

JUDICIAL COUNCIL of CALIFORNIA
Minutes of the Business Meeting—February 28, 2012
Ronald M. George State Office Complex
William C. Vickrey Judicial Council Conference Center
Malcolm M. Lucas Board Room
San Francisco, California

OPEN MEETING (RULE 10.6(A))—BUSINESS MEETING

Chief Justice Tani G. Cantil-Sakauye, Chair, called the meeting to order at 10:00 a.m. on Tuesday, February 28, 2012, in the Malcolm M. Lucas Board Room of the William C. Vickrey Judicial Council Conference Center in the Ronald M. George State Office Complex.

Judicial Council members present: Chief Justice Tani G. Cantil-Sakauye; Justices Judith Ashmann-Gerst, Marvin R. Baxter, Harry E. Hull, Jr., and Douglas P. Miller; Judges Stephen H. Baker, Emilie H. Elias, James E. Herman, Teri L. Jackson, Ira R. Kaufman, Mary Ann O'Malley, Kenneth K. So, David S. Wesley, and Erica R. Yew; Ms. Miriam Aroni Krinsky, Ms. Edith R. Matthai, and Mr. Mark P. Robinson, Jr.; **members attending by phone:** Judge Sharon J. Waters and Ms. Angela J. Davis; **advisory members:** Judges David F. De Alba, Terry B. Friedman (Ret.), Robert James Moss, David Rosenberg, and David M. Rubin; Commissioner Sue Alexander; Court Executive Officers Alan Carlson, Kim Turner, and David H. Yamasaki; and Mr. Frederick K. Ohlrich.

Members absent: Senator Noreen Evans and Assembly Member Mike Feuer.

Others present included: public: Ms. Maytak Chin, Ms. Roberta Fitzpatrick, Mr. Lindsey Scott Florez, Mr. Robert Greene, Ms. Beth Jay, Mr. Cliff Palefsky, Ms. Debra Pearson, Mr. Shane Trawick, and Ms. Deborah Trujillo; AOC staff: Mr. Peter Allen, Ms. Heather Anderson, Mr. Nick Barsetti, Ms. Deirdre Benedict, Ms. Deborah C. Brown, Ms. Nancy Carlisle, Mr. Philip Carrizosa, Mr. James Carroll, Mr. Steven Chang, Ms. Roma Cheadle, Mr. Curtis L. Child, Ms. Donna Clay-Conti, Ms. Gisele Corrie, Dr. Diane E. Cowdrey, Mr. Dexter Craig, Ms. Charlene Depner, Mr. Mark W. Dusman, Mr. Edward Ellestad, Mr. Chad Finke, Ms. Cristina Foti, Ms. Lynn Holton, Ms. Rebecca Kleinman, Mr. John A. Judnick, Mr. William L. Kasley, Mr. Gary Kitajo, Ms. Maria Kwan, Ms. Althea Lowe-Thomas, Ms. Susan McMullan, Ms. Vicki Muzny, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Jody Patel, Ms. Mary M. Roberts, Mr. Colin Simpson, Mr. Curt Soderlund, Ms. Nancy E. Spero, Mr. Zlatko Theodorovic, Ms. Martha Wright, and Ms. Josely Yangco-Fronida; **media representatives:** Ms. Maria Dinzeo, Courthouse News Service; Ms. Laura Ernde, Daily Journal; and Cheryl Miller, The Recorder.

Public Comment

The letters submitted to the Judicial Council for consideration at this meeting are attached. The council received one request to speak from Mr. Cliff Palefsky on behalf of the California Employment Lawyers Association.

Approval of Minutes

The minutes were approved from the Judicial Council business meetings of December 12 and 13, 2011, and January 24, 2012.

Chief Justice's Report

The Chief Justice related the highlights of her activities since the January 2012 council meeting. She welcomed Ms. Jody Patel as newly appointed Interim Administrative Director of the Courts appointed by the council on February 9, 2012, who intends to serve until the council completes its search for a permanent Administrative Director of the Courts.

Interim Administrative Director's Report

Ms. Jody Patel, Interim Administrative Director of the Courts, distributed a report on the activities of the AOC since the January meeting. She acknowledged the Chief Justice for her leadership and the leadership and contributions of Mr. Ronald G. Overholt, former Chief Deputy Director of the AOC and Ms. Patel's predecessor as Interim Administrative Director of the Courts. She referred to the five key priorities for her interim tenure: budget restoration for the next fiscal year; planning for reductions in the AOC budget; alignment of branchwide initiatives with the council's direction; preparation for the forthcoming Strategic Evaluation Committee report; and the productivity and morale of the AOC workforce given the current climate of change and public scrutiny.

Judicial Council Committee Presentations

Executive and Planning Committee (E&P)

Justice Douglas P. Miller, Chair, reported that E&P had met four times since January 2012. In the course of those meetings, the committee set the agenda for the council's February 28, 2012, business meeting, confirmed conversion of subordinate judicial officer positions to judgeships for the Superior Courts of Riverside and Alameda Counties, and granted an exception from conversion of a subordinate judicial officer position at the request of the Superior Court of Sacramento County.

