

JUDICIAL COUNCIL MEETING
Administrative Office of the Courts
Malcolm M. Lucas Board Room
455 Golden Gate Avenue
San Francisco, California 94102-3688
December 7, 2007
8:30 a.m.–11:55 a.m.
Open to the Public

AGENDA

- 8:30–8:40 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.
- 8:40–8:45 a.m. **Approval of Minutes**
The minutes of the August 31, 2007,
business meeting.
- 8:45–9:05 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. Eileen C. Moore, Chair
[Committee Reports Tab]
- 9:05–9:15 a.m. **Administrative Director's Report**
Mr. William C. Vickrey, Administrative Director of the Courts, will
make a report.
- 9:15–9:25 a.m. **Chief Justice's Report**
Chief Justice Ronald M. George will report on activities in which he
has been involved since the last Judicial Council business meeting.

Consent Agenda (Items 1A–II, 2–8)

A council member who wishes to request that any item be moved from the Consent Agenda to the Discussion Agenda is asked to please notify Nancy Spero at 415-865-7915 at least 48 hours before the meeting.

ITEM 1

JUDICIAL COUNCIL–SPONSORED LEGISLATION

Item 1A Night Court Assessment: Transfer of Revenues (Veh. Code § 42006) (Action Required)

The Policy Coordination and Liaison Committee recommend sponsoring legislation to shift revenues from the night/weekend session assessment from the counties to the Court Facilities Trust Fund in an amount proportional to the counties' shift of court facilities to state responsibility. This amendment is necessary to align the revenues with the responsibility for remaining court facilities.

Staff: Ms. Eraina Ortega
Office of Governmental Affairs

Item 1B Small Claims: Postjudgment Fees (Code Civ. Proc., §116.820) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend the Small Claims Act to clarify that the same fees are charged and collected as for the enforcement of a civil judgment. Although the Small Claims Act provides that small claims judgments may be enforced like other civil judgments, the act specifies only certain postjudgment fees that may be charged. This amendment is necessary to clarify the law and standardize the procedures for charging postjudgment fees under the Small Claims Act.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel
Ms. Cara Vonk
Office of the General Counsel
Ms. Donna S. Hershkowitz
Office of Governmental Affairs

Item 1C Fees: Small Claims Postponement Fee and Fees for Petitions to Seek Return of Property (Code Civ. Proc., § 116.570; Health & Saf. Code, § 11488.5; Pen. Code, § 12028.5; and Welf. & Inst. Code, § 8102) (Action Required)

The Policy Coordination and Liaison Committee and staff recommend the Judicial Council resubmit the following proposals to the Legislature:

1. Authorize a \$10 postponement fee in small claims proceedings;
2. Establish a \$320 filing fee for petitions to claim property that has been seized; and
3. Establish a \$320 filing fee for petitions to claim firearms that have been seized.

These amendments would preserve valuable court resources, as well as provide clarification and statewide uniformity.

Staff: Ms. Eraina Ortega
Office of Governmental Affairs

Item 1D **Small Claims: Appearance by Declaration or Telephone (Code Civ. Proc., §116.540) (Action Required)**

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation amending the Small Claims Act to authorize the court, in its discretion and upon a showing of good cause why a party or witness cannot appear in person, to allow a party or witness to appear at a small claims hearing by written declaration or by telephone. The practice of allowing telephonic appearances in small claims matters is currently happening sporadically across California, with no consistent practice or procedures. This amendment would improve access to small claims court in a manner consistent with the underlying intent that small claims court “be informal, the object being to dispense justice promptly, fairly and inexpensively.” (Code of Civ. Proc., §116.510.) The amendment would also make the practice more consistent statewide.

Staff: Mr. Patrick O’Donnell
Office of the General Counsel
Ms. Cara Vonk
Office of the General Counsel
Ms. Donna S. Hershkowitz
Office of Governmental Affairs

Item 1E **Subordinate Judicial Officer: Definition Updated to Exclude Temporary Judges (Gov. Code, §71601) (Action Required)**

The Policy Coordination and Liaison Committee recommends sponsoring legislation to amend the Trial Court Employment Protection and Governance Act to remove temporary judges from the definition of SJO, but continue to provide that temporary judges are not covered by

the protections of the act. Temporary judges and subordinate judicial officers are legally distinct, and the definition should be corrected. This amendment is a clarification of existing law, has no substantive impact, and will prevent confusion.

