority in regard to the provision of supplemental benefits that are paid for by counties and different considerations may apply to those benefits (1) because of the unique and complex relationship between counties and the state (see, e.g., SB 11, sec. 1(b) concerning the reduction in county maintenance of effort obligations in exchange for continuation of supplemental judicial benefits) and (2) because county-funded benefits do not affect the operating budgets of the courts.

After discussion, the committee concluded that it was necessary for the Judicial Council to adopt interim procedures to assure that the legislative intent of SB 11 is carried out in a manner that provides for public accountability and fiscal responsibility, especially in light of the serious fiscal situation affecting state government and its potential impact on court personnel costs and the ability of courts to provide services to the public.

Comments from Interested Parties

The proposed interim procedures were circulated for comment on April 14, 2009, to, among others, all administrative presiding justices and clerk administrators of the appellate courts and the presiding judges and executive officers of the superior courts, with the request that they be circulated among all judges. Comments were invited by close of business on April 20, 2009.

Some concerns were expressed about the limited time available to provide for comment. The committee wanted to have the procedures in effect prior to the effective date of SB 11 on May 21, 2009, and wanted to have the action taken by the full council rather than having the committee take action on behalf of the council. The April 24 meeting was the only available council meeting. The short time period for comment, while not optimal, was viewed as preferable to having no comment period at all. In light of the short comment period, the committee recommends that the council delegate to the committee the authority to continue to receive comments on the proposal and take appropriate action.

Eleven comments were received concerning the proposed interim procedures. One commentator agreed with the adoption of the proposed interim procedures, three agreed subject to modification, two opposed adoption, and five did not indicate a position. The comments and responses to the comments are summarized in the chart attached at pages 10-20. The most significant comments are discussed below.

Three commentators raised concerns regarding the impact of proposed interim procedure 3 on court-funded benefits for new judges. The committee has revised procedure 3 to clarify that the restriction on increasing the amount paid by a court applies on a cost-per-judge basis. Thus, proposed interim procedure 3 would allow a court to provide to a new judge the same benefits as provided to other judges of that court as of July 1, 2008, so long as the cost for providing the benefit to the new judge does not exceed the per-judge amount spent as of July 1, 2008.

Five commentators raised concerns regarding the restriction that courts cannot pay an amount for a specific benefit that is more, per judge, than was paid effective July 1, 2008. The committee discussed this issue and concluded that a reasonable interpretation of the phrase in SB 11 (Gov. Code, § 68220(a)) “on the same terms and conditions” is that a court may not increase the amount it pays for a specific benefit, unless additional judges are appointed (as discussed above). This interpretation is consistent with the overall

intent of SB 11 to maintain the status quo and with the specific provision of SB 11 (Gov. Code, § 68222), which provides that “[n]othing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.”

The committee recognizes that the phrase “on the same terms and conditions” is open to other interpretations. Among other arguments, it could be said that the phrase would allow a court to pay for the increased expense associated with a particular benefit as the cost of providing that benefit increased. For example, courts could continue to pay the increased cost of life insurance premiums as such costs were increased by the insurance provider. It may be argued that this is the only way to maintain the status quo, i.e., to continue providing the same level of benefit to judges, regardless of expense. The committee’s recommended procedure reflects a policy decision based, in large part, on the current economic climate and the absence of any additional appropriation to pay for increases in the cost of court-funded judicial benefits. To recommend otherwise would be inconsistent with the provision in SB 11 that states that nothing in the act requires the Judicial Council or state to increase funding to a court or pay for previously provided benefits. (Gov. Code, § 68222.)

One court objected to the adoption of proposed interim procedure 6 on the ground that restricting courts from paying for benefits that had been paid by a county on July 1, 2008, and subsequently terminated by the county would be inconsistent with SB 11, because such restriction would not allow for preservation of the status quo. The committee discussed this objection and concluded that SB 11 does not authorize courts to assume the cost or otherwise pay for benefits that, as of July 1, 2008, were provided by the county. SB 11 specifically provides that judges shall continue to receive supplemental benefits “from the county or court *then paying the benefits.*” (Gov. Code, § 68220(a); italics supplied.) If the Legislature wanted to authorize courts to pay for benefits previously paid for by the county, it could have so provided when it authorized counties to terminate those benefits; it did not do so.

