

JUDICIAL COUNCIL MEETING
Administrative Office of the Courts
San Francisco, California
Open to the Public (except where otherwise noted)
December 9–10, 2004

AGENDA

December 9, 2004
Executive Session
3:00–5:30 p.m.

Discussion of negotiations with the Legislative and Executive Branches.
[Closed session]

December 10, 2004
Business Meeting
8:30 a.m. – 2:55 p.m.

- 8:30–8:45 a.m. **Public Comment Related to Trial Court Budget Issues***
 [Subject to requests]
 *This time is reserved for public comment on
 discussion agenda items relating to trial court
 budgets.
- 8:45–8:50 a.m. **Approval of Minutes of October 15, 2004**
 [Minutes Tab]
- 8:50–9:10 a.m. **Judicial Council Committee Presentations**
 Executive and Planning Committee
 Hon. Richard D. Huffman, Chair
 Policy Coordination and Liaison Committee
 Hon. Marvin R. Baxter, Chair
 Rules and Projects Committee
 Hon. Laurence D. Kay, Chair
 [Council Committee Reports Tab]

Consent Agenda (Items 1A–1H, 2–13)

(If you wish to request that any item be moved from the Consent Agenda to the Discussion Agenda, please notify Dennis Blanchard at 415-865-7455 at least 48 hours before the meeting.)

ITEM 1

JUDICIAL COUNCIL–SPONSORED LEGISLATION

Item 1A

~~Trial Court Facilities Act of 2002: Clean-Up (Gov. Code, §§ 76100, 70312, and 70325) (Action Required)~~

This item has been removed from the agenda because staff identified an area in the Trial Court Facilities Act of 2002 requiring further revision. The item will be resubmitted at the February council meeting.

~~The Policy Coordination and Liaison Committee recommends sponsoring legislation to make technical and clarifying amendments to the Trial Court Facilities Act of 2002. Specifically, the amendments would: (1) clarify the allowable use of local Courthouse Construction Fund revenues; (2) correct an incorrect cross reference; and (3) revise the term “historical facility” to the statutorily defined “historical building.”~~

~~Staff: Ms. Eraina Ortega, Office of Governmental Affairs~~

Item 1B

Juvenile Law: Court Protective Orders (Welf. & Inst. Code, § 213.5) (Action Required)

The Policy Coordination and Liaison Committee and the Family and Juvenile Law Advisory Committee recommend sponsoring legislation to amend Welfare and Institutions Code section 213.5(a) to allow the court to issue ex parte protective orders for parents and caregivers of children under its jurisdiction regardless of whether the court is issuing an order to protect the child.

Staff: Ms. Tracy Kenny, Office of Governmental Affairs

Item 1C

Family Law: Temporary Custody and Visitation Orders Prior to Venue Change (Code Civ. Proc., § 396b(c)) (Action Required)

The Policy Coordination and Liaison Committee and the Family and Juvenile Law Advisory Committee recommend sponsoring legislation to expand the court’s authority under Code of Civil Procedure section 396(b) to make temporary orders in Uniform Parentage Act proceedings, and orders for custody and visitation of children.

Staff: Mr. Daniel Pone, Office of Governmental Affairs

Item 1D

Civil Settlements: Written Acceptance of Offers (amend Code Civ. Proc., § 998) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend Code of Civil Procedure section 998 to require that acceptances of offers be in writing in order to reduce uncertainty and reduce the number of appeals related to ambiguous acceptances of settlement offers.

Staff: Mr. Daniel Pone, Office of Governmental Affairs

Item 1E

Small Claims: Motion to Correct or Vacate Judgment (Code Civ. Proc., § 116.725) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend co-sponsoring legislation with the California Judges Association to amend Code of Civil Procedure section 116.725 to provide that a small claims motion to correct an error or vacate the judgment may be made (1) on the court's own motion at any time or (2) on a party's motion that must be filed within 30 days after the clerk mails notice of entry of the judgment to the parties, with only one motion allowed per party.

