

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts Web site. What follows is a formatted and unedited transcript of the meeting of April 29, 2011. The official record of each meeting, the meeting minutes, are usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts Website at <http://www.courts.ca.gov>.

>> This is the business meeting of February 28th, 2012. This meeting is now in session. So at this meeting, the council will hear first the internal committee reports and a portion of our discussion agenda. We will then break for lunch. We will then return for further discussion for presentation and discussion on reports on the legislature on CCMS and the Phoenix financial system as well as various funds that for the Judicial Branch operations. As you know our meetings are audiocast live with real time subtitles on the California Courts website. As many of you know portions of our meetings are taped and then they are routinely broadcast later on CCN, which is California court news. And we've had several hundred visitors and greater listeners for the archived of the past and prior audiocasts and video reports and I say this as you know for your benefit that when you speak, please speak into the microphone and I remind members to, when speaking to each other, if necessary, please address each other by name so that the audiocast listeners are able to better track the conversation and discussion and the real time captioning readers the same. New to this meeting I want to welcome someone who's familiar with us. Seated to my right is someone we've all known as a very competent and accomplished regional director of the AOC, Jody Patel.

(Applause.)

>> Welcome, Jody. Following the resignation of Ronald Overholt earlier this month, the council met and appointed Jody to serve as interim executive director of the Court until it completes its search for a permanent director and Justice Hull is chair of the search committee and he will provide later a brief update on that front. I also want to thank Jody for agreeing to step in to this important position at an especially critical time. I also want to thank Curt Soderlund who is here today for making the temporary move from Sacramento to assist Jody as interim deputy director. I also want to thank Chris Patton for her experience who continues to serve the AOC at this of time of transition. Thank you, Chris. One of Jody's first moves was to convene a meeting of the AOC managers to explain the change in the organization. And I understand that at Jody's invitation certain Judicial Council members attended that meeting to answer questions and that was Justices Miller and Hull and Judge Rosenberg as well as Alan --

(Inaudible.)

>> And I understand there were many discussions about the changes happening in the and there was a good discussion and they also answered questions from the managers. And I know I speak for many council members and many, many branch that we wish

Ronald Overholt the very, very best in his future endeavors. As you know Ron has been in court administration I believe for more than or over 30 years. He was first in the Superior Court of San Diego and then as executive officer of the Superior Court of Alameda. His work has been in everything but significantly in the trial court delay reduction act and the trial court budget act. He also spent 12 years here as you know as deputy administrative director at the AOC, and he's seen and benefit at the forefront of the progress of the branch in the last 12 years. Last year, his accomplishments were recognized by the national center for state courts when they awarded him distinguished service award. We'll have an opportunity I'm sure later, not today, to recognize Ron for his commitment and devotion to the branch and we look forward to honoring him then. We are at that portion, the beginning of our meeting where we have and entertain all public comments. My understanding, we have no requests for public comment. Generally, we will have later a person who will bring remarks to a specific agenda item. And per our rules now, or per our practice now, that person will speak closer in time to when the agenda item is called and not at public comment. The first thing we'll do we'll proceed to approve our minutes for our meetings of December 12th, 13th and January 24th. And if you've all had an opportunity to review the minutes, are there any corrections or comments that need to be made?

>> I'd move to approve the minutes.

>> Second.

>> Thank you. Justice Miller moves to approve the minutes. Justice O'Malley seconds. Any discussion from the minutes on those three meetings?  
All in favor say aye.

>> Aye.

>> Thank you. Any opposition?  
(No response.)

>> Thank you. Thank you. I am reminded that we have -- and I've just heard we have Judge watters attending this meeting telephonic as well as member Angela Davis and I'm informed that for your convenience as well our ability to be able to hear each other, that if necessary please feel free to mute your button on your end regarding any -- any interference on your end. Thank you for attending telephonically. Upon approval of the minutes, the next order on the agenda is the chief justice's report. And I will begin with the budget, which we will have further discussion on later, I'm sure. Hearings are scheduled on the Judicial Branch budget for April. And as many of you know, our ability to perform our duties as justices and judges increasingly relies on the restoration of our branch funds. And through the office of government affairs, I and many of you benchmark coalition and other court leaders are meeting with legislative staff and members. Our first goal is to educate them about the cumulative impact of our consecutive budget cuts. This is our fourth year. And also we are joined in this effort by many members of the bar and other stakeholder groups, like the open courts coalition and

as the bench bar. In California as in many other states the bar has really stepped up this year to make the case for the courts on our budget. And as far as I'm aware or certainly in recent history, this level of support and this activity is unprecedented and another, I think, indication of the severity of the cuts and how it's being felt widespread in the state. Justice Baxter may have more to say on our budget efforts on the letter when he reports on the policy coordination committee. I believe he will update the council on AB 1208. I'm also very excited to tell you about the Judicial Council liaison initiative that Justice Miller will go into with greater detail. But I recently completed the assignment of council members to be liaison to the trial courts and to the divisions of the AOC. I know many of you are aware of this. You volunteered and you indicated what your preference would be in terms of the counties and the divisions. Remember, this was one of our initiatives that was discussed last year. Also in our planning session in an effort, I think, to increase direct and personal communication between council members and judges and court administrators and also to better understand the work of the AOC. Many of you will recall the more formal Judicial Council visits of prior years where members of the Judicial Council would travel to several courts at a time to meet with the judges and to inspect the facilities and to interchange what problems and concerns to share ideas. Well, that program was very fruitful but, unfortunately, was cut several years ago as a result of budget reductions. So I realize that this liaison decision is for council members to get out and understand and spread and exchange the business of the council. So I do thank you for these efforts. They're very meaningful especially in this time of great unrest and concern about what's happening in Sacramento and what's happening with Judicial Council and I look forward to what your review of your duties as a result of this liaison in any ways we can improve it in the future. I also briefly want to explain to you some of the outreach that I've done on behalf of the Judicial Council as chair. Since our January meeting in addition to the budget meetings in Sacramento, I also continued to visit with a series of editorial boards briefing them on matters affecting the branch. I also appeared at several public forums and before various bar organizations including a general state of the judiciary speech I gave at the commonwealth club of California here in San Francisco. And in preparing for the speech I learned something very interesting about the commonwealth club. That it was a primary proponent of the 1926 constitutional amendment that created the Judicial Council. I was honored to receive this year the person of the year award from met news at its annual awards dinner in Los Angeles on January 27. I saw many of you there. Thank you for attending. It was a fabulous night. George duke, our former governor was also honored. It was very strange to be on the same platform with him.

(Laughing.)

>> But there you have it. I thank personally Mr. and Mrs. Grace for their efforts in making that event happen. By phone, I participated with the board of directors of the conference of chief justice, justices, that was our midyear meeting that was held in Delaware. I chose not to go to Delaware at that time since so much was happening here in California. I recently attended the editorial board meeting for California lawyer. The chief justice normally sits in an advisory capacity on that magazine's editorial board. On February 2nd I addressed a joint meeting of the trial court presiding judges and the court advisory executive committees. There had been a request for those remarks and so the remarks were shared with colleagues in the branch. I also had the pleasure of chairing the

commission on judicial appointments where we had a unanimous vote for justice Kathleen O'Leary confirmed as presiding justice of the fourth district Court of Appeals division 3. And finally, last week on another visit to Los Angeles, I addressed several hundred judges, attorneys and elected officials at the San Fernando Valley judges gala. I saw many of you and thank you for supporting the good deeds of the judges. The next day I was the opening guest speaker at Loyola law school at their restore justice conference and later that afternoon -- it's kind of a blur, I delivered the keynote at the southwestern school of law. It happens to be their 100-year anniversary. They were doing a program on women in the United States Supreme Court and so I had the distinct and historic honor of meeting an icon and that's Justice Sandra Day O'Connor who was there on the panel and had lunch we are and talked about her civics initiative and she was very conversant with what's happened in California with our budget so that was quite an opportunity. That includes also many of you were there as well again, I think, showing that California's judiciary and bar leaders are very interested and moving forward -- our excellence in spreading the word about what our issues are and working together with the other -- other elected officials. This concludes my report. Next, we'll hear from our internal administrative director, Jody, on her report. Thank you, Jody.

