



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
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MEMORANDUM

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| Date August 25, 2006 | Action Requested None, For Information Only |
| To Members of the Judicial Council | Deadline N/A |
| From William C. Vickrey <i>WCV</i> Administrative Director of the Courts | Contact William Vickrey 415-985-4235 phone 415-865-4244 fax william.vickrey@jud.ca.gov |
| Subject Report from the Administrative Director of the Courts | |

The following information highlights some of the many activities that have taken place during the past two months to further the council's goals and agenda for the judicial branch.

New Judgeships

- Negotiations with the Speaker, his staff, and the Governor's Office to retain the 50 new judgeships have resulted in an agreement to amend SB 56 (Dunn) to establish all 50 positions. The bill will be eligible for a vote on the Assembly floor next week, most likely no sooner than Tuesday. Then, the bill will go back to the Senate for a final vote (concurrence in the Assembly amendments).
- Additionally, the Governor's Office has requested support for making possible amendments to the judicial appointments application and process to broaden the qualified candidate pool. A letter from the Chief Justice to the Governor on diversity in the judiciary is attached.

Probate Reform

- A four-bill probate conservatorship reform package is currently pending in the Legislature: AB 1363 would increase court oversight over probate conservatorships, primarily by increasing the frequency and scope of court investigations; SB 1116 would provide greater court oversight over moves of conservatees and sales of their homes; SB 1550 would establish licensure for private professional conservators, guardians, and other fiduciaries; and SB 1716 would allow courts to take action in response to ex parte complaints regarding the treatment of wards and conservatees.

- Negotiations between the authors and the Governor's Office reportedly are moving in a positive direction on a possible compromise on licensure, as well as addressing cost concerns. All bills are currently linked, which means that either all four are enacted or none will take effect. (The council supports the reform package, provided funding is made available through the budget process to cover the costs of the new court mandates.)

Facilities

- Over the past several months, Chief Deputy Director Ron Overholt led discussions of the joint court-county facility working group to resolve facilities transfer issues, which resulted in an agreement between the counties, the courts, and the State Department of Finance on legislative language changes to facilitate transfers. SB 10 (Dunn), (permitting the transfer of Level V court facilities), has been amended to contain the joint court-county working group proposal and has been referred to the Assembly Judiciary and Appropriations Committees. Those hearings will likely happen early next week.

Court Interpreters

- Chief Deputy Director Ron Overholt and interpreter representatives met with Assembly Member Chu (D-Monterey Park) regarding proposed legislation that would have replaced the Judicial Council's Court Interpreters Advisory Panel with a Blue Ribbon Panel on Language Access in the Courts. In subsequent discussions, resolution was reached to leave the existing panel in place and create a separate Blue Ribbon Panel.

Minimum Judicial Education Rule

- On August 14, the Chair and Vice Chair of the council's Governing Committee of the Center for Judicial Education and Research (CJER) met with the respective chairs of the Presiding Judges and Administrative Presiding Justices Advisory Committees, a judicial member of the Access and Fairness Advisory Committee, and two representatives of the California Judges' Association to discuss input and determine options. There was constructive discussion, but no agreement on an alternative to the pending proposal.
- On August 15, the CJER Governing Committee met to discuss what recommendation they would forward to the Judicial Council. After they each expressed their views, they voted unanimously to approve recommending its rule proposal to the Judicial Council with slight modifications. (Two members were absent; one other member did not participate in the vote.)
- The rule proposal will be presented to the council at its October business meeting.

Judicial Education Audit

- Stemming from concerns of Assemblywoman Rebecca Cohn (D-Campbell) in response to a 2005 Attorney General report on domestic violence, which found that the criminal justice system is failing to protect victims and families, the Joint Legislative Audit Committee directed the Bureau of State Audits to conduct an audit of funding for all judicial education programs including those on domestic violence.
- Three state auditors were on site at the Administrative Office of the Courts (AOC) for three months to the conduct the audit.
- The final report, expected to be released on August 29, will be shared with the Judicial Council, together with the AOC's response to the auditor.

Temporary Judges and Domestic Violence Education

- In response to the attached *Los Angeles Times* article, the Chief Justice received a joint letter from the Mexican American Legal Defense and Educational Fund (MALDEF) and several other organizations expressing concern and requesting action on the issues raised by the reported courtroom incident. In his response, also attached, the Chief indicated that his letter would be forwarded to the council, presiding judges, court executive officers, and appropriate council committees.

Presiding Judges (PJs) and Court Executive Officers (CEOs) Meetings

- The Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, and the Conference of Court Executives held separate and joint meetings with discussion and updates on a broad range of issues: court interpreters, conservator legislation, administrative infrastructure, facilities, juvenile law forms, media and public inquiries on cases, the California Civil Justice Project, the Blue Ribbon Commission on Children in Foster Care, court security, mentoring new presiding judges, the assigned judges program, and minimum judicial education.

Regional PJ and CEO Meetings

- PJs and CEOs convened at the AOC Southern (SRO), Northern/Central (NCRO), and Bay Area/Northern Coastal (BANCRO) Regional Offices for their quarterly regional meetings. Each region's agenda is set by PJ and CEO representatives based on specific issues for their region. For example, issues for Southern courts included the challenge of temporary judges, mutual aid between courts, succession planning, Proposition 36, and access to legal opinions; issues for the Northern/Central courts included court facilities and security; and issues for the Bay Area/Northern Coastal courts included the CA case management system, PJ responsibility for managing budget and human resources, and judicial security.
- The Chief Justice joined NCR court leaders at their meeting in Sacramento to hear local perspectives and answer questions on court administration and access to justice issues. The Chief will meet with court leaders from the Southern and Bay Area/Northern Coastal regions in October.