Staff: Ms. Donna S. Hershkowitz
Office of Governmental Affairs

Item 1F Subordinate Judicial Officers: Relocation Costs (Pen. Code, § 832.9) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to (1) ensure Penal Code section 832.9 properly applies to all subordinate judicial officers, and (2) clarify that subordinate judicial officers are court, not county, employees, therefore making the court responsible for moving and relocation expenses necessary when the judge or SJO, or member of his or her family, must move in response to a credible threat that a life-threatening action may be taken against the judge, SJO, or his or her immediate family, as a result of his or her job. This change is necessary to provide clarity and ensure appropriate placement of responsibility for costs of relocation.

Staff: Ms. Donna S. Hershkowitz
Office of Governmental Affairs
Mr. Chad Finke
Office of the General Counsel

Item 1G Trial Preference: Updating Outmoded Statutory Language (Code Civ. Proc., § 36) (Action Required)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to make minor, nonsubstantive amendments to the trial preference statute to delete obsolete language and modernize the statute. This amendment would bring the statute into accord with contemporary practices and procedures.

Staff: Mr. Patrick O'Donnell
Office of the General Counsel
Ms. Donna S. Hershkowitz
Office of Governmental Affairs

Item 1H **Government Fee Exemption (Gov. Code, § 6103) (Action Required)**

The Policy Coordination and Liasion Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to clarify that government entities are not exempt from the obligation to pay civil jury fees and jury deposits. This amendment to the Government Code would clarify the law and eliminate confusion.

Staff: Mr. Patrick O'Donnell
 Office of the General Counsel
 Ms. Donna S. Hershkowitz
 Office of Governmental Affairs

Item 1I **Local Rules: Increase Time for Filing With the Judicial Council From 30 to 45 Days (Gov. Code, § 68071) (Action Required)**

The Policy Coordination and Liaison Committee, and the Trial Court Presiding Judges Advisory Committee, and the Court Executives Advisory Committee Joint Legislative Working Group recommend sponsoring legislation to extend the time period for Judicial Council review and processing of local court rule amendments from 30 days to 45 days before their January 1 or July 1 effective date. The current 30-day time frame does not provide sufficient time for several actions that need to be taken by the Administrative Office of the Courts, the trial courts, and the publishers of the local rules. This amendment would enable the public to have timely access to the rules.

Staff: Ms. Cara Vonk
 Office of the General Counsel
 Ms. Donna S. Hershkowitz
 Office of Governmental Affairs

Item 2 **Criminal Law: Compliance With the Determinate Sentencing Law (amend Cal. Rules of Court, rules 4.405, 4.420, 4.428, 4.433, and 4.437) (Action Required)**

The Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2008, amend the California Rules of Court to clarify the rules guiding judges in sentencing defendants to state prison under the determinate sentencing law. Effective May 23, 2007, the Judicial Council had amended these rules of court by circulating order in response to the recent United States Supreme Court decision in *Cunningham v. California* (2007) 549 U.S. ____ [127 S.Ct. 856] and the legislative response to that decision (Sen. Bill 40; Stats.

2007, ch. 3). These amended rules have now been circulated for public comment and the committee recommends clarifying changes.

Staff: Mr. Joshua Weinstein
Office of the General Counsel

Item 3 **Criminal Law: Jury Voir Dire (amend Cal. Rules of Court, rule 4.201) (Action Required)**

The procedure regarding when to allow and when to inform prospective jurors of the possibility of sequestered voir dire is not well known. Jurors and a Judicial Council member have asked staff to consider how best to increase awareness of this option. To that end, the Criminal Law Advisory Committee recommends that the Judicial Council, effective January 1, 2008, amend rule 4.201 of the California Rules of Court by adding an advisory committee comment to emphasize the procedure to be followed to determine whether sequestered voir dire is appropriate and when courts might wish to inform prospective jurors of this option.

Staff: Mr. Joshua Weinstein
Office of the General Counsel

Item 4 **Civil Jury Instructions: Approve Publication of Revisions (Cal. Rules of Court, rule 2.1050) (Action Required)**

The Advisory Committee on Civil Jury Instructions recommends approval of the publication of revisions and additions to the Judicial Council of California Civil Jury Instructions (CACI), which were first published in September 2003 and last revised in August 2007. This proposal includes 64 new or revised instructions and verdict forms. Among them are revisions to the instructions and verdict forms on bad-faith insurance actions and a new series on trade secrets.