>> Thank you, Chief. I first want to thank you, Chief, as well as the council for your confidence -- for the confidence that you've placed in me as the interim administrative director. I also want to thank you for your support during these last couple of weeks and the next several months to come. In the interim role, I am committed to guiding the work of the administrative office of the Court. As a public service organization and staff agency to you, the council as well as meeting your needs and the needs of the courts and the public in the most effective and efficient way possible. You have in your meeting material my written report which I'm not going to go into. But that report provides updates since the January meeting on the many different activities of the AOC to further the goals of the council as well as the Judicial Branch. I want to add my personal thanks to that of the chief to Curt Soderlund for agreeing to fill in as the interim chief deputy director and that Chris Patton has served as the administrative director but for her willingness to assist curt will be engaged over the next three to four months. I want to acknowledge in addition to the chief the leadership and contributions of Ronald Overholt during his 12 years here with the AOC. And his more than 30 years of dedicated public service. Ron has in the last couple of weeks have been instrumental in assisting me during this transition as well because there's a wealth of knowledge and experience that he has in his head and doing that transfer has been very, very beneficial to me. And will be to the AOC as well. I want to take this opportunity to share with you some key priorities that I've established for the AOC until the council appoints a permanent director and after my interim appointment, I did share these priorities with the chief as well. And there are five principle areas and they're not in any priority order to me. They're equally important. And they're equally, I think, important for the AOC as a whole to focus in on over the next several months. The first is to support the chief yourselves and the courts with supporting the efforts of budget restoration. Working very closely with Curt Childs and his staff and the office of governmental affairs to ensure that we are they proactive for the budget restoration for the fiscal year '12-'13. The second is planning for budget reductions here at the AOC. We're engaged in a number of different activities to

streamline AOC functions that will then assist us in meeting our budget reductions for the '12-'13 fiscal year. The third is to newer that we align the branch wide initiatives such as CCMS as well as the facility projects as your direction with the Judicial Council and ensure that we support you in your direction with regard to all those branch wide activities.

Fourth, I think it's important for the AOC to begin to prepare for the report from the strategic evaluation committee. Our understanding is that will be forthcoming to the council in early April. The SEC report will make recommendations, we believe, that we have to address long before a new permanent director may be appointed by the council and so it's important for the AOC while we're undergoing the budget restriction drill to look at how we're structured and how we can better be streamlined and then sync our efforts together with the recommendations that the SCC may provide to the council. Lastly, I think it's very, very important that we maintain productivity and moral at the AOC. Our organization, as many of you know, has undergone many changes, a lot of questions and a lot of negative scrutiny. My goal is to help our staff focus on our work and keep morale as high as we can while providing an honest assessment of the challenges ahead of us. I want to again, in addition to the chief thank the members of the council, Justice Miller, Justice Hull, Judge Rosenberg and Alan Carlson for taking the time to meet with our executive and management team about two weeks ago. Their statements that this was a team undertaking for the chief, the council and the AOC was truly an encouragement and commitment to our staff that we will keep the lines of communication open during this transitional period of change and I really, really appreciate your spending the entire day with us. These priorities I believe will ensure that the AOC is directing staff and our fiscal resources to where they are most needed. And I believe will place our organization on a firmer footing moving forward. I feel very fortunate to be a part of the Judicial Branch of government and to have your support with this role with the executive team and staff that we have here at the AOC I really believe our team and our staff, a very diverse and talented professionals care very, very deeply about the Judicial Branch and they put their heart and soul to the work that we do. Chief, that's my report.

>> Thank you, Jody, any questions on Jody's report? Hearing none, I'll ask Justice Baxter to deliver the PLC report.

>> Thank you, chief. The policy committee has had one meeting since the last Judicial Council meeting. And that meeting was really focused on 1208 and also on budget-related issues. The committee received a very extensive presentation from the director of the office of governmental affairs. Curt Childs and Curt is here and in the event there are any questions about either 1208 or the budget I would volunteer Curt to respond to those. I think the bottom line is that the report was positive. Most of you have read the reports in the press in terms of the senate leadership as to 1208. And I won't go beyond that at this point. As far as the legislative schedule is concerned, the deadline to introduce bills was Friday, February 24th, in the office of governmental affairs as is the normal process, is in the process of reviewing all of these bills and identifying all of those that are of interest to the Judicial Branch, that impact the Judicial Branch one way or the other and in future reports, I'll keep you informed of the progress of these bills of interest including Judicial

Council-sponsored legislation. As you become aware of specific bills, there have been instances in the past -- and I'm going way back where usually it's because of a sentence here or a sentence there, I recall the retention election legislation some years ago where the actual number of years remaining on a justice's term kind of slipped through and it had profound consequences because the electorate would vote for those justices who had short terms left but would vote against those that had long terms left because they do they were too greedy. So it was just an oversight at that time. So that's just an example of the type of thing you may come across. And in the event that you do, be sure to call it to our attention, to make sure that something inadvertent doesn't slip through. That completes my report, Jeff.

>> Anything on the report?

>> If you have anything to add on either subject, feel free.

>> Thank you. Next then we'll hear from Justice Miller.

>> Thank you, chief. Since the council's last business meeting in January, the executive and planning committee has met four times, twice by twelve, February 9th and February 16th and twice by email on February 21st and February 23rd. The minutes for those meetings are linked to the meeting agenda under internal committee presentations and publicly posted on the California court's website. During those meetings we set the agenda for February's meeting and we set a subordinate officer positions for the judgments of Riverside and Alameda counties and we granted an exception from conversion of a subordinate judicial officer position at the request of the California Superior Court of Sacramento County. That, in essence, completes the report with regards to E & P activities but if it's okay, chief I'd like to talk about the two liaison programs that have been instituted.

At a planning session last June, the Judicial Council asked the executive and planning committee to the governance to make it more transparent and accountable. We wanted to be better informed and to be able to better communicate the actions that we take at the Judicial Council to the Judicial Branch. You may remember that we made some pretty significant changes immediately making it easier to give public comment and opening up our educational sessions which used to be closed. As the chief justice noted in her opening remarks we are now instituting two more initiatives that were approved in those governance meetings to approve communication and accountability. We will be assigning Judicial Council members as liaisons to the trial courts and to the divisions of the AOC. Earlier this month she signed the liaison appointment letters for council members and they are included in your information pack and will also be posted online. By assigning these liaisons to the trial courts we are making each trial court has direct access to the Judicial Council. A point of contact to raise concerns and issues we will rely on Judicial Council members to bring back to the council any and all issues and concerns they may hear from these different assigned courts. Of course, several Judicial Council committees already have similar functions. The trial court presiding judges committee that Judge Rosenberg chairs and the court executive advisory chairs that Aaron Carlson chairs what we're doing with the liaison program is creating another more personalized avenue

for the trial courts to have access to the Judicial Council. This is a new program, so we will continue to monitor it and evaluate it and make adjustments as necessary. I did want to see what I think the value are. Along with David Rubin from CJA we're invited to visit Stockton and visit with the judges there. We had a wonderful time. We had a great dinner with them and then we both spoke to them. And to me that's what these programs are about. I learned a wealth of information from the judges and from their staff about their courts, about their issues, about their concerns. We had a great discussion after dinner where they were able to ask questions and receive responses and I have to tell you, I have brought back a number of incredibly good ideas that I heard from the judges and a number of incredible concerns and immediate and critical concerns that they have that's the value of this program and it will help us keep in touch with them with regards to that aspect.