Chief Justice Liaison/Outreach Meetings

- Following the meeting with NCR court leaders, the Sacramento Superior Court hosted a meeting between the Chief, judges, and justice system partners to discuss strategies for the future of California's justice system. Discussions focused on public trust and confidence, strategic planning for the judicial branch through 2012, and strengthening the justice system. Nineteen justice system organizations were represented at the meeting including the State Bar; the Attorney General's Office; district attorney, public defender, and consumer attorney associations; the California Women Lawyers; La Raza; the Mexican-American and Asian-Pacific bar associations; and various law schools. The outreach visits continue in October when the Chief will meet with justice system stakeholders from the Southern and Bay Area/Northern Coastal regions. These outreach visits mark the 10th anniversary of the Chief Justice's original visits to the trial and appellate courts in each of the state's 58 counties.
- As part of the ongoing Judicial Council series of liaison meetings with justice system partners, the Chief Justice, council members, and AOC executive staff met on separate occasions with the leadership of the State Bar and the Civil Justice Association of California (CJAC). State Bar

discussions included the bar's Pipeline initiative supporting bar and Judicial Council goals to reflect California's demographic diversity within the judicial branch. CJAC shared concerns about the over reliance on trial experience as criteria for appointment to the bench, thereby excluding certain civil practitioners.

- The Chief and AOC leadership also participated in an outreach dinner with bar and legislative leaders on advancing the Judicial Council's agenda in facilities and other areas.

Technology

- The first deployment of the new statewide integrated SAP Court Accounting and Reporting System (CARS) and the Courts Human Resources Information System (CHRIS) was implemented in the Sacramento Superior Court.
- The first deployment of the California Case Management System (CCMS) was successfully launched at the Fresno Superior Court. The first demonstration of V3 Case Management System (civil, small claims, and probate) was conducted for court leaders in the Bay Area/Northern Coastal Region. The V3 production system will be rolled out to Orange, San Diego, and Sacramento courts by year end.
- Justice Laurence Kay (Ret.), Chair of the Council's Domestic Violence Task Force, joined AOC staff in Burbank for a demonstration of Orange Superior Court's domestic violence protective order registry and Web-based applications. The system provides the court with real-time access to 12 types of protective orders. In initial steps toward possible consideration of the system for statewide application for judges and law enforcement, the Orange court has offered access to the Inyo court to deposit information and orders into the system; a demonstration for the Attorney General also is scheduled.

Foster Care

- The final state budget for fiscal year 2006–2007 increased funding for foster care and child welfare by \$82 million above the Governor's May Revision. Significant investments were made in reducing caseload and program improvement for child welfare agencies, support for kinship care, housing, education and permanence for older youth. In addition, funding was increased by \$3 million above the Governor's May Revision amount of \$2.1 million for dependency drug courts and related social and treatment services.
- The California Youth Connection concluded its annual three-day policy conference by inviting the California Blue Ribbon Commission on Children in Foster Care and AOC staff to hear presentations from current and former foster youth regarding the policy agenda the youth have set for the coming year. Three members of the commission served as a panel of respondents. The presentations were focused on emancipation, education, placement issues and the courts and juvenile justice.

Youth Court Summit and DUI Curriculum Development

- The first California Youth Court Summit was sponsored by the AOC, with funding provided by the Office of Traffic Safety. More than 200 youth, youth court staff, juvenile bench officers, superior court personnel, education experts, law enforcement, juvenile probation, and youth-focused associations came together to network and share best practices about youth courts. The summit strengthened the effort to establish an official statewide youth court association, part of a national youth court coalition.

- The summit also provided an excellent forum to gather input for the development of the AOC's DUI prevention curriculum project, aimed at educating defendants who go through the youth court adjudication process on the dangers of driving under the influence. The curriculum will be implemented statewide in early 2007.

Conference of Chief Justices & Conference of State Court Administrators (CCJ/COSCA)

- The national conferences and their subcommittees convened for business and educational meetings. Areas of focus included sentencing policy in criminal justice cases, disaster preparedness, judicial independence, and causes of public dissatisfaction with the courts.
- CCJ/COSCA adopted several resolutions (see attached), including a resolution in support of action to improve judicial selection and improve public confidence in the judiciary, and a resolution to seek amendment to the proposed recommendation pending before the House of Delegates of the American Bar Association on the legal services portion of the General Agreement on Trade in Services.

WCV/tc

Attachments

- Chief Justice's Letter to the Governor on Diversity in the Judiciary
- *Los Angeles Times* Article and Chief Justice's Response to MALDEF and Other Organizations
- Judicial Vacancy Report
- CCJ/COSCA Resolutions



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WALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

July 14, 2006

Hon. Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, California 95814

Re: Follow-up to the Summit on Diversity in the Judiciary

Dear Governor Schwarzenegger:

When we met in December 2005, you asked that the judicial branch take action to help increase the diversity of judicial officers in California. Diversifying the state's judiciary has been a firmly held priority of the Judicial Council for a number of years, as reflected in the Judicial Council's 2000–2006 strategic plan goal statement that “[m]embers of the judicial branch community will reflect the rich diversity of the state's residents.” (*Judicial Council of California Strategic Plan—Leading Justice Into the Future*, March 2000, p. 9.) Achieving the goal of a more diverse judiciary is important not only to enhance the public's trust and confidence in California's judicial system, but also to realize the value that persons with diverse cultural backgrounds, work and life experiences, and perspectives bring to the judicial decision-making process.