Staff: Mr. Daniel Pone, Office of Governmental Affairs

Item 1F

Small Claims: Proof of Service of Claim and Order (Code Civ. Proc., § 116.340) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to require that proof of service of the claim and notice of hearing be filed with the small claims court at least five days before the hearing in order to help courts manage their small claims trial calendars.

Staff: Mr. Daniel Pone, Office of Governmental Affairs

Item 1G

Small Claims: Time for Scheduled Hearing (Code Civ. Proc., § 116.330) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend Code of Civil Procedure section 116.330 to replace the code's three time periods for scheduling a small claims hearing with a single provision that all small claims hearings must be scheduled no less than 20 days but not more than 70 days from the date the order was issued.

Staff: Mr. Daniel Pone, Office of Governmental Affairs

Item 1H

Small Claims: Transfer of Judgment After Appeal (Code Civ. Proc., § 116.780) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to repeal the 10-day time period before the small claims appeal and judgment can be transferred to the small claims court for enforcement proceedings under Code of Civil Procedure section 116.780 (d).

Staff: Mr. Daniel Pone, Office of Governmental Affairs

Item 2

Criminal Procedure: Subpoena in Criminal and Juvenile Cases (amend form 982(a)(16)) (Action Required)

The proposed revision to the *Subpoena (Criminal or Juvenile)*, form 982(a)(16) would delete checkbox 2d. Checkbox (d) allows the subpoenaing party to obtain a copy of records directly, rather than having the documents reviewed by the court. In recent statutory amendments, the Legislature has clarified that the type of subpoenaing provided in check box d does not apply in criminal cases. Therefore, the form should be revised to delete that provision.

Staff: Mr. Joshua Weinstein, Office of the General Counsel

Item 3

Child Support Withholding: Revised Order/Notice to Withhold and Related Instructions (adopt forms FL-195/OMB No. 0970-0154 and FL-196/OMB No. 0970-0154) (Action Required)

AOC staff recommends minor technical changes to the *Order/Notice to Withhold Income for Child Support*, which is a federally mandated standard form, as well as to its instruction sheet. These minor revisions are being implemented to conform to federally mandated changes.

Staff: Ms. Ruth McCreight, Center for Families, Children & the Courts

Item 4

Access to Visitation Grant Program: Redistribution of Grant Funds for Fiscal Year 2004–2005 (Action Required)

AOC staff recommends the approval of a redistribution of \$8,642.00 representing additional federal Access to Visitation Grant funds resulting from one court program's closure. The recommendation is to redistribute the funds to two existing grantees: the Superior Court of

Mendocino County and the Superior Court of Shasta County. The funds would be divided equally between the two superior courts. The Judicial Council is charged with administering and distributing the federal Child Access and Visitation Grant funds from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement. Under established provisions contained in the standard contract agreement with each superior court, the Judicial Council may redistribute funds among grant recipients to ensure that all available funds are used and spent.

Staff: Ms. Shelly Glapion, Center for Families, Children & the Courts

Item 5

Equal Access Fund—Distribution of Funds for Partnership Grants (Action Required)

The Legal Services Trust Fund Commission of the State Bar has prepared a report requesting approval of an allocation of \$950,000 in Equal Access Funds for distribution to legal services providers for programs conducted jointly with courts to provide legal assistance to pro per litigants (partnership grants). The Budget Act authorizing the Equal Access Fund provides that the Judicial Council must approve the commission's recommendations if the Judicial Council determines that the awards comply with statutory and other relevant guidelines. The report demonstrates that the commission has complied with those guidelines.