He announced that Chief Justice Tani G. Cantil-Sakauye appointed liaisons from the council to each of the state's 58 trial courts and the 12 divisions and offices of the Administrative Office of the Courts, explaining that the purpose of the program is to increase communication, transparency, and accountability. Justice Miller also informed the council of the progress of the Strategic Evaluation Committee (SEC) under the leadership of a new chair, Judge Charles D. Wachob, Assistant Presiding Judge of the Superior Court of California, County of Placer. The Chief Justice appointed the SEC in March 2011 to conduct an in-depth review of the Administrative Office of the Courts. The committee is expected to submit its report through E&P in April 2012 for the council's consideration.

Policy Coordination and Liaison Committee (PCLC)

Justice Marvin R. Baxter, Chair, reported that the PCLC had convened once since the January 2012 council meeting to discuss Assembly Bill 1208 and budget related issues. He added that the Legislature's deadline to introduce bills was Friday, February 24. The Office of Governmental

Affairs has since been reviewing the bills submitted to identify those of interest to the judicial branch. The committee will continue to keep the council informed of the progress of the bills of interest, including Judicial Council–sponsored legislation.

Rules and Projects Committee (RUPRO)

Justice Harry E. Hull, Jr., Chair, reported that RUPRO has met three times since the January 24 council meeting. On February 2, RUPRO met by phone to consider four proposals for council approval, including *Alternative Dispute Resolution: Ethics Standards for Neutral Arbitrators in Contractual Arbitration*, Item J on the discussion agenda. RUPRO had previously considered this proposal and reconsidered it in light of concerns by some commentators, including the California Judges Association. RUPRO recommended this item for the discussion agenda and recommended council approval. RUPRO recommended approval of three other consent agenda proposals, items A10, A11, and A15.

On February 22, RUPRO discussed changes to the rule-making process and invitations to comment. RUPRO considered possible changes recommended by the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, as well as those identified by RUPRO members in recent months. RUPRO will continue to consider changes designed to lessen the burden on courts and make the invitation-to-comment process more meaningful. It will continue its dialog with the courts, through the Trial Court Presiding Judges and Court Executives Advisory Committees.

On February 17, RUPRO members communicated by e-mail to approve technical changes to three restraining order forms and recommended approval of this proposal, item A16, on the consent agenda. Justice Hull reported that the committee also deferred one item, initially designated item 12 on the consent agenda, to a future council meeting.

Justice Hull ended his report with an explanation of the search process for a permanent Administrative Director of the Courts.

California Court Case Management System (CCMS) Internal Committee

Judge James E. Herman, Chair, reported that the committee had met once since January 2012 on February 23, 2012, by telephone. The committee received a briefing on a series of upcoming legislative hearings during March and April on the course of branch technology and the budget outlook and implications for the next budget cycle. The committee discussed the status and details of a \$16 million delay cost reimbursement from CCMS vendor Deloitte Consulting, LLP, with an option set to expire on March 31, 2012. The committee also reviewed preparations for a special session of the council on CCMS and branch technology, scheduled for March 27, 2012, as well as the existing council policy, adopted in 2006, on the funding process and delegation of authority for allocating the costs of statewide administrative infrastructure and technology. The committee has considered the possibility of updating the policy in the future because it predates the 2007 initiation of V4 development, and will consult with the Court Executives Advisory Committee and trial court judges on a policy solution to the problem of failing legacy case management systems, and the need for system upgrades and replacements.

CONSENT AGENDA (ITEMS A1–A16, B–I)

Appellate Procedure

Item A1 Appellate Procedure: Briefs

The Appellate Advisory Committee recommended amending the rules relating to briefs to (1) alert rule users to the fact that there may be statutory limitations on extensions of briefing time; (2) clarify when to file briefs when there is a cross-appeal; and (3) clarify who must be served with the People’s brief in felony appeals in which the appellant is the People. These changes would make the rules clearer and easier to follow.

Council action

The Judicial Council, effective January 1, 2013, approved the committee’s recommendation to:

1. Amend rules 8.212 and 8.882 to clarify that the stipulated extensions provided under these rules are available “unless otherwise provided by statute”;
2. Amend the Advisory Committee Comment accompanying rule 8.212 to
 - a. Add a provision indicating that extensions of briefing time are limited by statute in some cases;
 - b. Add a provision noting that rule 8.216 addresses the sequence and timing of briefing when there is a cross-appeal and that, in such cases, the cross-appellant’s combined respondent’s brief and opening brief typically must be filed within the period for filing a respondent’s brief; and
 - c. Update references concerning electronic service addresses and a web address.
3. Add a new Advisory Committee Comment accompanying rule 8.882 containing the same content as the proposed additions to the comment to rule 8.212; and
4. Amend rule 8.360 to clarify that:
 - a. The People’s briefs must be served on appellate counsel for each defendant who is a party to the appeal and on the district appellate project; and
 - b. If the district attorney is representing the People, the district attorney must also serve one copy of its brief on the Attorney General.

Item A2 Appellate Procedure: Bringing New Authorities to the Attention of the Court of Appeal

The Appellate Advisory Committee recommended adopting a new rule establishing a procedure for bringing new authorities to the attention of the Court of Appeal after a party has filed its final brief. This rule would fill a gap in the California Rules of Court.