Last month a summit on diversity in the judiciary—Continuing a Legacy of Excellence: A Summit on Diversity in the Judiciary—was held in San Jose. This summit attracted over 120 judicial officers, legislative staff, State Bar leaders, and practicing attorneys, all of whom expressed a high level of interest in this issue. I had the opportunity to address the participants and very much appreciated the participation of John Davies as a panelist at the summit, as the perspective he offered as judicial appointments advisor was of special interest to the attendees.

Hon. Arnold Schwarzenegger

July 14, 2006

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With the success of the recent summit, we are actively exploring how we can effectively respond to your request for assistance in improving diversity in the judiciary. To support you as you exercise your constitutional authority for judicial appointments, we are happy to share with you some observations about the current judicial selection process.

First, the application for superior court appointment appears to emphasize trial or litigation experience as a major consideration for judicial appointment. This emphasis may be a factor that limits applications from candidates with different legal practice experiences who are well qualified to serve as judges. General civil practice lawyers, government lawyers (including lawyers who represent state entities, counties, and municipalities), and lawyers who specialize in family, juvenile, probate, and mental health matters offer different expertise, which can improve the quality of judicial decision making and provide much-needed experience in our high-volume courts. We would encourage the consideration of practitioners with diverse backgrounds who may not have extensive trial experience.

Second, we believe the judicial selection process should respond to the needs of the community in which the appointments will be made. Judicial officers should possess the abilities and experiences that enable them to relate to a community's needs. Consideration should be given to applicants who offer these additional qualities—diversity of experiences and backgrounds and relationships with and service to local communities—in order to enhance the courts' ability to understand and meet the needs of the communities they serve. To the extent that consideration of a community's needs would mean making out-of-area judicial appointments, we would support that approach.

Third, the judicial branch will continue to explore outreach and other actions that the Judicial Council, the courts, and the State Bar can take to encourage well qualified attorneys from all races, ethnicities, cultures, and professional backgrounds to serve the public as judicial officers in California and to assist them in the application process.

These are several of the many ideas that have been generated on this topic since our conference call following the judicial summit. I would be happy to discuss these and other ideas with you at any time.

Thank you for your interest in continuing California's tradition of a well-qualified judiciary that is institutionally independent and in increasing the diversity of the judiciary to reflect the

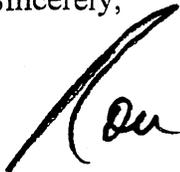
Hon. Arnold Schwarzenegger

July 14, 2006

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richness of California's populace. We look forward to working with the executive branch to accomplish those goals.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron", written over a large, sweeping diagonal stroke.

RONALD M. GEORGE
Chief Justice of California and
Chair of the Judicial Council

RMG/MMR/lag

cc: Susan Kennedy, Chief of Staff, Office of the Governor
John Davies, Judicial Appointments Advisor, Office of the Governor
William C. Vickrey, Administrative Director of the Courts, Administrative Office of
the Courts

It Wasn't the Court Order She Sought

Illegal immigrant seeks order against husband. The judge tells her to get out or be deported.

By Sam Quinones, Times Staff Writer
July 20, 2006

A substitute judge hearing the case of an illegal immigrant seeking a restraining order against her husband threatened to turn her over to immigration officials if she didn't leave his courtroom.

Los Angeles Superior Court Judge Pro Tem Bruce R. Fink told Aurora Gonzalez during last week's hearing that he was going to count to 20 and that if she was still in his courtroom when he finished, he would have her arrested and deported to Mexico.

In an interview Wednesday, Fink said that the woman had admitted in court that she was in the country illegally and that he didn't want her to get in trouble with immigration officials.

"We have a federal law that says that this status is not allowed," Fink said. "You can't just ignore it. What I really wanted was to not give this woman any problems."

He said he thought the couple "obviously wanted to get back together" and that he was trying to avoid granting a restraining order that would keep them apart for at least a year. He said he also thought the court order might lead to Gonzalez's deportation, because her husband would not be able to continue helping her get legal residency.

Gonzalez could not be reached for comment Wednesday.

Allan Parachini, spokesman for the Los Angeles County Superior Court, said the July 14 incident was under review. "We will take appropriate action after a full investigation of the circumstances," he said, adding that Gonzalez was welcome to refile for a restraining order.

In her initial court petition, Gonzalez alleged that Francisco Salgado, 51, her husband of six years, was "verbally and emotionally abusive" to her and their two young boys. Gonzalez, who moved into a domestic violence shelter last month, accused Salgado of referring to her with a derogatory term and threatening to call immigration authorities.

In last Friday's hearing in Pomona, Fink asked Gonzalez if she was in fact

an illegal immigrant.

"I'm illegal," she said.

"I hate the immigration laws that we have," the judge responded, according to the court transcript, "but I think the bailiff could take you to the immigration services and send you to Mexico. Is that what you guys want?"

Fink then asked Salgado if he wanted his wife deported. Salgado replied he was helping his wife get her legal papers, according to the transcript.

"But she's an illegal alien, right?" Fink said. "She has no right to be here at this point, correct?"

"Yes," Salgado said.

At that point, Fink warned Gonzalez to either leave his courtroom or risk arrest.