The second liaison program involves connecting Judicial Council members to various AOC divisions. Although the divisions support the council and carry out its policies and directives, a third of the council members are replaced each year and new council members are often familiar with only the work of one or two divisions depending on what committees they may have served on in the past. The AOC liaison program will help facilitate knowledgeable communication among those on the Judicial Council, AOC staff and others within the Judicial Branch about how AOC staff supports and implements Judicial Council policies designed to benefit our branch, our justice, state partners and the public. We expect and hope with these liaison programs, especially with the AOC that we'll be able to share with other council members any information that may be helpful to the council and we will ask the liaisons to report back to the council with regards to their visits and discussions with those particular divisions. Again, it's a new program. We're going to watch it. We're going to monitor it and evaluate it and make any changes or adjustments that need to be made. And then lastly I wanted to inform the council that I have the privilege to speak with the new chair of the strategic evaluation committee of the judge of Plasser superior court and he has assured me that the SCC are on track and they are hopeful to submit their report to the council in April for our consideration. The chief Justice appointed this strategic evaluation committee last mar to conduct an in-depth review of the administrative office of the courts and to make recommendations to the council based on its review. The council has not been a part of the committee's deliberations. We're not members of that particular committee nor has anyone from the AOC. We do not know and I do not know what the committee may ultimately recommend. But I do know is that the committee has interviewed members of the Judicial Branch, justice partners, from our justice partner system, from throughout the state and that they have collected detailed information from all key stakeholders as well as from the AOC? An interim report submitted to the chief justice in January was posted on our website and shows the considerable breadth and depth of the committee's activities. The SEC committee will provide their report to the Judicial Council. And the chief justice has directed that the report will be submitted to the executive and planning committee. We will then set aside a time and a schedule for the council to review and study the recommendations. As is the practice of the Judicial Council in reviewing important and critical reports, we will establish a plan and a process for vetting the report within the Judicial Council, within the branch, and then we will discuss and review that and make recommendations at an upcoming Judicial Council meeting. I know that

the chief and the council deeply appreciate the work of the committee members and the service they are doing for the branch. I especially want to acknowledge Judge Walkup and Judge Brian McCabe of Merced Superior Court for agreeing to chair the committee following the departure of Justice Scotland. And, again, I know the chief and the council deeply, deeply appreciate the work of the committee members and the service that they are providing to the Judicial Branch and we look forward to receiving their report of April. And then lastly, for those on the phone, I'd just like you to know that I'm sitting and I'm not standing making this report.  
(Laughing.)

>> So thank you, Chief.

>> Thank you, Justice Miller. Any questions of Justice Miller on the updates? Pretty exciting the liaison report and also the SCC report. Seeing no hands raised, I turn it over to Justice Hull for RUPRO.

>> Ladies and gentlemen the rules and projects committee has met twice since our January the 24th council meeting. RUPRO met by phone on February the 2nd to consider four proposals for council approval including alternative dispute resolution, ethics standards for neutral arbitrators and contractual arbitration. RUPRO had previously considered this proposal and reconsidered it in light of concerns by some commentators including the California judges association about one aspect of the proposal. RUPRO recommended that this item be placed on the discussion agenda today to highlight that aspect of the proposal. RUPRO recommends approval of this proposal which is item 1 on today's discussion agenda. RUPRO recommends approval of the other three proposals which are items A10, A11, and A15 on the consent agenda. RUPRO met by phone on February 22nd to discuss changes to the rulemaking 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 the courts and to make the invitation to comment process more meaningful and will continue its dialog with the courts through the trial court presiding judges and the court executive advisory committees. In addition, on February 17th, RUPRO members communicated by email to approve technical changes to three restraining order forms. RUPRO recommends approval of this approval which is item A16 on today's consent agenda. RUPRO previously met and recommended approval of a proposal that was on today's agenda but has since been withdrawn. What was item 12 on the consent agenda has been deferred to a future council meeting. Chief, that concludes the report of the rules and projects committee. If I may take a minute, I will, as you mentioned earlier, give the council and those who are joining us otherwise a bit of an update on a search for a permanent administrative director. As all of you know, we are indebted and will be indebted to Jody Patel for taking this on, on an interim basis. Perhaps as a demonstration of her wisdom she had already said she would not consider it on a permanent basis. So our search will continue. What had happened -- the committee originally had hoped to be in a position to make recommendations to the council for a permanent administrative director by this April's council meeting. We hired

the search firm I referred to in the past Robert Anderson and associates headed by Mr. Robert Byrd for the search and the first step in that process was and is the preparation of a brochure, an application brochure, if you will, that sets forth the qualifications and the job description of the person that we're looking for. Mr. Burg provided us with the first draft of that brochure in a timely fashion as he said he would. The committee met and in reviewing it decided that there needed to be a change in emphasis in certain places and some editing, which we undertook primarily with the help with Ms. Beth Jay. What happened -- we'd been delayed a bit in that effort because as many people know, many of us who serve on the search committee serve on other committees and have other duties with the council and with the events of the early part of 2012, which have been -- have had to take some precedence, there was some delay in getting the edits to Robert Anderson. However, those edits were provided to Mr. Burg last Friday morning, I believe it was. I understand that those edits have been made. There are some other changes to the appearance to the brochure that we thought was appropriate and they should be completed by the end of the week and we expect the brochures will be available in the search by the end of the week. I should note Mr. Burg have already begun some of his efforts in identifying potential candidates for this position notwithstanding he has not had the permanent -- or the final brochure in hand. As matters stand right now, it does not appear it will be possible to present to you a name or names for your consideration by the April meeting but we have every reason tomorrow morning we had do so by the June meeting at which point we will have your vote on hiring a private director for the administrative executive director's office. Thank you, chief.

>> Any questions. I asked for clarification our search for the executive director that for the first time this branch -- instead of using our previously established panel for contracting had the first time our experience with using the private contract code and that required a little more of establishment and preparatory time in getting a bid and proceeding with a search time. Mary, can you just speak briefly to that?

>> Can you hear me?

>> Yes.

>> Yes. The new requirements of part 2.5 of the public contract code became operative for Judicial Branch entities including the council as of November 1 of 2011. And it was about a month or six weeks before that date that the activities started about retaining a search firm. So we did conform the request for proposals and the contract terms to the new requirements of the public contract code -- a part that is now applicable to the Judicial Branch. So there was a little bit of time that was taken at that point in the process. But everything is in accordance with the new requirements which are different and to some extent more onerous for the requirements that had previously been applicable to the branch with respect to procuring services including consulting services.

>> Thank you. Thank you. Any questions for Justice Hull regarding RUPRO or search? Thank you, Justice Hull. We'll hear now from Judge Herman. Oh, a hand raised? Beth Jay.

>> I just wanted to note --  
(Inaudible.)

>> Could you use the mic?  
(Inaudible.)

>> That decided not to --  
(Inaudible.)

>> Thank you. Judge Herman?

>> Thank you, chief. As chair of the CCMS internal committee I've spent the last month monitoring the progress with the grant Thornton report which will be delivered to the council for the especially set meeting which I'll talk about in a moment as well as monitoring Deloitte's progress as the primary vendor and with ENP to set up the special meeting in March to address CCMS and branch technology. We had our telephonic committee meeting on February 23rd. We received a briefing from Curt Child on the upcoming legislative hearings on the course of branch technology and the budget outlook for the next budget cycle. The hearings have been called by two-state assembly budget subcommittees, one of which is directed at technology specifically. And that meeting is going to be on March 14th. There's also the senate budget subcommittee meetings that are set for April. We also discussed the status and details of a \$16 million credit option referred to as a delay cost reimbursement with CCMS of Deloitte to be applied for deployment activities and set to expire. That is our option that is set to expire March 31st 2012 what the council will do with this \$16 million, either as a cash option or a services option.

We also reviewed preparations for this special session of the council on CCMS and branch technology schedule for March 27th, 2012. We discussed the status of grant Thornton's analysis of CCMS deployment alternatives. Which is one of the subjects of the special session. The committee discussed a comprehensive report that Jody Patel is heading on the AOC side objects CCMS and branch technology for council discussion. And myself and cochair, Justice Judith Ashmann-Gerst will be working with weekly meetings with Jody Patel's team in order to prepare to have input into that report for presentation to the council. It's a special meeting on what we're looking, go forward alternative wise both with CCMS and branch technology. The full committee will meet as well to review the report and the accompanying recommendations to be presented to the council prior to the special session. And the context of setting this as a special session is the concurrence of a number of events. The legislative committee hearings I spoke about as well as the fact that our option, Deloitte option expires on March 31st as well as the expectation of the delivery of the grant Thornton report. Finally, we did review the council's existing policy adopted in 2006 on the funding process and delegation of authority for allocating the costs of statewide administrative infrastructure and technology initiatives. Do we have enough adjectives and Latinate words? Part of our committee's inventory is to figure out how we address issues with those courts that have failing legacy systems. And once the need is determined, how are they to be funded, in terms of whether the AOC contributes primarily to the funding or the courts themselves

contribute the funding in terms of their replacement legacy systems. And to some degree the 2006 policy sort of parallels the emergency needs that we dealt with most recently in terms of the San Joaquin court, for example. So anyway, that policy has been reviewed. It is in our inventory. We will make a determination within the committee and working with AOC staff in terms of what -- what changes may need to be made to that policy and we're going to then bring that, of course, back to the council. And I think our current thinking with it, since it is a policy that does go back to 2006, before the 2007 initiation of the development of V4 that we probably need to bring it back both to CEAC as well as trial court judges to get invite on the trial courts on what their vision is and what they see as far as the development of this policy with one, either failing legacy systems or 2, a need to upgrade an existing system or three, a need to replace an existing system. Just for better efficiencies. So thank you, chief. Any questions?