Staff: Ms. Bonnie Hough, Center for Families, Children & the Courts

Item 6

Reimbursement of Extraordinary Costs Associated with Homicide Trials (adopt Cal. Rules of Court, rule 6.711) (Action Required)

AOC staff recommends adopting this rule establishing a process for courts in counties with populations of 300,000 or less to seek reimbursement for the extraordinary costs of homicide trials. Adoption of a new rule is necessary to comply with provisional language in the Budget Act of 2004 (Stats. 2004, Ch. 208) that requires that the Judicial Council adopt a rule of court to establish a process by which courts may seek reimbursement for this purpose.

Staff: Ms. Denise Friday, Finance Division

Item 7

Judicial Branch Budget Delegation Authority (amend Cal. Rules of Court, rule 6.101) (Action Required)

The proposal will make permanent, as part of the California Rules of Court, the annual council delegation to the Chief Justice and Administrative Director of the Courts of authority to make technical changes as appropriate to the proposed budget and also to enter into negotiations with members of the executive and legislative branches and make changes in the budget proposal in response to those negotiations. The Chief Justice and the Administrative Director of the Courts would also be authorized by the council to allocate the non-trial court budget on behalf of the council. The proposal would save the council from having to make this delegation on an annual basis.

Staff: Mr. Michael A. Fischer, Office of the General Counsel

Item 8

Enforcement of Agreements: Petitions (Gov. Code, §§ 71639.5 and 71825.2) (amend Cal. Rules of Court, rule 2211) (Action Required)

AOC staff recommends that the council amend rule 2211, to narrow the scope of claims eligible to be heard under the previously established writ petition and hearing procedure, and conform to the new code sections applicable to the writ process. Originally, the council adopted rule 2211 to provide a hearing and appeal mechanism for disputes between trial courts and recognized employee organizations involving both unfair practices and enforcement of labor agreements. Senate Bill 1102 recently amended the Trial Court Employment Protection and Governance Act and the Trial Court Interpreter Employment and Labor Relations Act, placing all unfair practice disputes under the jurisdiction of the Public Employment Relations Board. Because the agreement enforcement procedure is now separate from unfair practice dispute resolution under the new statutory provisions, the council should amend rule 2211 to conform to SB 1102.

Staff: Mr. Scott Gardner, Office of the General Counsel

Item 9

Dissolution of the Judicial Branch Budget Advisory Committee and Establishment of the Trial Court Budget Working Group (amend Cal. Rules of Court, rules 6.11 and 6.620 and repeal and adopt rule 6.45) (Action Required)

The proposal will replace the Judicial Branch Budget Advisory Committee with a newly established Trial Court Budget Working Group to advise the Administrative Director of the Courts on trial court budget issues. Membership of the working group would include trial court judicial officers and executive officers and may include others selected by the Administrative Director of the Courts. The new working group would avoid overlap, facilitate expeditious resolutions on critical trial court budget-related matters, and provide for broader representation of courts statewide.

Staff: Michael A. Fischer, Office of the General Counsel

Item 10

Allocation of Revenues From the Trial Court Improvement Fund (adopt Cal. Rules of Court, rule 6.105) (Action Required)

Government Code section 77205(a) requires the Judicial Council, by rule of court, to allocate 80 percent of the amount of fee, fine, and forfeiture revenue deposited into the Trial Court Improvement Fund in each fiscal year that the amount of revenue deposited exceeds the amount of fee, fine, and forfeiture revenue deposited in fiscal year 2002–2003.

The adoption of proposed rule 6.105 would set forth the use of the increased fee, fine, and forfeiture revenue. The proposed rule also would require the Administrative Office of the Courts to establish budget procedures to implement the allocation mandated by the statute and the rule. These procedures will be issued as a Finance Memo and posted on the Serranus web site.

Staff: Michael A. Fischer, Office of the General Counsel

Item 11

Technical Changes to Fourth Installment Revision of Appellate Rules (Repeal Cal. Stds. Jud. Admin., §§ 6.5 and 20) (Action Required)

As part of the fourth installment of its revision of the appellate rules, the Judicial Council amended rule 60(e) to incorporate the substance of section 6.5 of the Standards of Judicial Administration and amended rule 76.5(b)–(c) to incorporate the substance of section 20(a)–(b) of the standards. The council had previously amended rule 76.6 to incorporate the substance of section 20(c) of the standards. Each of the cited sections of the standards should have been repealed as no longer needed, but through oversight the repeal was not effectuated. The sections should now be repealed.