"I'm going to count to 20, and if you people have left this courtroom and disappeared, she isn't going to Mexico forthwith," Fink said, according to the court transcript. "One. Two. Three. Four. Five. Six. When I get to 20, she gets arrested and goes to Mexico."

After Gonzalez left the courtroom, Fink asked Salgado if he wanted to stay, and he said yes.

Fink then dismissed the case: "Well, she brought the proceedings, and if she's not here to go forward, I guess all of the requests are denied."

On Wednesday, Fink, who has been a family law attorney for 35 years, insisted he was seeking what he thought was an agreeable solution for both parties.

"What I saw was nothing more than some yelling and screaming between a husband and wife," he said.

"I also saw that they really didn't want to not be together anymore."

If he had issued the restraining order, Fink said, "we'd wind up with exactly the opposite of what these people wanted."

"The cure could be far worse than the illness," he said.



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RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

August 10, 2006

Ms. Cynthia Valenzuela
Director of Litigation
Mexican American Legal Defense and Educational Fund
634 S. Spring Street
Los Angeles, California 90014

Dear Ms. Valenzuela:

I write in response to your letter of July 25 regarding the *Los Angeles Times*' report on the disturbing incident at the Pomona courthouse. I appreciate your concerns. The Judicial Council's reason for being is to promote equal access to fair, impartial, and consistent justice. I want to assure you that the council has taken and will continue to take direct action in furtherance of this fundamental goal.

This incident raises several issues, including judicial fairness and decorum, the law of domestic violence, and the intersection of the law with immigration. The following provides some specific information on Judicial Council action in these important areas.

Fairness Education

Since 1997, the council has with my strongest support led a statewide effort to make broad-based fairness education courses available for every judicial officer and all court employees. Fairness education issues now are incorporated into all ongoing substantive curricula and continue to be included in new judicial officer and court staff programs as appropriate. Retired judges sitting on assignment in the trial courts do so under the sole authority of the Chief Justice; upon assuming my current office, I established requirements for continuing education (including fairness, elimination of bias, access, and demeanor) for all judges who wish to sit on assignment. In addition, in October the Judicial Council will consider pending proposals for further continuing education guidelines or requirements for all active judges.

Ms. Cynthia Valenzuela
August 10, 2006
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Domestic Violence

Domestic violence education is mandated by rule of court (rule 970 of the California Rules of Court) for all new judge education programs. It is incorporated into all family and criminal law education programs as a matter of practice and provides the focus for an annual institute that includes a cultural competence module. Specific to the issue you raise in your letter, a new course on domestic violence and immigration issues has been very well received by the courts. The program already has been delivered twice and will be presented again in January 2007.

On the broader issue of domestic violence, in November 2005 I appointed a Domestic Violence Practice and Procedure Task Force that will recommend ways to improve the administration of justice in cases involving domestic violence. Our goals are to ensure fair, expeditious, and accessible justice for litigants in these critical cases and to promote both victim safety and perpetrator accountability. Additionally, the Violence Against Women Education Project Planning Committee, now in its fourth year, is an initiative designed to provide the courts with information, educational materials, training, and technical assistance on issues including domestic violence. I am forwarding your letter and this response to the Judicial Council's Domestic Violence Practice and Procedure Task Force, the council's Family and Juvenile Law Advisory Committee, and its Governing Committee for Judicial Education. These letters also will be forwarded to each presiding judge and court executive officer in the state as well as all members of the Judicial Council.

Temporary Judges

In December 2005, the Judicial Council approved a comprehensive set of rules, effective July 1, 2006, to improve the quality and training of attorneys who serve as temporary judges in state trial courts. The rules govern the selection, training, appointment, supervision, and evaluation of temporary judges. They will ensure the quality of temporary judging by establishing minimum education and experience requirements. Temporary judges must satisfy all the new requirements concerning qualifications and training by January 1, 2007, including an in-person, three-hour, education program covering bench conduct, demeanor, decorum, access and fairness, elimination of bias, and self-represented litigants. The Judicial Council, through its staff agency the Administrative Office of the Courts, is collaborating with local judges on a train-the-trainer program to meet these training requirements by January 1.

I understand from Presiding Judge William A. MacLaughlin of the Superior Court of Los Angeles County that he has had productive discussions on this issue with you as well as with several other bar and local community organizations. Judge MacLaughlin has shared the court's plan of action, which I fully support.

Ms. Cynthia Valenzuela
August 10, 2006
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The partnership that exists between the courts and our justice system supporters is essential to our success in maintaining public trust and confidence in our judicial system. I welcome and appreciate the valuable perspectives of MALDEF and other public interest organizations regarding our shared goal of equal access to justice, which is the fundamental right of all people of California.

Sincerely,



RONALD M. GEORGE
Chief Justice of California and
Chair of the Judicial Council

RMG/tc

cc: Nelson Castillo, President, Hispanic National Bar Association
Maribel Medina, President, California La Raza Lawyers
Claire Cifuentes, President, Mexican American Bar Association
Nancy Ramirez, Executive Director, Los Angeles Center for Law and Justice
Raquel M. Fonte, Chair, Los Angeles County Bar Association Immigration Law Section
Cristina Felix-Carrasco, President, Latina Lawyers Bar Association
William C. Vickrey, Administrative Director of the Courts
Members of the Judicial Council
Judicial Council Domestic Violence Practice and Procedure Task Force
Judicial Council Family and Juvenile Law Advisory Committee
Judicial Council Governing Committee of the Center for Judicial Education and Research
Presiding Judges of the Trial Courts
Court Executive Officers of the Trial Courts