Council action

The Judicial Council, effective July 1, 2012, approved the committee's recommendation to adopt rule 8.254 to establish a procedure for bringing new authorities to the attention of the Court of Appeal.

Item A3 Appellate Procedure: Ensuring Tribal Receipt of Records on Appeal in Juvenile Cases

The Appellate Advisory Committee, the Family and Juvenile Law Advisory Committee, and the California Tribal Court/State Court Forum recommended amending the rule governing sending the record in juvenile appeals to clarify that if an Indian tribe has intervened in a case, a copy of the record of that case must be sent to that tribe. This change would ensure that a tribe that has become party to a case through intervention receives a copy of the record, as do other parties to a juvenile court proceeding.

Council action

The Judicial Council, effective January 1, 2013, approved the recommendation to amend rule 8.409 of the California Rules of Court to require that, if an Indian tribe has intervened in a juvenile case, a copy of the record on appeal in that case be sent to appellate counsel for that Indian tribe or, if the tribe is not represented, to the tribe itself.

Item A4 Appellate Procedure: Judicial Notice

The Appellate Advisory Committee recommended amending the rules relating to taking judicial notice in appellate courts to specifically require that if judicial notice of the matter was not taken by the trial court, the motion state why the matter is subject to judicial notice under the Evidence Code. These amendments would ensure courts have the information they need to make an appropriate determination regarding taking judicial notice.

Council action

The Judicial Council, effective January 1, 2013, approved the committee's recommendation to amend rules 8.252 and 8.809 to specifically require that if judicial notice of a matter was not taken by the trial court, the motion state why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.

Item A5 Appellate Procedure: Time for Filing Applications to File Amicus Curiae Briefs

The Appellate Advisory Committee recommended amending the rule relating to filing documents in the Supreme Court and Court of Appeal to clarify that applications to file amicus briefs and answers to these briefs are considered timely if the time to file them has not expired on the date they are mailed by priority or express mail or delivered to an overnight carrier. This amendment was intended to improve court administration by making rule 8.25 clearer.

Council action

The Judicial Council, effective July 1, 2012, approved the committee's recommendation to amend rule 8.25 of the California Rules of Court to add applications to file amicus briefs and answers to these briefs to the list of documents that are considered timely if the time to file them has not expired on the date they are mailed by priority or express mail or are delivered to an overnight carrier.

Item A6 Appellate Procedure: Time to Appeal

The Appellate Advisory Committee recommended amending the rules establishing the time for filing a notice of appeal in a civil case and providing for extensions of this time under certain circumstances. These amendments would clarify that even if the parties waived notice in the trial court of the order that is the subject of the appeal, the longer time to appeal applies unless either the court or a party serves notice of entry of judgment or a file-stamped copy of the judgment. The amendments would also fill a gap in the rules by adding a new provision establishing an extension of time to appeal the granting of a new trial motion under certain circumstances.

Council action

The Judicial Council, effective July 1, 2012, approved the committee's recommendations to:

1. Amend rules 8.104 and 8.822 to indicate that, when notice of the ruling being appealed has been waived in the trial court under Code of Civil Procedure section 1019.5, the longer appeal period applies unless the court or a party serves notice of entry of the judgment or a file-stamped copy of the judgment;
2. Amend rules 8.108 and 8.823 to provide that when a new trial is granted because a party rejects a conditional additur or remittitur or if the additur or remittitur is deemed rejected because the time for accepting it has expired, any party has 30 days from the time the party serves the rejection of the additur or remittitur or it is deemed rejected to appeal the grant of the new trial motion; and
3. Make other nonsubstantive changes to these rules.

Civil and Small Claims

Item A7 Civil Practice and Procedure: Addressing Class Actions and Waived Court Fees

The Civil and Small Claims Advisory Committee recommended revising *Request for Dismissal* (form CIV-110) to include a notice that it may not be used for dismissal of a class action or a derivative action and to make changes to the sections that apply to waivers of court fees and costs.

Council action

The Judicial Council, effective January 1, 2013, approved the committee's recommendation to revise *Request for Dismissal* (CIV-110) to include a notice that it may not be used for dismissal of a class action or a derivative action and to make changes to the sections that apply to waivers of court fees and costs.

Item A8 Civil Cases: Vexatious Litigants

The Trial Court Presiding Judges Advisory Committee and the Civil and Small Claims Advisory Committee recommended changes to forms related to vexatious litigant procedures in order to implement recent legislation, achieve consistency, and make other needed changes to these procedures.

Council action

The Judicial Council, effective, January 1, 2013, approved the committees' recommendations to:

1. Revise *Prefiling Order—Vexatious Litigant* (form MC-700) and *Request to File New Litigation by Vexatious Litigant* (form MC-701); and
2. Approve *Order on Request to File New Litigation by Vexatious Litigant* (form MC-702), *Application for Order to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List* (form MC-703), and *Order on Application to Vacate Prefiling Order and Remove Plaintiff/Petitioner from Judicial Council Vexatious Litigant List* (form MC-704).

Criminal Law

Item A9 Criminal Procedure: Intercounty Probation Transfer Forms

The Criminal Law Advisory Committee proposed adoption of three new mandatory forms to be used by petitioners and courts to facilitate intercounty probation transfer procedure under Penal Code section 1203.9 and rule 4.530 of the California Rules of Court.