Staff: Mr. Peter Belton, Office of the General Counsel

Item 12

Appellate Procedure: Indexes of Sealed Records (amend Cal. Rules of Court, rules 31.2 and 34.1) (Action Required)

Rule 31.2(b)(5) requires the superior court clerk to prepare an index of all confidential materials in the appellate record and send a copy of the index to all parties. In appeals from judgments of death, rule 34.1(d) requires the clerk's and reporter's transcripts to contain indexes separately listing all sealed documents and sealed transcripts they include. Penal Code section 987.9(a) authorizes a defendant in a capital trial to request funds for preparation of the defense, but specifies that the contents of the request and the fact that it was made must be kept confidential. The proposal would correct the rule to conform to the statute, by clarifying that rules 31.2(b)(5) and 34.1(d) do not apply to materials relating to a request for funds under Penal Code section 987.9(a).

Staff: Mr. Peter Belton, Office of the General Counsel

Item 13

Report to the Legislature on Superior Court Purchase and Lease of Electronic Recording Equipment (Action Required)

AOC staff provides for consideration of the council a report to the Legislature as required by the Budget Act of 2004 (Stats. 2004, ch. 227). The Budget Act requires that the council report on purchases and leases of electronic recording equipment that will be used to record superior court proceedings. This report covers the period between August 16 and September 17, 2004. This report is to be submitted to the Legislature by December 31, 2004. Reports will hereafter be required on a semiannual basis.

Staff: Ms. Vicki Muzny, Finance Division

Discussion Agenda (Items 14A–14E, 15–23)

ITEM 14

JUDICIAL COUNCIL SPONSORED LEGISLATION

Item 14A

9:10–9:30 a.m.

Judges' Retirement: Modification of Allowance—Benefit Factor Defined for Judicial Retirement System II (Gov. Code, § 75522(a)) (Action Required)

The Policy Coordination and Liaison Committee and the Judicial Services Advisory Committee recommend sponsoring legislation to amend section 75522 of the Government Code to provide that a

judge will be eligible to receive a monthly retirement allowance (defined benefit) or, in the alternative at the judge's option, monetary credits (defined contribution) upon attaining both 63 years of age and 10 or more years of service in lieu of the current requirement that the judge attain both 65 years of age and 20 or more years of service.

Presentation (10 minutes)

Speakers: Ms. Kathleen T. Howard, Office of Governmental Affairs

Ms. June Clark, Office of Governmental Affairs

Discussion/Council Action (10 minutes)

Item 14B

9:30–10:00 a.m.

Uniform Civil Fees (Action Required)

Numerous issues led to the formation by the Chief Justice of the Court Fees Working Group (CFWG) last year. In April 2004, the CFWG reached unanimous recommendations on a statewide uniform civil fee structure. In the ensuing months, extensive negotiations have gone on with interested and affected groups, including counties, law libraries, civil attorneys, local dispute resolution programs, court representatives, employee representatives, and others. The Uniform Civil Fee (UCF) proposal will streamline and vastly simplify the civil fee structure, provide for uniformity across the state, address the funding shortfall under the current fee structure, and provide significantly improved financial stability, accountability, and predictability. The UCF is proposed for council sponsorship in 2005 as an urgency bill so that the new fee structure can take effect on July 1, 2005.

Presentation (15 minutes)

Speakers: Ms. Kathleen T. Howard, Office of Governmental Affairs

Ms. Christine M. Hansen, Finance Division

Discussion/Council Action (15 minutes)

Item 14C

10:00–10:20 a.m.