JUDICIAL COUNCIL OF CALIFORNIA - ADMINISTRATIVE OFFICE OF THE COURTS

JUDICIAL VACANCY REPORT (8011)

Number of Judgeships Authorized, Filled and Vacant as of August 1, 2006

| TYPE OF COURT | NUMBER OF COURTS | NUMBER OF JUDGESHIPS | | | | |
|------------------|------------------|----------------------|--------|--------|---------------------------|---------------------------|
| | | Authorized | Filled | Vacant | <i>Filled(Last Month)</i> | <i>Vacant(Last Month)</i> |
| Supreme Court | 1 | 7 | 7 | 0 | 7 | 0 |
| Courts of Appeal | 6 | 105 | 104 | 1 | 104 | 1 |
| Superior Courts | 58 | 1498 | 1480 | 18 | 1477 | 21 |
| All Courts | 65 | 1610 | 1591 | 19 | 1588 | 22 |

JUDICIAL VACANCIES: APPELLATE COURTS

| Appellate District | Vacancies | Reason | Justice to be Replaced | Last Day In Office |
|------------------------|-----------|------------|--------------------------|--------------------|
| First District, Div. 5 | 1 | Retirement | Hon. Lawrence T. Stevens | 02/28/06 |
| TOTAL VACANCIES | 1 | | | |

JUDICIAL VACANCIES: SUPERIOR COURTS

| County | Vacancies | Reason | Judge to be Replaced | Last Day In Office |
|------------------------|-----------|------------|------------------------------|--------------------|
| Alameda | 1 | Elevated | Hon. James A. Richman | 02/22/06 |
| Los Angeles | 5 | Retirement | Hon. Stephen D. Petersen | 06/26/06 |
| Los Angeles | | Elevated | Hon. Steven C. Suzukawa | 06/08/06 |
| Los Angeles | | Retirement | Hon. Charles G. Rubin | 04/30/06 |
| Los Angeles | | Retirement | Hon. Paula Adele Mabrey | 04/28/06 |
| Los Angeles | | Retirement | Hon. Michael E. Knight | 02/20/06 |
| Riverside | 1 | Retirement | Hon. H. Dennis Myers | 05/09/06 |
| Sacramento | 1 | Retirement | Hon. Charles C. Kobayashi | 01/31/06 |
| San Bernardino | 4 | Deceased | Hon. Roberta McPeters | 05/18/06 |
| San Bernardino | | Retirement | Hon. Douglas Alan Fettel | 03/17/06 |
| San Bernardino | | Resigned | Hon. Patrick J. Morris | 03/06/06 |
| San Bernardino | | Retirement | Hon. Peter H. Norell | 02/28/06 |
| San Diego | 2 | Retirement | Hon. Laura P. Hammes | 06/11/06 |
| San Diego | | Retirement | Hon. Joe O. Littlejohn | 04/06/06 |
| Santa Clara | 2 | Retirement | Hon. Nazario (Tito) Gonzales | 07/25/06 |
| Santa Clara | | Retirement | Hon. Leonard P. Edwards | 05/31/06 |
| Santa Cruz | 1 | Retirement | Hon. Thomas E. Kelly | 03/25/06 |
| Sonoma | 1 | Retirement | Hon. Raymond J. Giordano | 05/01/06 |
| TOTAL VACANCIES | 18 | | | |

(Vacancy Removed from Report when Replacement Appointed or Elected)

CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 1

Regarding Waiver of Attorney-Client Privilege and Work Product

WHEREAS, policy leaders in both the United States Courts and the Congress of the United States have publicly expressed concerns about the common law of waiver of attorney-client privilege or work product in situations such as where there has been an inadvertent or minuscule disclosure by a party to litigation or by a person or corporation in response to a government investigation; and

WHEREAS, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States ["Federal Rules Committee"] has undertaken the promulgation of a new Federal Rule of Evidence 502 ["Rule 502"] governing certain disclosures of information protected by the attorney-client privilege that are inadvertent or occur in the course of investigative or regulatory proceedings; and

WHEREAS, proposed Rule 502 is commendably designed to reduce the high costs of privilege reviews in discovery intensive litigation, particularly where electronic records are involved, by protecting against the forfeiture of privilege where a disclosure is the result of innocent mistake, by agreement of the parties to litigation, or by virtue of cooperation with government investigation; and

WHEREAS, the Federal Rules Committee has already revised previous drafts of proposed Rule 502 to address federalism concerns by, for example, removing a provision that would have extended protection against forfeiture of privilege in cases of inadvertent disclosure in state court litigation; and

WHEREAS, current proposed Rule 502(b) may conflict with principles of federalism by providing that inadvertent disclosures in federal litigation do not operate as a waiver in state proceedings; and

WHEREAS, current proposed Rule 502(d) may also conflict with principles of federalism by providing that confidentiality orders by federal courts would bind persons or entities in state court proceedings; and

WHEREAS, the public policy in some states with respect to forfeiture of privilege after inadvertent disclosure or pursuant to confidentiality orders may differ from what would be mandated by proposed Rule 502; and

WHEREAS, principles of comity and federalism would suggest that changes to attorney-client privilege policy should be determined in and through state courts and legislatures which are best situated to determine and control the impact of reform within their own communities; and

WHEREAS, proposed Rule 502 is the subject of a six-month public comment period ending approximately in February 2007;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices and the Conference of State Court Administrators engage in a dialogue with the appropriate Rules Committees of the Judicial Conference to share the federalism concerns of the state judiciary with proposed Rule 502.