Two courts raised concerns regarding the conditions under which a court may reimburse mileage to a judge who also receives a car allowance. The extent to which a court-provided car allowance is intended to be in lieu of mileage reimbursement and the extent of any mileage reimbursement are both dependent on the terms and conditions under which the benefit was established. The resolution of this issue is, therefore, dependent on the intent evidenced in the local documentation establishing the benefit.

Implementation Requirements and Costs

Implementation may require court staff time to conduct the required recordkeeping and reporting on court-funded county benefits. The first reports will be due by June 30, 2009.

Attachments

Interim Procedures for Administration of Court-Funded Supplemental Judicial Benefits¹

The Judicial Council, as part of its goal of ensuring excellence and diversity on the bench, remains committed to establishing equal and appropriate benefits on a statewide basis.

The following procedures are to help assure that SB 11 is implemented in a manner that provides for public accountability and fiscal responsibility, especially in light of the serious fiscal situation affecting state government and its potential impact on court personnel costs and the ability of courts to provide services to the public. Each court is responsible for implementing the legislation and, in order to do so, must determine what action is required and appropriate in light of the benefits the court provided to judges as of July 1, 2008. These procedures are interim in light of the report to the Legislature required by SB 11 and the possibility of further legislative action on this subject. These procedures are directed to court-funded supplemental judicial benefits that are authorized under SB 11; they do not independently authorize the provision of benefits by a court.²

1. Courts must have and maintain documentation that shows the following information about the cost to the court of supplemental judicial benefits and report the information to the Judicial Council by June 30, 2009, and thereafter as requested:
 - Total cost to the court of court-funded supplemental benefits;
 - Source of money used to pay the court-funded supplemental benefits; and
 - Per-judge cost of court-funded supplemental benefits or, if cost varies among judges, the range of per-judge costs and factors that affect costs.

2. Courts must have and maintain documentation that shows the following information about each supplemental judicial benefit funded by the court and report the information to the Judicial Council by June 30, 2009, and thereafter as requested:
 - Eligibility requirements, if any;
 - Identity of payee (e.g., judge, benefit provider, county);

¹ These procedures do not apply to judicial benefits expressly prescribed by other statutes (e.g., Gov. Code, § 69907). The Judicial Council does not have authority in regard to the provision of supplemental benefits that are paid for by counties and different considerations may apply to the those benefits (1) because of the unique and complex relationship between counties and the state (see, e.g., SB 11, sec. 1(b) concerning the reduction in county maintenance of effort obligations in exchange for continuation of local judicial benefits) and (2) because county-funded benefits do not affect the operating budgets of the courts.

² The prohibition against courts establishing any new benefit, which is part of paragraph 6 in the proposal, applies generally to all courts and is a restatement of SB 11's authorization of only those supplemental benefits provided to judges as of July 1, 2008. (Gov. Code, § 68220 (a).)

- Date benefit was established, method by which established, and any documentation evidencing establishment; and
 - The terms and conditions applicable to each benefit, method by which established, and any documentation evidencing establishment.
3. Courts must not increase either the level of any supplemental judicial benefit provided or the total amount per judge paid by the court for supplemental judicial benefits above the actual level of and court expenditures per judge for benefits as of July 1, 2008.
 - Money that was previously used to provide unrestricted cash allowances or cash-in-lieu benefits may be used to pay increased costs of other benefits.
 4. Courts that provide a car allowance to judges must not also provide mileage reimbursement to the same judges absent clear evidence that the car allowance was established with the intent that it be in addition to mileage reimbursement.
 5. Courts that provide other cash allowance benefits to judges for a specified purpose must restrict payment of that allowance to payment for or reimbursement of actual, documented expenditures absent clear evidence that the benefit was established with the intent that it be paid regardless whether activities related to the specified purpose are undertaken. In the latter situation, courts should encourage judges to accept only the actual cost of activities that the cash allowance is intended to support.

Example: A cash allowance for professional development should be provided to pay for professional development activities that are undertaken, as opposed to providing a lump-sum cash payment regardless whether such activities are undertaken.

6. Courts must not establish any new judicial benefit and must not assume the cost or otherwise pay for a county-paid judicial benefit if the county terminates funding for or provision of a judicial benefit.