Council action

The Judicial Council, effective July 1, 2012, approved the committee's recommendation to adopt:

1. *Notice and Motion for Transfer* (form CR-250) for use by petitioners to request intercounty probation transfer orders from courts;
2. *Order for Transfer* (form CR-251) for use by courts to order intercounty probation transfers; and
3. *Receiving Court Comment Form* (form CR-252) for use by receiving courts to submit comments to the transferring court regarding the propriety of a proposed transfer.

Family Law

Item A10 Family Law: Information Sheet for Dissolution of Marriage

The Family and Juvenile Law Advisory Committee and the Elkins Family Law Implementation Task Force recommended approval of a new optional form designed to provide basic information regarding the process for starting and finalizing the dissolution of a marriage, opportunities for alternative dispute resolution, and help in finding legal assistance. The provision of such a form was recommended by the Elkins Family Law Task Force and was designed to increase court efficiency by providing key information about the divorce process to assist parties to complete their cases.

Council action

The Judicial Council, effective July 1, 2012, approved the committee and task force recommendation to approve *Legal Steps for a Divorce (Dissolution)* (form FL-107-INFO) to provide information to litigants about the dissolution process and how to get help in resolving their case.

Item A11 Family Law: New, Restructured, and Amended Family Law Rules of Court

The Elkins Family Law Implementation Task Force and the Family and Juvenile Law Advisory Committee recommended restructuring title V of the California Rules of Court to improve the cost-effectiveness and accessibility of practices and procedures in family law. This proposal was developed in response to the Judicial Council's charge to the Elkins Family Law Implementation Task Force in April 2010, when the council accepted the *Elkins Family Law Task Force: Final Report and Recommendations*.

Council action

The Judicial Council, effective January 1, 2013, approved the restructured rules outline and the new, amended, repealed, and renumbered Family Law Rules of Court (Cal. Rules of Court, title V) as submitted by the task force and committee.

Item A12 Family Law: Proof of Service by Publications or Posting

No action

This item was deferred for a future meeting.

Juvenile Law

Item A13 Juvenile Law: Forms for Disclosure of Information

The Family and Juvenile Law Advisory Committee recommended three information-sharing forms: new standardized consent forms for release of health and mental health information and education information and an amended order after judicial hearing form for release of

information from the juvenile case file pursuant to Welfare and Institutions Code section 827. In order to make informed and punctual decisions about children in foster care, judges need accurate health, mental health, and education information. Creation of standardized, legally accurate forms for use by social workers to obtain information from health care and education professionals would expedite this process.

Council action

The Judicial Council, effective January 1, 2013, approved the committee's recommendations to:

1. Adopt *Authorization to Release Health and Mental Health Information* (form JV-226), which allows release of information from a health-care professional to a child welfare agency when signed by the parent, legal guardian, Indian custodian, or child, in certain circumstances;
2. Adopt *Consent to Release Education Information* (form JV-227), which allows the parent, legal guardian, educational representative appointed by the juvenile court, Indian custodian, or certain eligible students to consent to the release of education records by a school to a child welfare agency; and
3. Amend *Order After Judicial Review* (form JV-574), to make a technical change that allows the court to clearly grant or deny a request to share information in juvenile case files.

Temporary Judges

Item A14 Temporary Judges: Recruitment, Selection, and Appointment of Temporary Judges by the Court

The Access and Fairness Advisory Committee recommended that the Judicial Council amend two rules of court relating to the oversight and administration of temporary judge programs. These amendments would encourage greater diversity in the selection and appointment of temporary judges, enhance transparency and openness in the temporary judge selection process, and complete the council's 2005 direction to the Temporary Judges Working Group to review whether any rules should be amended to include broad diversity considerations in the recruitment and selection of temporary judges.

Council action

The Judicial Council, effective July 1, 2012, approved the committee's recommendations to:

1. Amend rule 10.741 (Duties and authority of the presiding judge) to:
 - a. Require courts, except those that have nine or fewer authorized judge positions to publicize the opportunity to serve in a temporary judge position whenever the court seeks to add attorneys to its pool of temporary judges or within a reasonable time before conducting its mandatory training for temporary judges, but in any case, no less than once every three years ((b)(1));

- b. Require courts to publicize the opportunity in a manner that maximizes the potential for a diverse applicant pool and provides an equal opportunity for all eligible individuals to seek appointment as a temporary judge ((b)(2));
 - c. Ensure nondiscrimination in the selection and appointment of temporary judges ((c)); and
 - d. Encourage presiding judges to consider, as an additional qualification for selection and appointment, an applicant's experience with, or exposure to, diverse populations and issues related to those populations ((c)); and
2. Amend rule 10.743 (Administrator of temporary judges program) to incorporate by reference the amendments to rule 10.741.

Item A15 Jury Instructions: Additions and Revisions to Criminal Jury Instructions

The Advisory Committee on Criminal Jury Instructions recommended approval of the proposed additions, revisions, and revocations to the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*. These changes would keep *CALCRIM* current with statutory and case authority.