Staff: Mr. Bruce Greenlee
Office of the General Counsel

Item 5 **Court Facilities Contracting Policies and Procedures (Action Required)**

The Administrative Office of the Courts (AOC) recommends approval of the Court Facilities Contracting Policies and Procedures. These policies guide the AOC in a qualifications-based selection process for providing the judicial branch with the best value in products and services during the acquisition and the development, including design

and construction, of court facilities. By soliciting and evaluating by predetermined selection criteria, the AOC seeks to contract for the best value in every product and service for the judicial branch. The council must act on this proposal, because it is required to adopt policies and procedures on such matters per California Government Code, section 70374(b)(2).

Staff: Mr. Lee Willoughby
Office of Court Construction and Management
Mr. Jim Stephenson
Office of Court Construction and Management
Ms. Kim Davis
Office of Court Construction and Management

Item 6 Allocation of Revenue From the Trial Court Improvement Fund in Accordance With Rule 10.105 of the California Rules of Court and Government Code section 77205(a) (Action Required)

The Administrative Office of the Courts recommends approval of specific one-time allocations pursuant to Government Code section 77205(a) for fiscal year 2006–2007 for distribution in January 2008.

Staff: Mr. Stephen H. Nash
Finance Division
Mr. Ruben Gomez
Finance Division

Item 7 Traffic: 2008 Uniform Bail and Penalty Schedules (revise schedules) (Action Required)

The Traffic Advisory Committee has proposed revisions to the Uniform Bail and Penalty Schedules (schedules) to become effective January 1, 2008. Vehicle Code section 40310 provides that the Judicial Council must annually adopt a uniform traffic penalty schedule for all nonparking Vehicle Code infractions. According to rule 4.102 of the California Rules of Court, trial courts, in performing their duty under Penal Code section 1269b, must annually revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for traffic infractions is established by the Schedules approved by the Judicial Council. The proposed revisions would bring the schedules into conformance with recent legislation.

Staff: Mr. Courtney Tucker
Office of the General Counsel

Item 8 **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 \$1.6 million in Equal Access Funds for distribution to legal services providers for programs conducted jointly with courts to provide legal assistance to self-represented 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

Discussion Agenda (Items 9–13)

Item 9 **Criminal Cases: Rules for Continuances and Calendar Management
9:25–9:45 a.m. (amend Cal. Rules of Court, rule 4.115) (Action Required)**

Courts face serious calendar management difficulties in criminal cases. The calendar management problems are exacerbated by cases that are on or near the last day for trial, significantly reducing the court’s flexibility and creating artificial calendar management emergencies.

The Trial Court Presiding Judges Advisory Committee, with the support of the Criminal Law Advisory Committee, recommends that the Judicial Council, effective January 1, 2008, amend rule 4.115 of the California Rules of Court to clarify that all requests for trial continuances, including trailing cases, must comply with the “good cause” requirement of Penal Code section 1050 and to encourage courts to actively manage trial calendars to preserve trial court flexibility and resources to minimize the number of statutory dismissals.

Presentation (10 minutes)

Speakers: Hon. William D. Gallagher
Trial Court Presiding Judges Advisory Committee

Hon. David S. Wesley
Criminal Law Advisory Committee
Mr. Joshua Weinstein
Office of the General Counsel
Discussion/Council Action (10 minutes)

Item 10 **2008 Judicial Council Legislative Priorities (Action Required)**

9:45–10:15 a.m.

The Policy Coordination and Liaison Committee recommends that the Judicial Council continue to sponsor legislation on the following topics that have been in process or have been partially implemented in recent years: (1) reform of the Judges' Retirement System II; (2) court facilities transfer deadline extension; (3) new judgeships; (4) court security; and (5) conversion of vacant SJO positions in fiscal year 2008-2009. These proposals are critical to the council's strategic plan.

Presentation (15 minutes)

Speakers: Mr. Curtis L. Child
 Office of Governmental Affairs
 Ms. Donna S. Hershkowitz
 Office of Governmental Affairs

Discussion/Council Action (15 minutes)

10:15–10:30 a.m. **BREAK**

Item 11 **Fiscal Year 2007–2008 Entrance Screening Station Replacement Schedule and Delegation of Authority (Action Required)**

10:30–10:50 a.m.