Statutes 2009, chapter 9 (Sen. Bill No. 11 (2009-2010 2d Ex. Sess.)
(Steinberg))

FILED WITH SECRETARY OF STATE FEBRUARY 20, 2009
APPROVED BY GOVERNOR FEBRUARY 20, 2009

LEGISLATIVE COUNSEL'S DIGEST

SB 11, Steinberg. Judges: employment benefits.

The California Constitution requires the Legislature to prescribe compensation for judges of courts of record. Existing law authorizes a county to deem judges and court employees as county employees for purposes of providing employment benefits. These provisions were held unconstitutional as an impermissible delegation of the obligation of the Legislature to prescribe the compensation of judges of courts of record.

This bill would provide that judges who received supplemental judicial benefits provided by a county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date. The bill would authorize a county to terminate its obligation to provide benefits upon providing 180 days' written notice to the Administrative Director of the Courts and the impacted judges, but that termination would not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The bill also would authorize the county to elect to provide benefits for all judges in that county. The bill would require the Judicial Council to report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

This bill would provide that no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of the bill on the ground that those benefits were not authorized under law.

This bill would provide that nothing in its provisions shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to address the decision of the Court of Appeal in *Sturgeon v. County of Los Angeles* (2008) 167 Cal.App.4th 630, regarding county-provided benefits for judges.

(b) These county-provided benefits were considered by the Legislature in enacting the Lockyer-Isenberg Trial Court Funding Act of 1997, in which counties could receive a reduction in the

county's maintenance of effort obligations if counties elected to provide benefits pursuant to paragraph (l) of subdivision (c) of Section 77201 of the Government Code for trial court judges of that county.

(c) Numerous counties and courts established local or court supplemental benefits to retain qualified applicants for judicial office, and trial court judges relied upon the existence of these longstanding supplemental benefits provided by the counties or the court.

SEC. 2. Section 68220 is added to the Government Code, to read:

68220. (a) Judges of a court whose judges received supplemental judicial benefits provided by the county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.

(b) A county may terminate its obligation to provide benefits under this section upon providing the Administrative Director of the Courts and the impacted judges with 180 days' written notice. The termination shall not be effective as to any judge during his or her current term while that judge continues to serve as a judge in that court or, at the election of the county, when that judge leaves office. The county is also authorized to elect to provide benefits for all judges in the county.

SEC. 3. Section 68221 is added to the Government Code, to read:

68221. To clarify ambiguities and inconsistencies in terms with regard to judges and justices and to ensure uniformity statewide, the following shall apply for purposes of Sections 68220 to 68222, inclusive:

(a) "Benefits" and "benefit" shall include federally regulated benefits, as described in Section 71627, and deferred compensation plan benefits, such as 401(k) and 457 plans, as described in Section 71628, and may also include professional development allowances.

(b) "Salary" and "compensation" shall have the meaning as set forth in Section 1241.

SEC. 4. Section 68222 is added to the Government Code, to read:

68222. Nothing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.

SEC. 5. Notwithstanding any other law, no governmental entity, or officer or employee of a governmental entity, shall incur any liability or be subject to prosecution or disciplinary action because of benefits provided to a judge under the official action of a governmental entity prior to the effective date of this act on the ground that those benefits were not authorized under law.

SEC. 6. The Judicial Council shall report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SP09-02**Interim Procedures for Administration of Court-Funded Local Judicial Benefits**

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Hon. George J. Abdallah, Jr., Judge Superior Court of San Joaquin County	NI	The proposal to establish a system of benefits equal throughout the branch assumes that is the goal desired by the judicial officers. I and many of my colleagues suggest that the funds that would be spent on a benefits system should be used not for compensation supplements but expended to make equal the level of staffing available for judges to complete their basic core duties. For example, many courts do not have adequate staffing of research attorneys or judicial secretaries.	The comment does not address the proposed interim procedures.
2.	Hon. Juliet L. Boccone, Judge Superior Court of Tulare County	NI	I am concerned about part 3 of this document stating there will be no changes in the amount of the payment beyond that paid on or before July 1, 2008. What if new judges are appointed? I know that some of the benefits relate to products or services purchased on behalf of the judges. There is no way to ensure the costs will remain the same when they are purchased from outside providers. I think there should be some modification of this portion to address these issues.	The commentator raises two points. First, consistent with SB 11, the proposed interim procedures do <i>not</i> prevent a court from providing a new judge the same benefit that was provided to other judges of that court as of July 1, 2008. Proposed procedure 3 has been clarified to reflect that the restriction on increasing the amount paid by a court applies on a cost-per-judge basis. Second, the committee discussed whether a court may pay more for a benefit than it paid on July 1, 2008, as a result of increased costs of benefits (e.g., insurance premiums). Although there are alternative interpretations, as a matter of policy, the committee concluded that the more reasonable interpretation of the phrase in SB 11 (Gov. Code,