Civil Law: Use of Denials and Admissions (Code Civ. Proc., § 2033) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend the Civil Discovery Act to clarify the admissibility at trial of admissions and denials of requests for admissions.

Presentation (10 minutes)

Speaker: Mr. Patrick O'Donnell, Office of the General Counsel

Discussion/Council Action (10 minutes)

10:20–10:35 a.m. **BREAK**

Item 14D

10:35–11:05 a.m.

Court Appointed Special Advocates (CASA): Funding Awards (Welf. & Inst. Code, § 100) (Action Required)

The Policy Coordination and Liaison Committee and the Family and Juvenile Law Advisory Committee recommend sponsoring legislation amending Welfare and Institutions Code section 100 to modify the funding allocation methodology for California CASA programs so that program awards are no longer linked to county size and are based instead upon outcome and performance based criteria.

Presentation (15 minutes)

Speakers: Mr. Lee Morhar, Center for Families, Children & the Courts

Ms. Leah Wilson Center for Families, Children & the Courts

Discussion/Council Action (15 minutes)

Item 14E

11:05–11:35 a.m.

2005–2006 Legislative Agenda: Conceptual Proposals (Action Required)

The Judicial Council has established critical and broad-ranging objectives in its current Operational and Strategic Plans. In many instances, these objectives require legislative action in order to be carried out. In addition to the specific proposals for sponsored legislation that the council is considering at this meeting, additional critical legislative proposals are in development. The Policy Coordination and Liaison Committee recommends that the council approve the proposals in concept, and direct the Office of Governmental Affairs to coordinate expedited council review and approval of individual proposals when they are fully developed.

Presentation (20 minutes)

Speakers: Ms. Kathleen T. Howard, Office of Governmental Affairs

Discussion/Council Action (10 minutes)

Item 15

11:35–11:55 p.m.

Facilities Planning: Update of the Trial Court Five-Year Capital Outlay Plan (Action Required)

Four policies related to the Five-Year Capitalized Asset Plan are proposed: that (1) additional demonstration projects not be included in the plan; (2) the previously proposed demonstration projects be merged into the ranked projects list; (3) ranked projects be reordered (within each superior court) to reflect court and master plan priorities; and (4) a proposal regarding additional projects for the updated plan be approved.

Presentation (10 minutes)

Speakers: Ms. Kim K. Davis, Office of Court Construction and Management
Mr. Robert Emerson, Office of Court Construction and Management

Discussion/Council Action (10 minutes)

Item 16

11:55 a.m.
–12:15 p.m.

Methodology and Allocation of Revenue from the Trial Court Improvement Fund Pursuant to Rule 6.105 Implementing Government Code § 77205(a) (Action Required)

AOC staff recommends approval of a methodology for allocating 50/50 Excess Fines Split Revenue and a one-time allocation of these revenues for distribution in January 2005.

Presentation (10 minutes)

Speakers: Ms. Christine M. Hansen, Finance Division
Mr. Ruben Gómez, Finance Division

Discussion/Council Action (10 minutes)

12:15–12:45 p.m.

BREAK for lunch

Item 17

12:45–12:55 p.m.

Authorization to Allocate Funding to Pay for Actual Court-Appointed Counsel Expenditures in Juvenile Dependency Proceedings (Action Required)

AOC staff requests that the Administrative Director of the Courts be given the authority to provide sufficient Trial Court Trust Fund monies beyond the established baseline level to address actual expenditures of court-appointed counsel in juvenile dependency proceedings. These costs for court-appointed counsel services are being incurred by the courts, but they currently cannot be paid in full without the authority to utilize funding beyond the court-appointed counsel base. These are important services that need to be funded in order to ensure the continued provision of high quality representation for the parties involved.

Presentation (5 minutes)

Speaker: Ms. Christine M. Hansen, Finance Division

Discussion/Council Action (5 minutes)

Item 18

12:55–1:20 p.m.