Adopted as proposed by the CCJ Board of Directors at the 58th Annual Meeting on August 2, 2006.

CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 2

In Support of Updating the National Database on Judicial Diversity in State Courts

WHEREAS, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have long been committed to access to justice for all through improvements in all aspects of the administration of justice; and

WHEREAS, CCJ and COSCA's Access to and Fairness in the Courts Committee encourages state courts to engage in outreach to increase access to justice and share strategies and information among jurisdictions; and

WHEREAS, the ABA's Standing Committee on Judicial Independence, in collaboration with the National Center for State Courts, is in the process of updating the National Database on Judicial Diversity in State Courts; and

WHEREAS, this database, which was last updated in 2003, captures key elements of judicial diversity in state appellate, trial and limited jurisdiction courts; and

WHEREAS, this survey will examine factors such as race/ethnicity, gender, methods of judicial selection, state population variables and progress made on the diversity issue;

NOW, THEREFORE, BE IT RESOLVED that CCJ and COSCA support the work of the ABA's Standing Committee on Judicial Independence and the National Center for State Courts and urge the state court community to report data to them in a prompt and timely manner.

Adopted as proposed by the CCJ/COSCA Access to and Fairness in the Courts Committee at the 58th Annual Meeting on August 2, 2006.

CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 3

In Support of a National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts

WHEREAS, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) have long been committed to fairness and access to justice for all through improvements in all aspects of the administration of justice; and

WHEREAS, CCJ and COSCA's Access to and Fairness in the Courts Committee encourages state courts to engage in outreach to increase fairness and access to justice and share successful strategies and useful information among jurisdictions; and

WHEREAS, the National Center for State Courts (NCSC) is initiating a four-phase campaign to mobilize the expertise, experience and commitment of judges and court officers to improve the state of racial and ethnic fairness in the nation's state courts; and

WHEREAS, this project will produce a national compilation of promising practices to achieve racial and ethnic fairness in four key areas:

- Diverse and representative state judicial workforces and juries
- Fair and unbiased behaviors on the part of judges, court staff, and others in court interactions
- Comprehensive, system-wide improvements in racial and ethnic fairness through inter-branch and inter-agency dialogue and action, including elimination of inappropriate racial and ethnic disparities in the criminal and juvenile justice systems
- The availability of timely and high-quality court interpretation services to non-English speaking persons, and of legal services, especially to recent immigrants; and

WHEREAS, CCJ and COSCA have designated three representatives to serve on the Steering Committee guiding this project; and

WHEREAS, the National Consortium on Racial and Ethnic Fairness in the Courts, the National Association for Court Management, the National Association of Women Judges, and the National Association for State Judicial Educators have appointed delegates to serve on this important Steering Committee; and

WHEREAS, Phase I of this project has received funding from the Open Society Institute, the State Justice Institute, and the NCSC; and

WHEREAS, Phase I requires the appointment in each state of a liaison to the project responsible for responding to information/data requests from the Steering Committee and project staff in a prompt and timely manner;

NOW, THEREFORE, BE IT RESOLVED that CCJ and COSCA endorse the National Campaign to Ensure the Racial and Ethnic Fairness of America's State Courts and urge each chief justice and state court administrator to support actively the work of this National Campaign by:

- Publicizing the work of this project to judges and court staff within the court system; and
- Appointing a primary contact to serve as liaison from the state judicial branch to the project.

Adopted as proposed by the CCJ/COSCA Access to and Fairness in the Courts Committee at the 58th Annual Meeting on August 2, 2006.

Conference of Chief Justices

Resolution 4

Regarding Adoption of Rules on the Licensing and Practice of Foreign Legal Consultants

WHEREAS, United States lawyers and law firms from nearly every state are increasingly called upon to provide legal advice on questions of American law in other countries; and

WHEREAS, some countries are reluctant to allow United States lawyers to provide this service unless comparable recognition is provided to their lawyers throughout the United States; and

WHEREAS, 26 American jurisdictions have already promulgated rules regarding the licensing and practice of foreign legal consultants that permit qualified lawyers from other countries to provide legal advice on their nation's law and on international law; and

WHEREAS, the experience of these American jurisdictions has been that licensing of Foreign Legal Consultants has not led to complaints regarding the conduct of these consultants or disciplinary proceedings; and

WHEREAS, the provision of such advice is increasingly important to American businesses and citizens throughout the nation; and

WHEREAS, the decision to promulgate a rule regarding the licensing and practice of Foreign Legal Consultants is separate and distinct from the decision whether to agree to having the rule listed as a commitment of the United States under the General Agreement on Trade in Services; and

WHEREAS, the American Bar Association has promulgated a Model Rule for the Licensing of Foreign Legal Consultants and will soon be considering an updated Model Rule for the Licensing and Practice of Foreign Legal Consultants;

NOW, THEREFORE, BE IT RESOLVED that the Conference urges the highest court of each state, that has not already done so, to consider adopting a rule permitting the licensing and practice of foreign legal consultants.

Adopted as proposed by the CCJ International Agreements Committee and the CCJ Professionalism and Competence of the Bar Committee at the 58th Annual Meeting on August 2, 2006.