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	Commentator	Position	Comment	Committee Response
				<p>§ 68220(a) “on the same terms and conditions” is that a court may <i>not</i> increase the amount it pays for a specific benefit, unless additional judges are appointed. This is consistent with the overall intent of SB 11 to maintain the status quo and with the specific provision of SB 11 (Gov. Code, § 68222), which provides that “[n]othing in this act shall require the Judicial Council to increase funding to a court for the purpose of paying judicial benefits or obligate the state or the Judicial Council to pay for benefits previously provided by the county, city and county, or the court.”</p> <p>To the extent that the cost for a benefit increases above the amount paid by the court on July 1, 2008, the individual judge may bear the increased expense if the cost-per-judge of the benefit exceeds the cost-per-judge as of July 1, 2008.</p>
3.	Hon. Timothy P. Cissna, Judge Superior Court of Humboldt County	NI	This [] penalizes Courts like ours that historically provided small benefits but terminated them just prior to July 1, 2008 in order to await guidance from the AOC. If we had waited a couple weeks to terminate those small benefits, then we would be eligible. We should all be treated the same.	The comment addresses the substance of SB 11, not the proposed interim procedures.
4.	Hon. John Gibson, Judge Superior Court of San Bernardino	AM	No specific comment.	No response required.

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	Commentator	Position	Comment	Committee Response
	County			
5.	Hon. Jennifer Shirk, Judge Superior Court of Tulare County	N	The wording regarding the proposal is concerning. In Tulare County, our only benefit is a gym membership. However, strictly following the proposal, would new judges be excluded from a gym membership? Or, would the current allocation for gym memberships be divided between all judges including future appointments? Additionally, if the gym membership fee is increased, would the judges have to bear the additional costs? Two of our judges elected not to accept the membership for health reasons. Are they precluded from access in the future?	Consistent with SB 11, the proposed interim procedures do <i>not</i> prevent a court from providing a new judge the same benefit that was provided to other judges of that court as of July 1, 2008. To the extent that the membership fee is increased over the amount paid by the court on July 1, 2008, the individual judge may bear the increased expense. (See response to comment of Hon. Juliet Boccone (#2) above.) So long as the benefit was available to judges in the court as of July 1, 2008, the benefit may be made available to new judges or to formerly non-participating judges on the same terms and conditions provided the cost-per-judge funded by the court is not increased.
6.	Mr. Benjamin Stough, CEO Superior Court of Mendocino County	A	No specific comment.	No response required.
7.	Superior Court of Contra Costa County by Ms. Kiri Torre, CEO	AM	The Court supports the interim procedure, with the clarification that any travel within County is intended to be covered by the local car allowance. However, travel outside of the normal course of work as a judge of the court should be reimbursed by either the Court or other entity, as applicable. This would primarily include the many statewide JC/AOC committee meetings where attendance by judges is requested.	The extent to which a court-provided car allowance is intended to be in lieu of mileage reimbursement and the extent of any mileage reimbursement are both dependent on the terms and conditions under which the benefit was established. The resolution of this issue is therefore dependent on the intent evidenced in the local documentation establishing the benefit. See also response to Superior Court of Kern County (#8 below).