Allocation of Trial Court Staff Negotiated Salary Increase and Health Benefits and Contract Security Salary and Benefits Funding as Provided in the Budget Act of 2004 (Action Required)

The Budget Act of 2004 provided new funds for trial courts for court staff salary and benefit increases and contract security salary and benefit increases. The funding was based on budget proposals submitted at the direction of the council at its August 29, 2003, meeting. Allocation of these funds was deferred at the council's July 7, 2004, meeting to allow for further work by staff. Recommendations on allocation are now presented to the council for consideration.

Presentation (10 minutes)

Speaker: Mr. Stephen Nash, Finance Division

Discussion/Council Action (15 minutes)

Item 19

1:20–1:35 p.m.

Deficiency Funding Request: Superior Court of Lake County (Action Required)

This item would provide \$480,000 in one-time emergency funding from the Trial Court Improvement Fund for support of the Superior Court of Lake County. The increase would be used to fund a shortfall in the court's normal ongoing operations and thereby enable it to maintain its prior year's level of service. A permanent solution is currently being considered through the regular budget process. Pursuant to Judicial Council policy, the funding cannot be provided without the council's approval.

Presentation (5 minutes)

Speaker: Mr. Stephen Nash, Finance Division

Discussion/Council Action (10 minutes)

Item 20

1:35–1:55 p.m.

Revision of the Operating Guidelines and Directives for Budget Management in the Judicial Branch (Action Required)

This proposal includes revisions to the Operating Guidelines and Directives for Budget Management in the Judicial Branch initially approved by the council in August 2003. These amendments, which were predicated by dynamic changes in the judicial branch budget process, recognize significant progress in critical areas covered by

the guidelines and directives, such as the implementation of new and statewide fees and establishment of an enhanced collections program.

Presentation (10 minutes)

Speaker: Ms. Christine M. Hansen, Finance Division

Discussion/Council Action (10 minutes)

Item 21

1:55–2:15 p.m.

Guidelines for Reimbursement of the Costs of Prisoner Hearings (Action Required)

AOC staff provides recommendations regarding guidelines for a process by which courts may obtain payment for costs of prisoner hearings. The Budget Act of 2004 (Stats. 2004, ch. 208) appropriates \$2.556 million to reimburse courts for these costs under Penal Code sections 4750–4755 and 6005.

Presentation (10 minutes)

Speaker: Mr. Stephen Nash, Finance Division

Discussion/Council Action (10 minutes)

Item 22

2:15–2:35 p.m.

Guidelines for Reimbursement of Extraordinary Costs Associated with Homicide Trials (Action Required)

AOC staff provides recommendations regarding guidelines for a process by which trial courts may obtain payment for extraordinary costs of homicide trials. The Budget Act of 2004 (Stats. 2004, ch. 208) appropriates \$254,000 for reimbursement of these extraordinary costs, as specified in Government Code section 15200.

Presentation (10 minutes)

Speaker: Mr. Stephen Nash, Finance Division

Discussion/Council Action (10 minutes)

Item 23

2:35–2:55 p.m.

Public Access to Electronic Trial Court Records (Action Required)

The Court Technology Advisory Committee recommends that the Judicial Council receive the progress report on the implementation of the rules of court on public access to electronic trial court records (Cal. Rules of Court, rules 2070–2077) and that the committee be directed to continue monitoring and reporting on the progress of the courts in implementing the rules. Continued monitoring will ensure that as the California case management system is developed and

electronic filing standards are established, the courts are able to expand public access to court electronic records.

Presentation (10 minutes)

Speakers: Hon. Terence L. Bruiniers
Superior Court of Contra Costa County
Chair, Policy Subcommittee
Ms. Charlene Hammitt, Information Services Division

Discussion/Council Action (10 minutes)

No Circulating Orders have been approved since the last business meeting.

Judicial Council Appointment Orders Since Last Business Meeting

[Appointment Orders Tab]