Conference of Chief Justices

Resolution 5

Regarding the Proposed Recommendation Pending Before the House of Delegates of the American Bar Association on the Legal Services Portion of the General Agreement on Trade in Services (GATS)

WHEREAS, the American Bar Association (ABA) Standing Committee on Professional Discipline, the ABA Task Force on GATS Legal Services Negotiations, the ABA Section of International Law, the ABA Section of Legal Education and Admissions to the Bar Standing Committee on Client Protection, the ABA Standing Committee on Professionalism, and the National Organization of Bar Counsel are recommending adoption of a resolution by the ABA House of Delegates regarding the development of disciplines on the regulation of the legal services under Article VI (4) of the GATS; and

WHEREAS, the recommended resolution as now worded supports the United States Trade Representative's participation in the development of disciplines that "do not *unreasonably*" impinge upon the authority of the states' highest courts of appellate jurisdiction to regulate the legal profession in the United States; and

WHEREAS, the authority for governing the practice of law currently rests and has traditionally rested with the highest appellate court of each jurisdiction; and

WHEREAS, the proposed resolution, as currently worded, could be interpreted to sanction the development of disciplines which, to some extent, impinge upon the regulatory authority of the highest appellate court of each jurisdiction;

NOW, THEREFORE, BE IT RESOLVED that the Conference urges the ABA House of Delegates to strike the word "*unreasonably*" before acting upon the resolution.

Adopted as proposed by the CCJ International Agreements Committee at the 58th Annual Meeting on August 2, 2006.

Conference of Chief Justices

Resolution 6

Regarding Approval of the Guidelines for State Trial Courts on Discovery of Electronically-Stored Information

WHEREAS, there are significant differences in the discovery of conventional paper documents and electronically stored information in terms of volume, volatility, and cost; and

WHEREAS, until recently, electronic discovery disputes have not been a standard feature of state court litigation in most jurisdictions; and

WHEREAS, the frequency with which electronic discovery-related questions arise in state courts is increasing rapidly, because of the near universal reliance on electronic records both by businesses and individuals; and

WHEREAS, uncertainty about how to address the differences between discovery of conventional and electronically-stored information under current discovery rules and standards exacerbates the length and costs of litigation; and

WHEREAS, discovery disputes are rarely the subject of appellate review; and

WHEREAS, the Conference of Chief Justices established a Working Group at its 2004 Annual Meeting to develop a reference document to assist state courts in considering issues related to electronic discovery; and

WHEREAS, that Working Group has now completed a set of *Guidelines for State Trial Courts Regarding Discovery of Electronically-Stored Information* to offer guidance to those faced with addressing the practical problems that the digital age has created;

NOW, THEREFORE, BE IT RESOLVED that the Conference approves the *Guidelines for State Trial Courts Regarding Discovery of Electronically-Stored Information* as a reference tool, and urges the highest appellate court of each jurisdiction to distribute the *Guidelines* to the trial judges in its state as appropriate.

Adopted as proposed by the CCJ Civil Justice Committee at the 58th Annual Meeting on August 2, 2006.

Conference of Chief Justices

Resolution 7

In Support of Action to Improve Judicial Selection and Improve Public Confidence in the Judiciary

WHEREAS, the Conference of Chief Justices co-sponsored a National Symposium on Judicial Speech Post-*White*, held in February 2005 and attended by justices, judges and others from 38 states; and

WHEREAS, the Symposium participants prepared a *Call To Action/2005* to reflect developments since the Summit on Improving Judicial Selection issued its *Call To Action* in December, 2000, and to urge the Conference of Chief Justices to take the following steps:

- To issue a public declaration regarding the unique nature of judicial elections
- To make recommendations on three key steps to protect and promote public confidence in the courts:
 1. Develop programs of outreach by judges and lawyers to help the public understand what judges do and particularly how their jobs differ from the jobs of other elected officials
 2. Enhance efforts that seek to promote a culture of judicial elections so that the public and candidates understand the importance of having judicial elections conducted in ways that protect the reality and appearance of open-mindedness and fairness
 3. Identify measures that will attract and retain on the bench people who will be quality judges, including encouraging states to establish special commissions to review judges' pay and make changes if warranted.
- To review and take action on the 20 recommendations put forward in the original *Call To Action*, adjusted to respond to events since 2000;

NOW, THEREFORE, BE IT RESOLVED, that the Conference assigns the CCJ Task Force on Politics and Judicial Elections the responsibility of drafting an action plan to implement the above steps.

Adopted as proposed by the CCJ Task Force on Politics and Judicial Elections at the 58th Annual Meeting on August 2, 2006.

CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 8

In Support of Modification of the Model Code of Judicial Conduct to Encourage Judicial Leadership

WHEREAS, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) understand and have long recognized the need and value of judicial leadership for the improvement of the administration of justice and that effective leadership is the common element in achieving systemic and community reform; and

WHEREAS, while leadership can come from different facets of the justice system or community, judges are well positioned to lead reform efforts because of their unique ability to convene stakeholders; and

WHEREAS, the American Bar Association (ABA) has undertaken an effort to update the Model Code of Judicial Conduct; and

WHEREAS, CCJ and COSCA commend the ABA Joint Commission to Evaluate the Model Code of Conduct for its work, the collaborative approach it has taken for developing the revision, and its recognition that the role of judges has changed over time to meet the needs of society and to improve the administration of justice; and

WHEREAS, portions of the current Model Code have been interpreted to discourage and limit judicial leadership; and

WHEREAS, CCJ and COSCA believe that the Model Code should be strengthened to acknowledge and recognize the leadership responsibility of judges to the extent that the leadership responsibilities do not interfere with the adjudication process; and