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All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
8.	Superior Court of Kern County by Mr. Terry McNally, CEO	NI	<p>The Superior Court, County of Kern provides a car allowance to all judges. Consistent with the prior practice and policy of the County (see attached 306.2. Elected Official and Department Head Private Vehicle Use), judges may be reimbursed for mileage at a reduced amount for travel using their personal vehicle. Most judges in Kern only request reimbursement for business travel outside of the County. However, our East Kern judges often commute to the remote regional branches--Ridgecrest, Mojave and Lake Isabella-- which can amount to over 500 commuting miles per week. Per this policy, they have been reimbursed for mileage at the reduced rate predating court unification.</p> <p>This historical practice in Kern County is contrary to the following recommendation:</p> <p style="padding-left: 40px;"><i>4. Courts that provide a car allowance to judges must not also provide mileage reimbursement to the same judges absent clear evidence that the car allowance was established with the intent that it be in addition to mileage reimbursement.</i></p>	The committee does not consider the historical practice in Kern to be inconsistent with proposed interim procedure number 4. Instead, the committee considers the historical practice to represent evidence that “the car allowance was established with the intent that it be in addition to mileage reimbursement.” The reduction in the amount of the mileage reimbursement recognizes both expressly and implicitly that the mileage reimbursement is intended to be in addition to the car allowance.
9.	Superior Court of Santa Clara County by Hon. Jamie Jacobs-May, Presiding Judge	AM	The Court agrees with the proposed procedures to the extent they carry out the mandate of SB11 that judges continue to receive supplemental benefits on the same terms and conditions as were in effect on July 1, 2008. However, the	See response to comment of Hon. Juliet Boccone (#2) above.

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	Commentator	Position	Comment	Committee Response
			<p>Court disagrees with the language of Interim Procedure 3 if it intends to bar a Court from paying the increased cost of existing supplemental benefits since that would result in the judges receiving a lower level of benefits than those provided on July 1, 2008. This result would be contrary to the requirement of SB11 that judges continue to be provided benefits under the same terms and conditions in effect on July 1, 2008.</p>	
10.	<p>Superior Court of Tulare County by Hon. Paul A. Vortmann, Judge</p>	NI	<p>In response to the request for comment to the drafts recommendation for an Interim Procedure for Administration of Court-Funded Local Judicial Benefits, I have the following comments and observations on behalf of our Court:</p> <p>Tulare County Superior Court Judges have received, since January 1, 2008, fitness club memberships for each judge and his or her family. This benefit, provided to the judges, is the same benefit extended to each of the court's employees as part of the court's wellness program. The establishment of this judicial benefit occurred following consultation with Office of General Counsel and an opinion that such a benefit was an appropriate expenditure. The payment for this benefit is made on an annual basis following negotiations with the various fitness clubs within the County of</p>	<p>See response to comment of Hon. Juliet Boccone (#2) above.</p>

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Interim Procedures for Administration of Court-Funded Local Judicial Benefits

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	Commentator	Position	Comment	Committee Response
			<p>Tulare and agreements reached with each such provider.</p> <p>The cost of this benefit may, and in all probability will, increase in the future for our employees and judges. Paragraph 3 of the Draft Recommendations, if implemented, would preclude the court from paying any incremental costs for this benefit. In addition, we expect the appointment of judges to fill vacancies created on the court through retirement and the filling of new positions that have been created and those expected to be created in the future. We also have judges that have chosen not to participate who would be precluded from receiving the benefit in the future. The implementation of the Draft Recommendation would preclude the court from providing to judges appointed to new positions along with those judges who wish to be included in the benefit in the future when they have elected not to participate in the past. The court's employees and the judges have the option to participate in the benefit program on January 1st of each year. We have two judges that took office in 2008 who began receiving the benefit of the fitness club membership on January 1, 2009. Under the Draft Recommendation, they could no longer receive that benefit.</p>	

SP09-02

Interim Procedures for Administration of Court-Funded Local Judicial Benefits

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	Commentator	Position	Comment	Committee Response
			I trust you will consider the concerns of the judges of the Tulare County Superior Court in addressing the Draft Recommendations for Court-Funded Judicial Benefits.	
11.	Superior Court of Yolo County by Hon. David Rosenberg, Presiding Judge	N	<p>1. Inadequate Time Given to Trial Court’s to Properly Solicit Comments</p> <p>The invitation to comment was received on Tuesday, April 14, 2009 after 5:00 PM with a due date of at the close of business day on Monday, April 20, 2009. We contend that a four business day turn around is unreasonable and not within standard practices of other invitations to comment periods.</p> <p>Typically an invitation to comment period requires at least 30 days. This requirement is well established pursuant to other Administrative Office of the Court policies such as the Trial Court Financial Policies and Procedures Manual (“Manual”). Further, the CARM Manual, http://serranus.courtinfo.ca.gov/reference/carm/carm_manual.pdf, correlates section 77206 with former Rule of Court 6.707 (which is now 10.804). Therefore, if the manual is promulgated pursuant to section 77206, then it would seem that the notice procedures of Rule of Court 10.804 should also apply.</p> <p>Whether directly, or by analogy, this rule sets</p>	The committee recognizes the concerns regarding the limited period for review and comment concerning the proposed interim procedures. The committee considered it important to have procedures in effect prior to the effective date of SB 11 on May 21, 2009, and that any action regarding the interim procedures be by the full council rather than the committee acting on behalf of the council. The April 24 meeting was the only available council meeting before the effective date of SB 11. The limited time period for comment, while not optimal, was considered preferable to having no comment period at all.