>> Thank you, Judge Herman. That concludes the four internal committee reports. So our agenda, not hearing any further discussion on the content of those reports, we move to the consent calendar. As you can see on the agenda it involves items A1 through A16. Some of those have been mentioned by Justice Hull on his report on RUPRO. Having heard no request to move any of the stated items except item A12 which is correctly and already documented as being removed from consent, there are no other items so barring any further objection or any discussion on those items needed, we approve by our rules these proposals and recommendations A1 through A16 minus A12 as reflected in our minutes. Just for those who might be listening and understanding our consent calendar better, the executive and planning committee places items on the consent calendar, and that is in consideration of council -- the council meeting time that we have. A placement on the consent calendar in no way reflects the significance of a proposal. Prior to the meeting, any council member may request that an item be moved to the discussion agenda and I anticipate given our liaison efforts and our public comment efforts and our outreach efforts and our public meeting efforts, if there are items on the consent calendar that there's ample way to notify it that we have our calendar and our items can be discussed beforehand so with this meeting having heard none, those items A1 through A16 are adopted.

(Inaudible.)

>> Thank you through A. A1 through A16 and B-I. So that next on our agenda on Page 7, and that appears to be item C -- I'm sorry. I'm sorry. I'm getting -- here I am, J is our discussion item. This has previously been referred to -- it's the alternative dispute resolution. The ethic standards for neutral arbitrators and contractual action. Arbitration - - this is an action item previously mentioned by Justice Hull. Our speakers to this are Mary Roberts, General Counsel and Ms. Heather Anderson also of the Office of the General Counsel. We're ahead of schedule.

>> And chief I do believe we have public comment from Mr. Cliff Palefsky. Is Mr. Cliff at the podium, thank you. Sir, I'm not sure I pronounced your name correctly. You may proceed. You have five minutes.

>> You got it right. Thank you very much Your Honor and members of the council. I

stand before you today on behalf of the California Employment Lawyers Association. We are very grateful for the effort here and I don't know how often you hear praise but we wanted to start by complimenting your staff -- the original rules were an extraordinarily complicated endeavor and these familiarity attempts are too and I think the staff has done a great job. We fully support these amendments especially the new disclosure rules. No system of justice can succeed without the confidence of its users. There's a whole bunch more involved in a justice system than moving money around and the emotional component is critical. In consumer cases and mandatory cases, the process starts off at a disadvantage. Anytime a process that is selected by one party when the providers or rules are provided by one party and imposed on another, it creates the perception that there may be some to the consumer parties so these rules are very important when they were originally proposed there was a great human cry that the sky was going to fall, that arbitrators wouldn't be able to comply. They wouldn't comply. And arbitrators would flee and that has not happened. In our mind the rules have been very successful. To the extent that they have been followed. And I can tell you that the larger providers have done a very good job of attempting to comply with the postings and with the disclosures. Unfortunately, many of the smaller providers are not complying with the posting requirements and certainly not providing all of the disclosures that are required. I think the staff has done a very good job of identifying the issues -- there was only one comment that I just wanted to address before I make some suggestions for some of the gaps. One of the commenters said the focus of the rules should be ferreting out bias and not the moral character of the arbitrator. I don't think I could disagree with that more. It is an awesome responsibility dispensing justice as you all know. And the moral character of the arbitrator goes to the heart of the process. There's nothing more important in justice, to justice, and to the arbitration process than the moral character of the arbitrator. So I really support these rules. I have some suggestions for you, for gaps that you might consider in the future. I think the suggestion of a model checklist is a great idea. It must include standard 8. I think a lot of the providers stop at standard 7 and they are not making the disclosures required of the providers. And this is especially important because of the recent experiences with the national arbitration forum. You may or may not know that the national arbitration forum which was probably the second or third largest national provider as a result of enforcement actions by the attorney general of Minnesota and the state attorney of San Francisco have been prohibited from conducting consumer arbitrations nationally and in California. It turns out they were using arbitration as a collection device and the owners of the debt, the collection services actually secretly bought 40% -- \$40 million worth of the national arbitration forum and they refused to disclose that, failed to disclose it. The attorney general of Minnesota uncovered it and Congress had hearings. It enhances one of the big holes in these rules as to the providers. The providers make the rules, select the arbitrators, sometimes select the arbitrators, rule on cause issues. And they are such an important part of the process. The rules don't presently require the providers to identify their owners. If the owners of the providers were provided we might have avoided some of the problems with the national arbitration forum. I also think that there's a problem with the rules as they are presently set up does not require the arbitrator to disclose any economic relationship between a party and the provider. And the explanation was that it wasn't necessary because arbitration providers are precluded from administering cases. Well, obviously

the national arbitration forum did not abide by that and did not make the disclosures so I think it would be very helpful to require a disclosure of who actually are the owners of the providers. I suggest also that there's no real enforcement mechanism that when the rules first went into effect, the disclosure rules, the national arbitration forum refused to comply. So we represented the chair of the assembly judiciary committee at the time who helped draft the rules. Assembly woman Corbett and brought a lawsuit against the national arbitration forum on her behalf. Their position was the federal arbitration act prevented these rules and they had no obligation to provide -- and, unfortunately, because there is no economic damage when you're trying to enforce compliance with these rules, presently,

no individual or no consumer has standing and so there's no real way to enforce the rules if providers themselves don't comply. Another hole in the rules -- right now, arbitrators are required to make disclosures and if they don't you can disqualify them but there's no mechanism to disqualify an entire provider. If, in fact, the providers are not providing the disclosures that would be a problem that would apply to every arbitrator so there needs to be some way to get out of that morass rather than having to go through 17 separate arbitrators and to disclose them. I also would suggest and urge you to take -- make it a little bit easier to find the rules. They used to be as part of the appendix to the civil procedure code and I don't think they're there anymore. And it's very important and maybe we can work with the legislature to find a way to make them easier to find so that consumers especially those who lack sophistication know where to go. Quickly, just two or three other small points. Marketing the rules place almost no limitation on marketing. The original ethical rules created by the ABA and the American arbitration association prohibited arbitrators from soliciting carriers on their own behalf. That's such an important role. There's a new organization called the commercial arbitrators association who, unfortunately, eliminated all marketing obligations. The notion of having arbitrators or agents of theirs go to particular companies or large corporations and say, give us all of your cases because we have this panel, we have these rules, really, is inconsistent with the perception of neutrality that is required. So I would ask you to take a much closer look at that.

Another and perhaps my next to last -- one of the problems we're having in the field -- under many circumstances the employer and sometimes the company vir to pay the full cost of arbitration for a lot of good reasons to provide access to justice. In my mind it's better to have arbitration voluntary and have the costs split. The problem that arises when you have one party paying the costs, and it's happening a lot, is that if the party doesn't like the way the arbitration is going, they stop paying. And the providers are saying, we're not going to give you the award. We're not going to finish the arbitration leaving the consumer and the employee with no remedy, whatsoever. Among the disclosures that you might have is a arbitrator and provider must identify whether they're willing to follow through and complete the process if the defendant or the other party stops playing. I realize my time is up.

>> Thank you, those are very helpful questions to us. A question before you step away from the podium, have your concerns been reduced to writing and provided to the AOC?

>> I have not produced them in writing. I've been working with the Assembly Judiciary

Committee. I had a conversation with Heather Anderson yesterday I was unaware with this process until I read it in the *Daily Journal* but I'm happy to follow through in any way you think it would be efficient.

>> I think it would be helpful for you to moralize that so that we have that available to us as we consider future roles. Obviously, here we have a set of recommendations that is really focused more on the standards of the arbitrators as a result of case law. But this is - you raise some very interesting points and we would like to hear further on that. Thank you.

>> Thank you.