Council action

The Judicial Council, effective February 28, 2012, approved for publication, under rule 2.1050 of the California Rules of Court, the criminal jury instructions prepared by the committee. The new and revised instructions will be published in the 2012 edition of the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

Restraining Orders

Item A16 Restraining Orders: Urgently Needed Technical Changes to Restraining Order Forms

The Administrative Office of the Courts (AOC) recommended technical revisions to three Judicial Council forms used in protective order proceedings. Staff has identified significant errors and problems in these three forms that urgently need to be corrected. One current elder abuse prevention form contains a statement that may result in protective orders being issued that inaccurately describe their duration. Two of the current juvenile protective order forms are structured so that they cannot be used to fully provide protection for all persons entitled to protection. To make the corrected forms available to the courts and the public as soon as possible, it was recommended that the necessary technical revisions be made to the forms effective March 1, 2012.

Council action

The Judicial Council approved, effective March 1, 2012, the AOC recommendation to:

1. Revise form EA-130, *Elder or Dependent Adult Abuse Restraining Order After Hearing*, to change in item 4 the statement “expires five years from the date of

issuance” to “expires three years from the date of issuance” and to add on page 5 the words “Form CR-160 or” before “Form CR-161.”

2. Revise form JV-245, *Request for Restraining Order—Juvenile*, item 1 and former item 2, to consolidate the lists of protected persons, and item 8 (formerly item 9), to correct the references to protected persons; and
3. Revise form JV-250, *Restraining Order—Juvenile*, item 1 and former item 2, to consolidate the list of protected persons, and item 8 (formerly 9), to add protected persons to the stay-away order and eliminate repetitive language.

Item B Child Support: Midyear Funding Reallocation for Fiscal Year 2011–2012 and Base Funding Allocation for Fiscal Year 2012–2013 for the Child Support Commissioner and Family Law Facilitator Program (Action Required)

The Family and Juvenile Law Advisory Committee recommended that the Judicial Council approve the reallocation of funding for the Child Support Commissioner and Family Law Facilitator Program for the remainder of fiscal year 2011–2012. Additionally, the committee recommended that the Judicial Council approve the allocation of funding for the Child Support Commissioner and Family Law Facilitator Program for fiscal year 2012–2013, subject to funding.

The Judicial Council is required to annually allocate non-trial court funding to local courts for this program (Assem. Bill 1058; Stats. 1996, ch. 957). The funds are provided through a cooperative agreement between the California Department of Child Support Services (DCSS) and the Judicial Council.

Council action

The Judicial Council, effective February 28, 2012, approved:

1. Reallocation for funding of child support commissioners for fiscal year 2011–2012, subject to the state Budget Act;
2. Reallocation for funding of family law facilitators for fiscal year 2011–2012, subject to the state Budget Act;
3. Allocation for funding of child support commissioners for fiscal year 2012–2013, subject to the state Budget Act; and
4. Allocation for funding of family law facilitators for fiscal year 2012–2013, subject to the state Budget Act.

Item C Judicial Branch Administration: Audit Report for Judicial Council Acceptance

The Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch (A&E) and the Administrative Office of the Courts (AOC) recommended that the Judicial Council accept the audit report that pertains to the Superior Court of California, County of Riverside.

Council action

The Judicial Council, effective February 28, 2012, approved the recommendation of the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch and the Administrative Office of the Courts to accept the “pending” audit report dated October 2011 entitled: *Audit of the Superior Court of California, County of Riverside*.

Item D Judicial Branch Report to the Legislature: Receipts and Expenditures from Local Courthouse Construction Funds

The Office of Court Construction and Management of the Administrative Office of the Courts recommended that the Judicial Council approve *2011 Report to the Legislature: Receipts and Expenditures from Local Courthouse Construction Funds* for submission to the budget and fiscal committees of the Legislature. The report provides information for the reporting period of July 1, 2010, through June 30, 2011, regarding receipts and expenditures from local courthouse construction funds, as reported by each county. The annual submission of this report is required under Government Code section 70403(d).

Council action

The Judicial Council approved the annual Judicial Council report for the period of July 1, 2010, to June 30, 2011, regarding receipts and expenditures from local courthouse construction funds, as reported by each county and directed the AOC to submit the report to the budget and fiscal committees of the California Legislature.

Item E Judicial Branch Report to the Legislature: Purchase or Lease of Electronic Recording Equipment

The Administrative Office of the Courts (AOC) recommended that the Judicial Council approve the *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (July 1–December 31, 2011)*. Government Code section 69958 requires that the Judicial Council report to the Legislature semiannually regarding all purchases and leases of electronic recording equipment that will be used to record superior court proceedings.

Council action

The Judicial Council approved the *Report on Purchase or Lease of Electronic Recording Equipment by Superior Courts (July 1–December 31, 2011)* and directed the AOC to submit the report to the Legislature.

Item F Judicial Branch Report to the Legislature: FY 2010–2011 Court Reporter Fees and Expenditures

The Administrative Office of the Courts (AOC) recommended that the Judicial Council approve the *Report of Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings for Fiscal Year 2010–2011* report, which is required by Government Code section 68086(c).

Council action

The Judicial Council approved the *Report of Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings for Fiscal Year 2010–2011*, and directed the AOC to submit the report to the Legislature.

A few of the revenue figures were corrected subsequent to the council's February 28, 2012, meeting and the council subsequently approved the amended report, dated February 29, 2012. The amended report can be found at <http://www.courts.ca.gov/7466.htm>.