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	Commentator	Position	Comment	Committee Response
			<p>forth a reasonable notice period which should meet a 30 day requirement, specifically when such a policy proposes regulations over fiscal affairs, moneys and judicial benefits. Government Code section 77206, Section 77206(a).</p> <p>2. Interim Procedures Extend Beyond the Scope and Intent of SB11 SB 11 provides that “judges who received supplemental judicial benefits provided by a county or court, or both, as of July 1, 2008, shall continue to receive supplemental benefits from the county or court then paying the benefits on the same terms and conditions as were in effect on that date.”</p> <p>SB 11 does not specifically give the Judicial Council any additional powers over and above what it already possesses, except that it states: “The Judicial Council shall report to the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, and both the Senate and Assembly Committees on Judiciary on or before December 31, 2009, analyzing the statewide benefits inconsistencies.”</p> <p>Procedures 1 and 2, which require the courts to</p>	<p>The committee discussed the role of the Judicial Council in interpreting and implementing SB 11. The committee concluded that:</p> <ol style="list-style-type: none"> (1) The phrase “paying benefits on the same terms and conditions” was subject to interpretation. (2) The Judicial Council has the authority and responsibility to establish procedures to assure that the courts meet their responsibility for public accountability in connection with court-funded benefits. (3) The six proposed interim procedures are consistent with SB 11 and with judicial branch policy that require the trial courts to be managed efficiently, effectively, and responsibly.

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Interim Procedures for Administration of Court-Funded Local Judicial Benefits

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			<p>have and maintain documentation regarding judicial benefits, appear consistent with statute. However, procedures 3 and 6 appear to be inconsistent with SB11 and are not authorized by either the new statutes or existing statutes and rules defining the powers of the Judicial Council.</p> <p>Procedure 3 and 6 read as follows:</p> <p>3. Courts must not increase either the level of any supplemental benefit provided or the total amount paid by the court for supplemental benefits above the actual level of and court expenditures for benefits as of July 1, 2008.</p> <p>6. Courts must not establish any new judicial benefit and must not assume the cost or otherwise pay for a county-paid judicial benefit if their county terminates funding for or provision of a judicial benefit.</p> <p>SB 11 says that judges shall continue to receive payment of judicial benefits on the same terms and conditions as were in effect on July 1, 2008. This is subject only to the county’s right of cancellation. SB 11 does not specifically speak to whether the court may pick up the costs if the</p>	

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			<p>county withdraws funding.</p> <p>In fact, the statute does not say that the court cannot pick up the costs of the benefits. It is therefore reasonable to assume that courts can pay the difference. The interim procedure overreaches by regulating courts from doing so, inconsistent with the intent of the policy to leave benefits as status quo. Instead, the statute should be interpreted as establishing a floor below which the benefits cannot drop, but the court is free to pay more than it's currently paying, e.g., in the way of picking up the difference in payments if the county gives notice of cancellation. To fulfill the spirit of the "same terms and conditions," the trial courts should be permitted to pay this difference.</p> <p>We encourage the Judicial Council to not adopt the interim policy as written as the scope is too broad. Rather, we request that a policy is adopted that is within the intent of SB 11 to keep the status quo.</p>	<p>The committee considered whether it is appropriate for courts to increase the amount, per judge, that is spent on court-funded benefits and concluded that, from a policy perspective, it is not, for the reasons discussed in response to the comment of Hon. Juliet Boccone (#2) above. The committee's recommended procedure reflects a policy decision based, in large part, on the current economic climate and the absence of any additional appropriation to pay for increases in the cost of court-funded judicial benefits. To recommend otherwise would be inconsistent with the provision in SB 11 that states that nothing in the act requires the Judicial Council or state to increase funding to a court or pay for previously provided benefits. (Gov. Code, § 68222.)</p>