WHEREAS, CCJ and COSCA believe the following concepts would strengthen and provide the needed specificity to encourage judicial leadership:

- **Rule 2.10: Ex Parte Communications** – language should be added similar to 2.10(A)(1)(2) that permits consultation with a problem-solving court team as long as the parties have consented and the practice is permitted by state law.
- **Rule 2.12: Disqualification** – language should be added to clarify that official communications received in the course of performing a judicial responsibility and knowledge gained in training programs or from experience do not create per se a basis for disqualification;

- **Rule 2.14: Supervision of Staff** – language should be added to recognize that a judge has responsibility to seek the necessary time, staff, expertise and resources needed to discharge the judge’s judicial and administrative responsibilities;

- **Civic Responsibilities** – language should be added to Canon 4 recognizing a judge’s civic responsibilities, including (1) providing leadership in: (a) identifying and resolving issues of access to justice; (b) developing public education programs; (c) engaging in community outreach activities to promote the fair administration of justice; and (d) convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services and /or the administration of justice and (2) publicly or individually endorsing project goals concerning the law, the legal system, the provision of services or the administration of justice, in principle, and actively supporting the need for funding of such organization or governmental agency;

NOW, THEREFORE, BE IT RESOLVED that CCJ and COSCA encourage the ABA Joint Commission to Evaluate the Model Code of Conduct to include the above described concepts in the revised Model Code; and

BE IT FURTHER RESOLVED that the respective chairs of CCJ and COSCA committees of court management and professionalism form a task force to draft recommended language to address the above concerns and others and timely submit their suggestions to the ABA Joint Commission to Evaluate the Model Code of Conduct.

Adopted as proposed by the Problem-Solving Courts Subcommittee of the CCJ/COSCA Court Management Committee at the 58th Annual Meeting on
August 2, 2006.

Conference of Chief Justices

Resolution 9

In Support of the Establishment of State Committees on Attorney-Client Privilege

WHEREAS, the attorney-client privilege and work-product doctrine help maintain the confidential relationship between client and attorney which allows clients to discuss their legal problems fully with their counsel so as to promote compliance with the law and ensure effective advocacy; and

WHEREAS, in response to the national concern raised by the conduct of corporate officials during the unexpected failure in recent years of several large American corporations, some law enforcement and regulatory authorities have adopted policies, practices and procedures that could have the effect of eroding the attorney-client privilege and work-product doctrine; and

WHEREAS, the Conference of Chief Justices has previously adopted a resolution in support of the preservation of the attorney-client privilege and work-product doctrine as essential to maintaining the confidential relationship between client and attorney thereby promoting the proper and efficient functioning of the American justice system; and

WHEREAS, the ABA Task Force on Attorney-Client Privilege has encouraged the creation of state and local bar committees to educate themselves on the issues surrounding attorney-client privilege;

NOW, THEREFORE, BE IT RESOLVED that the Conference endorses and supports the creation of state and local bar committees devoted to the preservation of the attorney-client privilege and work-product doctrine that are so vital to our legal system.

Adopted as proposed by the CCJ Professionalism and Competence of the Bar Committee at the 58th Annual Meeting on August 2, 2006.

CONFERENCE OF CHIEF JUSTICES CONFERENCE OF STATE COURT ADMINISTRATORS

Resolution 10

In Support of Modification of the Model Code of Judicial Conduct to Encourage Effective Judicial Management of Litigation

WHEREAS, the American Bar Association (ABA) has undertaken an effort to update the Model Code of Judicial Conduct; and

WHEREAS, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) commend the ABA Joint Commission to Evaluate the Model Code of Conduct for its work and the collaborative approach it has taken for developing the revision; and

WHEREAS, during the entire review process CCJ and COSCA have provided comments and feedback to the ABA Joint Commission on various aspects of the proposed changes; and

WHEREAS, CCJ and COSCA are concerned that Rule 2.10(A)(2) and 2.10(B) may impair fair and prompt adjudication of mass torts and other complex civil litigation by (1) restricting the ability of judges to communicate with each other concerning general case management matters by means of a Mass Torts Clearinghouse website and a Mass Torts Judges' Network, and (2) inhibiting the trial judge from obtaining generally available scientific methodology information to assist the court in making Daubert and Frye determinations;

NOW, THEREFORE, BE IT RESOLVED that CCJ and COSCA encourage the ABA Joint Commission to consider the following amendments to the proposed Model Code of Judicial Conduct:

Suggested Amendment to Proposed Rule 2.10(B) of the ABA Model Code of Judicial Conduct:

2.10(B). While A [a] judge shall not independently investigate facts in a case, and shall consider only the evidence presented, a judge may seek information of a general nature that does not bear on a disputed evidentiary fact or influence the judge's opinion of the substantive merits of the case.

Suggested Amendment to Comment [7]:

[7] The prohibition against a judge investigating the facts in a case independently or through a member of the judge's staff extends to information in all mediums, including electronic ones. The prohibition does not apply to a judge's effort to obtain general information about a specialized area of knowledge that does not include the application of such information in a specific case. Nor does the prohibition apply to interstate or state-federal communications among judges on the general topic of case management decisions in mass torts or other complex cases, such as discovery schedules, standard interrogatories, shared discovery depositories, appointment of liaison counsel, committee membership, or common fund structures.

Adopted as proposed by the Problem-Solving Courts Subcommittee of the CCJ/COSCA Court Management Committee and the Civil Justice Committee at the 58th Annual Meeting on August 2, 2006.