Item G Judicial Branch Report to the Legislature: FY 2010–2011 Special Funds Expenditures

The Administrative Office of the Courts (AOC) recommended that the Judicial Council approve the *Report of Special Funds Expenditures for Fiscal Year 2010–2011 (Including Supplemental Information on Statewide Technology Infrastructure Funding and Expenditures)*, which is required by Government Code section 77209(j).

Council action

The Judicial Council approved the report entitled *Report of Special Funds Expenditures for Fiscal Year 2010–2011 (Including Supplemental Information on Statewide Technology Infrastructure Funding and Expenditures)*, and directed AOC staff to submit the report to the Legislature.

Item H Judicial Branch Report to the Legislature: Court Interpreter Expenditures for Fiscal Year 2010-2011

The Court Programs and Services Division of the AOC recommended that the Judicial Council approve the annual report on trial court interpreter expenditures for submission to the Legislature. This report to the Legislature is required by the Budget Act of 2010 (Stats. 2010, ch. 712).

Council action

The Judicial Council approved the report to the Legislature summarizing the fiscal year 2010-2011 trial court interpreter expenditures in conformance with the requirements of the Budget Act of 2010 (Stats. 2010, ch. 712) and directed the AOC to submit the report to the Legislature.

Item I Judicial Branch Report to the Legislature: California’s Access to Visitation Grant Program for Fiscal Years 2010–2011 and 2011–2012

The Center for Families, Children & the Courts Division of the AOC recommended that the Judicial Council approve California’s Access to Visitation Grant Program Report for submission to the Legislature. This report to the Legislature must be submitted on even-numbered years and is required by Family Code section 3204(d).

Council action

The Judicial Council approved, effective March 1, 2012, the report to the Legislature summarizing the programs funded for fiscal years 2010–2011 and 2011–2012 and directed the AOC to submit the report to the Legislature.

Following the meeting, the council approved nonsubstantive changes to clarify the reporting period for the data collected to reflect the multiple time periods referenced in the report, such as budget fiscal year, program fiscal year, and data collection year. The amended report can be found at <http://www.courts.ca.gov/7466.htm>.

DISCUSSION AGENDA (ITEMS J–M)

Item J Alternative Dispute Resolution: Ethics Standards for Neutral Arbitrators in Contractual Arbitration

The AOC recommended amendments to ethics standards adopted by the Judicial Council under Code of Civil Procedure section 1281.85 in response to recent appellate court decisions concerning the standards. These amendments would: codify the holdings in cases on the inapplicability of the standards to arbitrators in securities arbitrations and on the time for disclosures when an arbitrator is appointed by the court; require new disclosures if an arbitrator has been publicly disciplined by a professional or occupational disciplinary agency or licensing board; and clarify required disclosures about associations in the private practice of law and other professional relationships between an arbitrator’s spouse or domestic partner and a lawyer in the arbitration.

Council action

The Judicial Council voted, with one no vote, to refer the proposal to amend standards 2, 3, 7, and 8 of the Ethics Standards for Neutral Arbitrators in Contractual Arbitration, to the Rules and Projects Committee to determine the appropriate advisory group or task force to review the standards and make a recommendation to the council.

Item K Judicial Branch Administration: Trial Court Business Process Reengineering Services

Council members Alan Carlson and Kim Turner **presented** a report on a business process reengineering services model developed by the council’s Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. The model is a voluntary tool for interested courts to improve productivity and reduce costs, particularly under current conditions of severe budget reductions.

No action

Item L California Court Case Management System (CCMS) and the Phoenix Financial System: 2011 Status Report to the Legislature

Justice Terence L. Bruiniers, Chair of the CCMS Executive Committee, Judge James E. Herman, Chair of the CCMS Internal Committee, and Mr. Mark W. Dusman, Director of the Information Services Division and Acting Director of the CCMS Program Management Office, presented the highlights of the annual report *Status of the California Court Case Management System and the Phoenix Program 2011* submitted for the council’s approval. Justice Bruiniers reported that the total program cost for CCMS over a 10 year period—including the maintenance and operations costs for V2 and V3—has been \$521.5 million. Of that amount, \$333 million is for the development and deployment of the V3 civil system, development of V4 (the final version of CCMS), and the development of a document management system. A special Judicial Council meeting on CCMS and branch technology will be held March 27.

Council action

The council approved the report and directed the AOC to submit the report to the Legislature.

Item M Budgets: Overview of Fund Types Supporting the Judicial Branch

Mr. Zlatko Theodorovic, Chief Financial Officer and Director, AOC Finance Division, and Mr. Steven Chang, Finance Division, presented an overview of the various fund types that support judicial branch operations as well as information on the current and projected balances of these funds, and their use in offsetting and mitigating the impact of budget reductions in recent years.

No action

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

Domestic Violence: Firearm Relinquishment in Criminal Domestic Violence Cases

This is an information report on the impact of implementing rule 4.700 of the California Rules of Court regarding firearms relinquishment in criminal domestic violence cases.

Trial Courts: Quarterly Investment Report for Fourth Quarter of 2011

This Trial Court Annual Investment Report provides the financial results for the funds invested by the Administrative Office of the Courts on behalf of the trial courts as part of the judicial branch treasury program. This report is submitted under the Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004. This report covers the period of October 1, 2011, through December 31, 2011.