>> Good morning, Chief Justice, members of the council, Jody as the slide in front of you indicates, this topic is the proposal to amend the ethics standards for neutral arbitrators and contractual arbitration. These are standards not rules technically that the council adopted in 2002 in accordance with the legislative direction. I will give a brief introduction and background and standards and will turn it over to Heather Anderson who is here with here Heather is a senior office in the general council and a nationally recognized expert in the field of alternative dispute resolution. Heather has worked in this area for over 20 years including as lead staff to the blue ribbon panel of experts on arbitrator ethics that has -- that assisted the council in developing the standards that have been in place now for more than 10 years. So let me clarify at the start that these standards apply to private arbitrators, not to -- let's go back to the first one. Not to arbitrators who serve in the court's judicial arbitration programs, nor to arbitrators who serve pursuant to labor contracts or collective bargaining agreements. The Judicial Council was tasked with adopting standards by statute. In 2001, the legislature enacted a code of standard procedure which required the council to adopt ethic standards so the council went to work immediately with the expert panel that former chief justice Ronald M. George established. The statute required that the council adopt ethic standards to be effective on July 1 of 2002 and these standards were apply and do apply to all neutral arbitrators serving in arbitrations serving under a arbitration agreement and requiring all persons serving as usual arbitrators under a arbitration agreement to comply with these standards. The legislature standards under the statute have the goals and requiring compliance with these ethic standards included to ensure that parties can have confidence in the integrity and fairness of private arbitrators, which is especially important given the limited judicial review of arbitration awards. To understand the role and importance of the ethics standards let me highlight some of the unique features of private contractual arbitrations to which these standards apply. There is no license or other credential that's required for a person to serve as a private arbitrator nor is there any public office or public/private that either vets individuals before they may serve as private arbitrators or that disciplines private arbitrators for inappropriate, unprofessional or unethical behavior, decisions of arbitrators and contractual arbitration are binding on parties and the grounds for judicial review of their arbitration decisions which are established by statute are very, very limited. An arbitrator's decision cannot be overturned or vacated on the basis that the arbitrator made a mistake of either fact or law. Because of the limitations on review of arbitrator' decisions select can an appropriate

person to serve as an arbitrator on a case becomes critical. The extensive disclosure requirements for arbitrators in both statute and in the ethic standards are intended to assist parties in making this crucial choice. In addition to protect parties and encourage compliance with these disclosure requirements, the legislature has provided that one of the limited grounds for a court to vacate an arbitrator's decision is if the arbitrator failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware. So the disclosure requirements and the ethic standards serve not only parties to select an appropriate person to serve as an arbitrator but if an arbitrator fails to make a required disclosure, it creates the potential basis for overturning the arbitrator's award. So with that history, let me turn now to November 2001 when the Chief Justice Ronald M. George applied the blue ribbon panel of ethics. This panel comprised 18 members including law school faculty, sitting and retired judges, legislative and executive branch representatives, business, consumer and labor representatives and practicing arbitrators. This panel was tasked with reviewing and providing input on drafts of the ethic standards for arbitrators that were prepared by AOC staff. The expert panel was chaired by USF law school professor Jay Fullberg, former dean and himself a nationally known expert in the field of ADR. In April 2002, the council adopted the ethic standards for neutral ark traitors and contractual arbitration in order to meet the statutory deadline but also directed the AOC to recirculate the standards in order to have a more robust period for public comment. And incidentally and I don't know that there's anybody on the council except perhaps Justice Baxter who may recall this that promptly after the council adopted the ethic standards, the council was sued by the New York stock exchange and by the national association of securities dispute resolution group, the self-regulatory agencies under federal securities law. They sued the council seeking a declaration that the ethic standards are preempted by the national security regulatory scheme. We responded to that lawsuit and it was dismissed by the federal court in November of 2002. And leader appealed by the NASD to the ninth circuit. And while it was pending on appeal, both the ninth circuit and our own California Supreme Court decided the issue that was of such concern to the securities arbitration industry and concluded that, in fact, the ethic standards as applied to arbitrators and security industry arbitrations were preempted by federal law. So the appeal that was then pending in our lawsuit was dismissed as moot. In fact, to the timeline in December of 2002, the council amended the standards based on the public comment that it received at the time. The standards had not been amended since December of 2002. So in the approximately 10 years since their adoption, there have been several cases addressing the these standards and the AOC has also received some suggestions for amending the standards. So with that background now I'm going to turn it over to Heather Anderson to speak in more detail about the proposed amendments.

>> Can you hear me in this mic or do I need to move?

>> We can hear you but you need to speak up.

>> How's that?

>> That's better.

>> Okay. Thank you. The proposal that's before you includes a number of recommended amendments to the arbitrator ethics standards including codifying the case law that Mary just spoke of regarding preemption of the standards by the SEC-approved rules for securities arbitrators, clarifying that arbitrators have to disclose if their spouse or domestic partner has a prior association in the practice of law within the last two years, with a lawyer in the arbitration, clarifying that the standards govern both initial and supplemental disclosures and also a requirement that arbitrators make disclosures regarding professional discipline imposed on them by a professional or occupational disciplinary agency. And as Mary, I think, mentioned, this proposal was circulated for a public comment. It was during last spring from April through June. And the only change that garnered significant public comment was the proposal to amend standard 7E to require the disclosure of public disciplinary actions. The specific language that's proposed is on Page 24 and 25 of your report. And it would provide that in addition to the matters that must be disclosed under subdivision D of standard 7, that's the subdivision that addresses disclosures to impartiality. An arbitrator must disclose first if the arbitrator has been disbarred or had his or her license to practice a profession or occupation revoked by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere. If the arbitrator has resigned his or her membership in the State Bar or another professional or occupational licensing agency or board, whether in California or elsewhere, while disciplinary charges are pending, or if within the preceding 10 years public discipline other than that imposed above has been imposed on the arbitrator by a professional or occupational area disciplinary or licensing board, whether in California or elsewhere. The standard it also includes a definition of public discipline as disciplinary action imposed on the arbitrator that the professional or occupational disciplinary agency or licensing board identifies in its publicly available records or in response to a request for information about the arbitrator from a member of the public. This particular proposal was developed in response to a 2010 decision by the California Supreme Court in Haworth versus Superior Court. That case involved a retired judge who was serving as an arbitrator who had been publicly censured on judicial performance while avenues judge. A party in that arbitration discovered the information about this censure and the arbitrator failed to disclose about the public sense you're. Because the arbitrator ethic standards, nor the statutes related to arbitrator's disclosure currently require disclosure specifically of professional discipline, the courts that looked at this had to analyze under the general standard relating to impartiality which is in standard 7D and that standard is whether a person of the fact -- that information could cause a person aware of those facts to reasonably entertain a doubt that the arbitrator would be able to be impartial. In the Haworth case it took four years and two trips to the superior court of appeal to the Supreme Court for a final determination to be made in the facts of this particular case, this particular censure melt the coalition relating to impartiality. It would enact a specific requirement for disclosure of professional discipline. The goal is by creating a clear or standard for disclosure to avoid this kind of protracted litigation about whether a particular disciplinary action meets the requirement for disclosure relating to impartiality support the finality of arbitration awards and enhance public confidence in the integrity of private arbitrators and the private arbitration system as a whole. It's not unusual for individuals who are serving in a capacity like an