The Administrative Office of the Courts recommends approval of the proposed allocation of the screening station equipment replacement funding that was included in the Budget Act of 2007 (Stats. 2007, ch. 171). Additionally, staff recommends that the council delegate to the Administrative Director of the Courts the authority to approve the list of equipment to be replaced in subsequent years based on existing criteria and the continued availability of funding. Approval of these items would allow staff to administer the replacement program more quickly and efficiently, thus benefiting the courts by upgrading old or unserviceable screening equipment that is key to preventing weapons and contraband from being brought into the courthouses.

Presentation (10 minutes)

Speakers: Mr. Malcolm Franklin
 Emergency Response and Security

Ms. Marcia Caballin
Finance Division
Discussion/Council Action (10 minutes)

Item 12 **Probate: Education Requirements for Judicial Officers Assigned to Hear Probate Proceedings; Qualifications and Education Requirements for Probate Court Staff Attorneys, Examiners, and Investigators; and Qualifications and Education Requirements for Counsel Appointed in Conservatorships and Guardianships (amend Cal. Rules of Court, rule 10.481; and adopt rules 7.1101, 10.468, 10.478, 10.776, and 10.777) (Action Required)**
10:50–11:15 a.m.

The Probate and Mental Health Advisory Committee recommends that the Judicial Council adopt new rules of court to (1) establish initial and continuing education requirements for judicial officers assigned to hear proceedings under the Probate Code; (2) establish qualifications and education requirements for court staff investigators, examiners, and probate attorneys; and (3) establish qualifications and continuing education requirements that counsel must meet to be appointed by the court to represent minors, conservatees, and proposed conservatees in probate guardianship and conservatorship matters. These rules implement the Omnibus Conservatorship and Guardianship Reform Act of 2006.

Presentation (10 minutes)

Speakers: Mr. Douglas C. Miller
 Office of the General Counsel
 Ms. Donna S. Hershkowitz
 Office of Governmental Affairs
 Mr. Roderick Cathcart
 Education Division/CJER

Discussion/Council Action (15 minutes)

Item 13 **Court Facilities: Delegate Development of Criteria for Evaluating Project Delivery Methods to the Administrative Director of the Courts; Authorize Actions Taken in Connection with the New Long Beach Courthouse Project (Action Required)**
11:15–11:35 a.m.

The Administrative Office of the Courts recommends that the council delegate to the Administrative Director of the Courts or his designee the authority to develop performance expectations and benchmark criteria for alternate methods of delivering court facility projects, as required by recently-enacted Government Code Section 70391.5; and that the council confirm the Administrative Director of the Courts’

authority to take all other actions necessary or desirable for completion of the new Long Beach courthouse, including: (1) implementing a procurement for the delivery of the project; (2) evaluating proposals received in response to solicitation documents; (3) selecting a proposal that is the most advantageous to the State of California; and (4) executing and delivering, on behalf of the Judicial Council and the Administrative Office of the Courts, a lease-purchase agreement or other multiyear agreement, and all other documents and instruments in connection with the new Long Beach courthouse.

Presentation (10 minutes)

Speakers: Ms. Ann Springgate
Office of the General Counsel
Mr. Clifford Ham
Office of Court Construction and Management

Discussion/Council Action (10 minutes)

Item 14 **Subordinate Judicial Officers: Allocation of Conversions (Action**
11:35–11:55 a.m. **Required)**

The Judicial Council is authorized to convert 16 subordinate judicial officer positions to judgeships in fiscal year 2007–2008, and 16 in future years, for a total of 162 conversions. The council is directed in statute to develop a uniform allocation methodology for allocating the conversions among the 25 eligible courts if there are more than 16 vacancies in these courts in any given year. The Administrative Office of the Courts recommends approval of the proposed methodology for allocating conversions of vacant subordinate judicial officer positions to judgeships. Staff further recommends that the council delegate to the Executive and Planning Committee the authority and responsibility for approving the conversions pursuant to the approved methodology.

Presentation (10 minutes)

Speakers: Ms. Donna S. Hershkowitz
Office of Governmental Affairs
Mr. Dag MacLeod
Executive Office Programs

Discussion/Council Action (10 minutes)

Circulating Orders since the last business meeting.

[Circulating Orders Tab]

Appointment Orders since the last business meeting.

[Appointment Orders Tab]