Government Code Section 68106: Implementation and Notice by Trial Courts of Closing Courtrooms or Clerks' Offices or Reducing Clerks' Office Hours (Report #10)

In 2010, the Legislature enacted fee increases and fund transfers for the courts and also added section 68106 to the Government Code. In 2011, the Legislature enacted Assembly Bill 973, which amended section 68106 effective January 1, 2012. As amended, section 68106 directs (1) trial courts to notify the public and the Judicial Council before closing courtrooms or clerks' offices or reducing clerks' office hours on days that are not judicial holidays, and (2) the council to post on its website and relay to the Legislature all such court notices. This is the tenth report providing information about the implementation of these notice requirements. Since the ninth report, two courts—San Mateo and Merced—have given such notice. Since section 68106 originally was added, on October 19, 2010, a total of 24 courts have given notice.

In Memoriam

Chief Justice Cantil-Sakauye closed the meeting with a moment of silence to remember recently deceased judicial colleagues and honor their service to their courts and the cause of justice:

- Hon. Russell Schooling (Ret.), Superior Court of California, County of Los Angeles
- Hon. Karl W. Jaeger (Ret.), Superior Court of California, County of Los Angeles
- Hon. William McGivern, Jr. (Ret.), Superior Court of California, County of Marin
- Hon. Lynn D. Compton (Ret.), California Court of Appeal, Second Appellate District, Division Two
- Hon. Ralph E. Brogdon, Jr. (Ret.), Superior Court of California, County of Santa Clara

There being no further public business, the meeting was adjourned at 3:05 p.m.

Circulating Orders since the Last Business Meeting

Fee Waivers: Change in Federal Poverty Guidelines

Approval of the February 9, 2012, Judicial Council Meeting Minutes

Appointment Orders since the Last Business Meeting

Appointment Orders since the Last Business Meeting

Judicial Council of California Appointments to internal committees

Ms. Thu B. Nguyen, Judicial Council of California Court Interpreters Advisory Panel

Hon. Emilie H. Elias, Judicial Council of California term ending September 14, 2013

Judicial Council of California Trial Court Liaison Assignments

Judicial Council of California Liaison Assignments to Administrative Office of the Courts Divisions

Respectfully submitted,



Jody Patel

Interim Administrative Director of the Courts and
Secretary to the Judicial Council

Attachments

1. Correspondence submitted by Early Langley, President, California Court Reporters Association
2. Correspondence submitted by Mr. Cliff Palefsky, California Employment Lawyers Association



February 24, 2012

Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

Attn: Chief Justice Tani Cantil-Sakauye

Dear Chief Justice:

On behalf of the California Court Reporters Association, I wish to bring to your attention that we question the Judicial Branch Report to the California Legislature regarding Court Reporter Fees Collected and Expenditures for Court Reporter Services for the fiscal year 2010-11.

The Judicial Council has reported to the public that there were over 1.1 million civil cases filed in 2011. The amount of fees collected under Government Code sections 68086(a)(1) and 68986.1 is reported as a little over \$34 million. We do not believe this is a correct accounting of monies collected.

In addition, the report states that the Administrative Office of the Courts has utilized a time percentage estimate based on a time study survey from 2003. Such reliance would not be based on a realistic picture of activities in our trial courts today and we question the method used to calculate these figures.

Early Langley,
President, California Court Reporters Association
Early.Langley@cal-ccra.org

JOHN A. MCGUINN
JOHN R. HILLSMAN
CLIFF PALEFSKY
DEREK B. JACOBSON
KEITH A. EHRMAN
CAROLYN SALMON
ABRAHAM FEINSTEIN-HILLSMAN
SCOTT M. STILLMAN

LAW OFFICES OF
MCGUINN, HILLSMAN & PALEFSKY
A PROFESSIONAL CORPORATION
535 PACIFIC AVENUE
SAN FRANCISCO, CALIFORNIA 94133
TELEPHONE (415) 421-9292

FAX (415) 403-0202

March 1, 2012

Nancy Carlisle
Court Services Analyst
Office of the General Counsel, Secretariat
Judicial Council of California - Administrative Office of the Courts
455 Golden Gate Ave.
San Francisco, CA 94102-3688

Dear Nancy,

I am very appreciative for having had the opportunity to address the Council on the subject of enhancements to the present Ethics Standards for Neutral Arbitrators in Contractual Arbitrations. At the request of the Chief Justice I am submitting a summary of suggestions for improvements and changes to the Standards. These are provided in summary form but I am available to provide additional information, support or clarification of any of these recommendations at your request. I would be grateful if you would forward this letter on to the appropriate interested parties.