arbitrator to be required to provide information about a public professional discipline. This is information that candidates for appointment to the superior court bench have to disclose to the governor, attorneys are required to disclose this information to the State Bar of California. Mediators in court connected to mediation programs for civil cases are required under our rules to disclose this information to the court. And neutral serving in the Los Angeles superior court ADR programs and the programs of other courts are required including judicial arbitrators are required to provide this information to the courts. The difference is that in these situations, there is a public official or public body whose job it is to vet the individual to determine whether they meet all of the criteria that you would want for somebody who's going to decide your dispute. In the case of private arbitration, there is no such public body. The determination of who serves as an arbitrator is made by the parties. So this -- this proposal would have the information go to those who are making the determination about who serves the parties. We also note that this information -- this same type of information is currently required to be disclosed under the securities arbitration rules, those that are approved by the SEC. They require disclosure of professional discipline on a checklist and that checklist is provided to the parties to help in selecting a arbitrator. As I mentioned before, this proposal was circulated for public comment. We specifically sought comment on whether the standard should include a requirement for disclosure of public professional disciplines and we got comments back from 8 individuals and organizations. 5 of those supported including this in the ethics standards. 1 didn't take a position but provided some input on the language of it. And 2 commentators opposed this. It was opposed by Judge Daniel Hamlin, John warnoff and Peter Mankin who commented together based on concerns that it would be requiring disclosure of information that the Supreme Court in the Haworth case felt was remote and irrelevant to the issue of impartiality. And their view that the disclosure should be limited only to those issues related to the arbitrator's ability to be impartial. It was also opposed by the California judges association on the basis that the disclosure requirements for arbitrators should be the same for the disclosure -- excuse me, the disclosure obligations for sitting judges because they're in a similar capacity of determining the outcome of a case. In response to all of the public comments, the AOC made a number of changes in the proposal as a whole and specifically to this provision relating to disclosure of professional discipline including limiting the disclosure of things other than disbarments or requirements to leave a profession to a discipline that had been imposed within the prior 10 years and adding the definition of public discipline that you see before you. The AOC recommends that the council adopt this proposed requirement to disclose professional discipline. That recommendation reflects AOC's conclusions that again, the Haworth case was focused on whether the disclosures were required under the standard for impartiality in that particular case and that's not what's being recommended here. What's being recommended is a disclosure obligation that is operate from disclosures relating to impartiality and goes to other issues that may be important to those who are selecting arbitrators including the integrity of the individual who will be deciding their case. That the ethics standards are focused on more than disclosures about impartiality. They include many other provisions and the disclosure obligations that are already there are different from the -- from the disclosure obligations of sitting judges. And that's because sitting judges and arbitrators are in different situations in a variety of ways, one of which there isn't a public body that vets arbitrators. The bodies are the only

ones that are having a say in whether this individual serves as their arbitrator. And finally that these potential changes will meet -- will further the overall goals of the ethics standards by making -- by avoiding litigation in this area and supporting the integrity of arbitrators and of the arbitration process as a whole. If, however, the council decides that this particular provision shouldn't be adopted, then the language that I read to you and was on the previous slides would simply be removed from the proposal that's before you. There would not be any provision 7E1 regarding professional discipline. And I'd be happy to answer any questions.

>> Thank you, Heather. Judge Rosenberg?

>> Thank you for that report. I have two questions, Number one, where did that 10-year requirement come from? Is that arbitrary number? Why not 7, 8, 9, 12, 5?

>> It was actually one of the suggestions that came from the State Bar of California's ADR Committee, that there be a limit and their suggestion was 5 or 10 years. The draft was modified to include the 10 years before it was circulated for comment.

>> Why did you pick 10 instead of 5? Again, arbitrary? Flip a coin?

>> I don't think it's necessarily arbitrary. I think that --the public discipline of an individual --  
(Inaudible.)

>> The implementations of that may last longer than a 5-year period --

>> No, even felons get a 5-year washout period.

>> Well, in the Supreme Court's review in the Haworth case, they specifically kind of keyed on that that 10-year period -- as the basis for thinking that this -- that particular disciplinary action was too old to be relevant to the issue of impartiality.

>> My second question is, I don't really understand why we need a more stringent rule than we have with regard to judges' disclosure. You know, this is private arbitration. I have to believe that the parties are big boys and girls. Government doesn't have to solve everyone's problem. And protect everyone. I just don't see why we need a more stringent role for private arbitrators than we would have for ethical disclosure for judges? That's a policy call, right?

>> It certainly is a policy call and that's why this issue is before the council as Justice Hull indicated in his remarks but just to underscore the significant difference between judges and commercial arbitration. It's a very, very limited opportunity to appeal in arbitrations. And, frankly, I think, in many, many cases especially given the popularity of commercial arbitrations, you often do have rather unsophisticated individuals who are participating in arbitrations because that is the forum that they find themselves in.

>> Judge Friedman, then Judge Rubin.

>> Thank you, chief. I can't vote on this. I'm not a voting member but I do have some comments to offer. As somebody who performs contractual arbitration, if I was a voting member, I perhaps would recused myself so I'm just going to offer these observations based upon my own experience which actually started when I was in the legislature because the initial statute that was enacted to compel private arbitrators to disclose potential conflicts which is now embodied in CCP 1221.9 came before the legislature and I recall at that time there were a number of private arbitrators who contacted me and urged me to oppose the legislation on the grounds that the process is private. It's one that the parties should be able to entirely craft on their own and make their decisions on their own. I thought that was an unwise position to take because it seemed to me then as it does now that the public is entitled to transparency in order to have confidence in the outcome of a process which, though, it is not our formal judicial system, it is part of the administration of justice in California and a growing part of it. Unfortunately, with all the cuts that are occurring, impacting our courts, more and more litigants and not just at the top of the food chain, major companies, but individuals are pursuing arbitration as a less costly and faster way of obtaining a result. So it seems to me in order to, as it did then, to enhance public confidence and enhance transparency in a system that is connected to what we do every day, that the more sunshine as Justice Brandeis said many years ago, the better. So I offer those comments just to provide a little bit of perspective from somebody who's encountered this issue as a policymaker and currently now as an arbitrator who would find no problem, whatsoever, with complying with these new disclosure requirements.

>> Thank you. Thank you, Judge Rubin?

>> Thank you, chief.

>> Standing by on this position on this, we feel you did a good job summarizing our position. We're going to stand by it. I guess I have a question. One of the key reasons that you suggest that this disclosure requirement be amended has to do with finality and we kind of point to the Haworth cases as an example has any cases have been overturned due a lack of disclosure. Apparently somebody does.

>> Yes. I certainly don't claim to know how many. But in my limited experience of representing lawyers and also in one case an arbitration provider, I have had at least four cases in which an arbitration ruling was challenged as a result of a disclosure issue and the difficulty of that is very large for the litigants because in each of those cases there were substantial attorney's fees that had been spent on both sides for the arbitration and then, of course, there was a result that was being set aside and if the parties were to redo the arbitration, there's always the lack of certainty as to whether the second arbitration result will be the same as the first. It's also of concern, and this is slightly off point but in case people are not aware in the room, the case law in California basically immunizes the arbitrator and the arbitration provider and so from any failure to disclose, that is

considered even a failure to disclose is part of the arbitration process and is considered within the judicial immunity. What that does to the bar is that it means that the only remedy when an arbitration award is set aside for the client is to turn to the lawyer and say, you should have figured out that this guy was going to get disqualified.

>> Thank you.

>> Well, okay. But if we're going to --

>> Sorry about that.

>> But even if we're going to amend this rule this way, it seems to be unfair if we're talking about some fracture or 1%, 2% of the cases. It seems like it could be an overreach and swinging at a rather small problem with a rather larger hammer and that's kind of, I guess, our concern. It's to put arbitrators at a disadvantage and it doesn't seem fair and I also agree with Judge Rosenberg's position and even if you're going to do that it's fine that felons have a better washout period than this. And the argument that the form somehow provides for sitting judges is some sort of answer to at least part of our argument, the form could be from 10 or 12 years. This could come down at any point in a judge's career so that's the position, I guess, and I guess you answered the question for -- is it Ms. Harrison.

>> Anderson.

>> Anderson.

>> Justice Hull, thank you, chief, I do appreciate Judge Rosenberg's point that these are private contractual arbitrations. On the other hand, it's apparent that they're not final. That they do end up in the courts. I don't know with what frequency but at least frequently enough that perhaps these matters could be avoided if we had a rule along these lines. My question for Judge Rubin or any of us here or anybody that could help me with this and I don't expect Judge Rubin for you to know all the details of every member of your organization but I understand part of the objection is that this would make a rules for different than rules for sitting judges but beneath that, what is the objection --

>> So that's the position, I guess. And I guess you answered the question, I guess for -- is it Ms. Anderson?

>> Ms. Anderson.

>> First of all, I do appreciate his point that these are private contractual issues. On the other hand, I don't know with what frequency, but at least frequently enough that perhaps these matters could be avoided if we had a rule along these lines, and my question for Judge Rubin, or any of us here, or anybody that can help me with this, and I don't expect,

Judge Rubin, for you to know all of the details of every member of your organization. I understand that part of the objection is that this would make a rule that is different than rules for sitting judges, but beneath that what is the objection.

>> The stated objection that it creates a difference.

>> Why would private arbitrators object to this?

>> The only way I can think of that they would object to it is that they have something in their background that they would prefer not to disclose?