Provider disclosures-The Providers play a critical role in the arbitration process. They create the rules, select the overall panel of arbitrators, create the shorter list of arbitrators for the parties to strike, in certain cases actually appoint the arbitrator and rule on challenges for cause. However, the current rules are deficient in certain respects. First they do not require the Providers to disclose whether or not they have an economic interest in or relationship with the parties and attorneys. The original Standard 8 indicates that such a disclosure obligation was not necessary because the Providers were not permitted to administer cases where such a relationship exists. The situation involving the National Arbitration Forum highlights the shortcomings of that thinking. As has been widely reported, a venture fund that bought the collection agencies that were using the National Arbitration Forum secretly bought the National Arbitration Forum and took great efforts to hide that ownership. As a result of a Congressional investigation and lawsuits by the Attorney General of Minnesota and the City Attorney of San Francisco, the NAF has been precluded from conducting consumer arbitrations and employment arbitrations in California for several years. More significantly, the NAF did not make the disclosure of that ownership conflict and continued to administer the cases. Additionally, the NAF generally refused to make the disclosures required by California law and took the position that the FAA preempted California law. Therefore, we strongly urge that the Providers be required to disclose any such interest or relationship with the parties or lawyers. Additionally, we suggest that the Providers be required to make available to the public and parties the identities of the true owners of their organizations so that the parties can conduct their own investigation and determination of

potential conflicts. Finally, and very importantly, there needs to be some way for Provider organizations to be disqualified when conflicts exist. Presently, the only remedy available to the parties is to disqualify an individual arbitrator after disclosures are made. However, when the conflict affects the Provider there is no efficient means to disqualify the Provider and go to an alternative forum. It obviously makes no sense for a party to have to go through the list and disqualify each arbitrator seriatim.

Stop administration?-As a result of various judicial decisions and contracts, in many types of consumer cases the company is obligated to pay the full cost of arbitration. Unfortunately, all too frequently, the company stops paying when they feel the arbitrator is not going their way on preliminary issues or even at the hearing itself. Several Providers actually stop administration and have even refused to release a completed award because of an outstanding bill. This is especially troubling because the Provider has it completely within their control to get deposits paid upfront or to otherwise assume the risks and costs of collection as all other businesses do. Accordingly, we recommend that among the disclosures the arbitrators and Providers make, they should be required to notify the parties whether they will complete the arbitration and assume responsibility for collection or stop administration if the company should refuse to pay the fees they are obligated to pay.

Marketing limitations-The competition in the ADR community has become intense. There is competition for neutrals and sitting judges and there is significant competition between Providers competing to be written into mandatory arbitration agreements. If arbitration was voluntary as it was always intended to be, the arbitrator would need the consent of both parties to be appointed. However, with the elimination of true consent, the present reality is that Providers only need the consent of the corporation who can write them into millions of agreements. As such, it is no longer necessary to market to individual consumers, employees or their attorneys. The original ABA/AAA Ethical Rules for Commercial Arbitrators permitted advertisements and solicitations of a general nature announcing availability. However, they expressly say it is unethical for arbitrators to solicit cases for themselves. Of course, if an arbitrator can't solicit cases for themselves they can't employ a marketing person to solicit cases on their behalf. Similarly, Providers should not be able to solicit all of a company's arbitrations for a closed panel. In light of the extraordinarily high hourly and daily rates being charged by arbitrators at the large Providers it is obvious that the firms are not competing on price. That of course leaves the nature and makeup of their panels as the primary distinguishing factor. We urge the Council to consider appropriate limitations on and perhaps require disclosure of the marketing and solicitation of cases beyond what is required by the present rule which essentially only requires that the solicitation be honest. We are aware of circumstances in the past where Providers have actually sent employees into insurance companies and other firms to review their caseloads and even make specific recommendations of neutrals to use for certain cases. We have been informed of a situation where a proposed specialized panel of arbitrators was shown to prospective users in advance in an effort to get their business. Those kinds of practices done either by the arbitrators or their agents should not be permitted.

Nancy Carlisle
Court Services Analyst
March 1, 2012
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Location of the rules-Unfortunately the Ethics Standards are very hard to find. They are referred to in the CCP but there is no indication in the Code where to find the Standards. We strongly urge that the Standards either be included in the CCP itself, have their location identified in the Code or require the Providers to make them available to the parties along with the other documentation they provide.

Lack of enforcement mechanisms-There presently isn't any mechanism available to citizens or attorneys to compel compliance with the CCP mandated disclosures. Because there is no real economic injury, standing is lacking under the present state of the law. Additionally, it would be very costly for any consumer or employee to have to finance a lawsuit to compel compliance in light of the greater resources of a company that is willing to flagrantly ignore their legal obligations. We strongly suggest creating standing for individuals to compel compliance with the posting and disclosure requirements and to provide for attorneys fees if they are successful.

Disclosure of additional employment-Presently, Standard 7(b) (2) actually says that an arbitrator can accept an offer of employment on another matter from a party in a pending arbitration without disclosing that new economic offer or relationship to the other side. Considering that additional business involves both ex parte contacts and significant financial consideration, it is entirely inconsistent with the required perception of neutrality for the arbitrator and one party to have those additional contacts and financial relationships during the pendency of the arbitration.

Checklist-We strongly support the development of model disclosure forms and it is essential that those forms include the disclosures under both Standards 7 and 8. We are aware of at least one major Provider who uses a form that only deals with Standard 7. We are also aware of smaller Providers that do not do any of the postings required by law. We suggest that any form disclosure checklist, in addition to addressing the required disclosures under Standards 7 and 8, also provide a link to the required website posting of consumer arbitration statistics, the identity of the owners of the Provider and perhaps a link to the Standards themselves.

Thank you very much for your consideration.

Very truly yours,



Cliff Palefsky