>> I think that's obviously one interpretation. I don't know the thoughts of all of them. I think the essence of it is it just seems unfair to them and puts them at a disadvantage. I think it may be part of a larger conversation that we're having about discipline generally speaking and some of it seems to be not as consistent with sort of general norms of what should be disciplined and they're being forced to disclose things that their colleagues didn't have to do when they were a judge two weeks ago that they didn't have to do. I think it has more to do with fairness.

>> Thank you.

>> Justice Baxter.

>> Yeah, I think by implication, I think the Haworth opinion would have been the same had this rule existed, because in that case the public -- was over ten years beyond. The problem, and I'm going to vote for this, but the problem I have is this should not be an AOC recommendation, and I think we have to look at our process a little bit here. I guess standards don't go through rules and maybe they should. I'm looking at the relationship between the AOC and the California judges' association as an example. I would feel so much more comfortable if this matter was presented to us as a proposal by the rules committee, by the policy committee, by the blue ribbon task force committee, but I feel very uncomfortable and I think we're leading with our chin when it's presented on behalf of the AOC, and I just make that comment because I think we should think -- and I think it's important to think that through. There are a number of members of the California judges' association who I think feel that this is an invasion of some sort, and it really needs to come from a Judicial Council Committee of one sort or another to be vetted and then presented. I think it makes it very uncomfortable for the AOC for this to be emanating from the AOC. That's all I have to say.

>> Justice Hull.

>> Thank you. In response to justice Baxter's comments, which I certainly take to heart, I just wanted to advise the council that one of the projects that RUPRO has on its tentative agenda this year, I know that guidelines don't come through RUPRO, that's my understanding; is that correct.

>> What about standards?

>> (Inaudible).

>> I think -- (Inaudible) -- expressed a little bit of -- members of the blue ribbon panel that was done to address -- (Inaudible) -- and in addition, these do come back to RUPRO --

>> I would only note that this is a topic of discussion, whether it's a guideline, it's a standard, or it's a rule as to whether or not I think we need to take a look at these issues, or this issue, and decide if we're proceeding in the -- in the best interest, in the absolutely most effective interest or effective manner for these various matters that affect people. Ms. Anderson...

>> I did want to mention that although we did not reconstitute the blue ribbon panel, we did send a draft of the standards, a preliminary draft of the standards to all of the members of that panel and almost all of them responded to that and provided input. Those members of the blue ribbon panel were also sent the version that was sent out for public comment and in addition to that, even before we went to the blue ribbon panel, we shared what we were thinking about doing with members of the legislature and legislative staff who had originally been involved in the enactment of CCP section 1231.85. So we did seek input but the name on this is -- AOC, and if the council wants that to be something different in the future, if and when we bring other amendments then certainly we should be looking at that.

>> Justice Miller.

>> I agree whole-heartedly with what you just said. I leaned over to our new interim director and asked if they could find out if there were any other issues like this out there that have been in some way assigned and given to the AOC so we can discuss those and determine if they're appropriate committees that should work through that first, we'll do that through ENP and then make a recommendation to the council. Lastly, I make a motion to approve the ethics standard for neutral arbitrator and contractual arbitration as set forth in item J.

>> Second.

>> Seconded by Judge Yew.

>> Baxter.

>> This isn't an automatic rule that would cause the award to be vacated as a matter of law. In other words, let's assume that you have something that is not disclosed but everyone knows about it. I mean, it's just obvious and everybody agrees they know about it. Both sides. And then after the party loses, I know this was an issue that came up

during the Haworth case. After the party loses, even having known about that failure to disclose, is it an automatic vacating of that arbitration award? Is it intended to do that?

>> No, it's not intended to be an automatic basis for vacating an award.

>> Okay.

>> I noticed the motion, but I'll make a substitute motion to refer to RUPRO for study.

>> I'll second.

>> So in terms of the substitute motion that's been made by Judge Wesley and seconded by Judge Rosenberg, any further discussion on that before we take up the vote on the substitute motion?

>> All in favor of the substitute motion say aye?

>> Aye.

>> Any opposed?  
Then the matter passes.

>> Passes. And so at this time then, it's the matter of recommendation found on pages 2 through 3 and is transferred to RUPRO for discussion -- before being brought back to council --

>> So that was part of your motion, right, to go to RUPRO and they decide if there's an appropriate --

>> Absolutely.

>> I'm fine with that.

>> Proper procedure, yes.

>> So I understand, I think, the process obviously it's an improvement in the process, given the fact that already has, as Heather described, been an input and vetting, et cetera. I'm just wondering if implicit in that motion maybe could be the intent of the council that it move on that track, hoping to have RUPRO review, give its seal of approval or not, and have it come back to the council pretty quickly.

>> I don't think there's any disagreement with that.

>> No, that's perfectly okay. I agree.

>> Thank you. In terms of the public comment that was made here today by Mr. Poleski, then I think that's also something that should be -- if it comes into the hands of the AOC, it should be referred to RUPRO and RUPRO can decide how to proceed with that and how it fits into the advisory committees under your purview.

>> We'll do that also.

>> Thank you.

>> One final comment, there was some question about should these be rules or standards or guidelines or what, the legislation that requires the council to adopt standards does use the word standards as opposed to rules or more expansive description. I don't know that in 2001 the council ever considered alternatives to standards, my vague recollection was that there wasn't a discussion about that, this was presented as standards because that's what the legislation had directed.

>> Thank you.

>> On a different subject, referring back to the conversation regarding the public contract code.

>> Yes.

>> I think I misspoke in terms of the operative date of the new requirements, the new legislation was enacted in March of 2001, with an operative date of October 1, I think I said November 1.

>> Okay. I want to correct myself for the record.

>> I appreciate that.

>> 2011.

>> What did I say 2001?

>> You're right, 2011.

>> Correcting the correction.

>> I'll correct the correction. Thank you so much.

>> Item K, I think we have a chance to discuss this before our lunch break, so this is the judicial branch administration trial court business process reengineering services. This is informative, no actions required.

>> Thank you for presenting.

>> (Inaudible).

>> Thank you.

>> Good morning, and thank you for the opportunity to present on this subject.

>> We're here today to talk about and provide information report on the trial court business process reengineering services model, which is a joint effort.

>> This is a follow-up to a meeting we had last April, a council meeting where we talked about activities in the trial courts and the chief asked us to come back with framework for business process reengineering services. What is a business process reengineering? It basically involves the redesign of business practices and systems and performance -- it identifies business policies and practices, improvements where the activities are no longer necessary, an efficient way of doing something can be found and the idea to implement changes that would allow us to better address the budget situation and the resources that we now have. It's a long established management practice. Fundamentally rethink how they do their work. It's also an approach for redesigning the way work is done to better support our mission and our duties. Some examples, I'll use from orange county which I know about. In early of 2009. We instituted -- we identified over a 100 quick wins in the first few months. We replaced the printing and copying distribution custody list every morning, instead now we just send out an e-mail of PDF of the document, saving all of the copy time the jam at the printer and everybody recycling paper. We also eliminated logging of return mail. There was no need to keep track of that. On a much larger scale, we introduced the mail processing machine. We call it the magic mail machine that processes the mail that comes in for tickets. It's connected to our case management system and it's connected to the banks in our bank account and basically you put envelopes in one end and the money appears in our bank account at the other end. The day we turned it on, it reduced the need for four people. Finally, we went to all paperless in our civil cases. We're now paperless -- almost there in family law, which reduced the need for ten people just in processing paper in unlimited civil cases.

>> The fact sheet that follows the reports is in green, it has some other examples of the nature of the improvements that we can accomplish.

>> So good morning, Chief and Council members. I don't want to rehash what we talked about last April, but it has taken us almost a year to take this concept through the vetting process through the committee to come before you today. And I want to start by just highlighting that while we're talking about BPR as a strategy today, many courts have already done amazing work in this area. A lot of hard work has been done especially in light of the fiscal imperatives. Also the evolving way that the public interacts with government and with business in general. So, you know, the use of web based strategies and electronic strategies, I think many things have been done already. We're not here to say this is the new, new thing that trial courts are going to do they have never thought of before. Many courts have been engaged in this process over a long

time. What we want to do and what you asked of us last year was to really kind of highlight the strategy and to provide some support to the courts who need assistance in this area. So as chair last year, I formed a limited term working group to help to develop the proposal that's before you today and to create the framework for the trial court business process services model. We took that report and format to the meetings that we had earlier this month. The state-wide meetings with Judge Rosenberg's assistants, they both approved moving this forward and bringing this report to the council. We are here today to talk about that. We believe that it is an initiative aligns with everything that you are trying to do and all of your partners in Sacramento to affect solutions that improve efficiencies in the branch that will help us with our budget, and also to align what we're doing here with all of the legislative priorities of the branch. We want to express though, also, that business process reengineering is a tool, the courts are still struggling with devastating and difficult budget cuts that will not be resolved by simply implementing business process reengineering so this is one of the arrows in our quiver, so to speak, more modern sort of responsive practices with the public and our partners.

>> There are two key components. The first is to publicize and raise awareness of the business process reengineering, to address the permanent reductions in trial court budgets and to minimize the impacts of those budget reductions. We envision such things as bringing reports to the council regularly. So that you are aware of the amazing work that is being done and has been done in this regard. We want to use the California court news updates and also the court's YouTube site to highlight the work that is going on in the courts to real champion and celebrate the successes that the courts are having in using these strategies. The second component is really an educational and training component. We're very fortunate to have a small but dedicated group that has been doing business process reengineering assistance with courts for a number of years already. More in a kind of one on one, a court will contact NCRO, the team will go out and give them ideas about how to reengineer traffic or jury services or whatever it may be. Even the AOC has benefitted from business process reengineering in the procurement area. What we want to do is leverage that work and -- wow.

(Inaudible)

>> There we go. Okay. So we want to provide educational opportunities to court leaders who have not yet implemented BPR or only used it in a limited way. So what we're envisioning regional training for courts and do it at AOC offices or at strategic locations across the state. Take that learning back to their courts to start doing the work. We're looking at training sessions to build capacity among analysts and others. Especially in larger courts that may be able to offer assistance to smaller courts and courts that don't have internal resources that can focus on this work. We're looking at having conference calls to make sure that whatever technical assistance is required is provided. And putting BPR on our regional meeting agenda, so that we're talking about trying to get a little buzz about it and finally to compile some kind of a central repository for all of the great work out there. Online library, ideas that are working in my court that Elin can use and so forth. Cross-pollinate these great ideas across the California trial courts. That's really the thrust of this proposal today.

>> So BPR has been and will continue to be one key tool the courts can use to improve our productivity and reduce costs. It's not a panacea, but clearly it can make a difference and reduce the impact of the resource cuts that we've had in the last couple of years. Help address the budget situation. So we're going to let Jody talk a little bit about the implementation efforts.

>> Thank you. And I think Kim pretty much covered in terms of implementation. We do have a staff of two in the northern central regional office that have been assisting small and medium courts particularly with reengineering over the last four or five years. So we will leverage those two staff to partner with the group to support technical and -- technical assistance and training to courts that are interested in doing BPR and the staff of two will also be the individuals that will ensure that we have a central repository of all of the best practices. So our staff are here just to support them and its working group. They do have the expertise with regard to reengineering as an example also assisting me during this transitional period in doing some reengineering here at the AOC as well and they will support any and all courts that have an interest in this.

>> One final point, involvement in the BPR services model is completely voluntary on the part of trial courts. So this is not an AOC mandate or a judicial councilman date, this is not an initiative that's going to require every trial court to get involved in this effort. Many courts are well down the road on this and don't need assistance. There are courts that for whatever reason don't think that this is a strategy that will assist them. We want to make sure we are very clear today that we're focusing on making this a voluntary program only for courts that are willingly coming to learn about these practices and get some analytic tools and templates that will help them to do this work.

>> This is teaching people how to fish not giving them fish. Teaching people how to analyze their business processes and operate more efficiently. You get it started and it rolls by itself once it's going.

>> So you reeled me in with that last comment. I'm sorry. I just thought this might be a presentation that you would want to make at one of your presiding judges conferences.

>> We certainly will. We certainly will invite Mr. Carlson and team to present. I know that the PJs expressed a great amount of support for the program. We're in support of what they are doing.

>> I want to say one thing about the genesis about how this became official focus for the Judicial Council and grateful to them for following through with this. It really started in my view when we had a committee of PJs and CEOs who talked about what they had been doing over the years in their respective courts with meeting the reductions at the same time trying to save jobs and reassign people in the courts, and there was -- it was a very helpful exchange of information. It also pointed out our differences in services and cultures in the courts, and from that, Chris did a great job of chronicling that conversation and compiling a list of all of the many different ways that courts were being innovative in

operationalizing cuts. So when the talk is whether this is an AOC driven project, it should be understood that this really had its genesis in the great discussion we had from all of you about your courts. That really brought forward this idea. Thank you, Chief.

>> Thank you. Thank you for this. It's an exciting project. Thank you for lending your time to this.

>>> I believe there are no further questions or discussions?

We're trying to be ambitious to get on to our next project before lunch, but I don't think that we can actually get there. So we will, however, are they ready? I see someone nodding in the audience. What I do then is take the liberty of taking until 12:30, we'll break for lunch until 1:30 -- let's take this item L first. California Court Case Management System and the Phoenix Financial System, it's the report to the legislature and. We'll take lunch thereafter. And I welcome you as presenters.

>> We have only one item after lunch.

>> Members of the council, this is an administrative office of the courts recommendation. And I say that because, you know, staff has been incredibly stressed, I think, by the amount of work that has to go out. It's been a very task busy project. This is a situation where this -- where the letter to the legislature and the legislative report from us was delivered to me February 8th and I asked later that evening for input and was told the next day that it had to go out by 1:00 and was delivered to them at 1:00 that afternoon. So there was not time for the internal committee to review and vet this report before it went out to the bureau of state audits. So it is a report that we're required to give annually and I would defer to them. Because at this point, this is a council decision to concur with the report or approve the report as submitted to BSA.

>> Good morning. I'll just focus on the CCMS aspects of the report, and I'll let him talk about the Phoenix reporting on this as well. We are obviously required to report annually, we're also making our one year report to the bureau of state audits in connection with the audit report and findings, which we received last year. We've advised the legislature that we have completed our development activities with CCMS, successfully completed them, that our total project costs for CCMS, that includes deployment and development of 3 and 4 that totaled 333.3 million dollars, that is the gross number and that does not include any offset for the 16 million dollars in credits that we are due to consulting for project delay. The total program cost for CCMS, including the maintenance and operation costs for V3 and V2 have been 521.5 million dollars. Again, that includes the ongoing maintenance and operations for those existing deployed systems. The -- and I should point out that the 333 million dollars also includes our development costs in association with our document management system, which is ultimately a part of CCMS. In addition to successfully completing the development activities on V4 we have completed the independent analysis required by the legislature and by this council. The council has heard the reports from ISD and to K3, we had not only those reports, but the independent verification and validation reports that were done by our retained consultants during that period. We have completely implemented all of the K3 reports and findings, we have

implemented the K3 recommended action plan for both DeLoitte and for the AOC in connection with the development and deployment activities. We had implemented at this point, I believe, all of the recommendations made by the bureau of state audits and their report initially released last year and we have complied with all of the recommendations from the California technology office that are applicable to the developmental activities so far. So we have advised the legislature that we now have a successful product that we are ready and able to deploy in terms of our subsequent activities, we have now largely completed, not entirely completed, the functional design work on the legislative updates that are required to bring CCMS in compliance with all of the recent legislative changes and with the majority of those changes in functionality recommended by our operations committee. Those have been prioritized as well. We have not started actual design work, code design work, on implementing those changes because we simply don't have the funding or budget yet approved by the council to do that, but the functional design relying largely upon the participation and support of the subject matter experts from a number of trial courts, not just the early adopter, but a number of other trial courts have assisted in that effort, that effort is largely done and ready for the final development work on that system. The other major development, I think, since we've last spoken is that we have now established and are standing up an IT working group composed of the court executive officers and court IT directors, primarily from the V3 course, although not exclusively. We have a number of other courts that have indicated a desire to participate. That working group will report directly to the operations committee. That's the attempt that we are making to try and leverage the experience, the expertise of those courts as we go forward with the technology initiatives. I think that covers most of the CCMS activities, and Mark, do you want to speak to the Phoenix --

>> Certainly, and before I do that, just to reiterate the comments that were made, which reports on -- but it does not include the go-forward numbers for the CCMS program, nor the deployment numbers, and that was something that our office of governmental affairs discussed with staff of the legislature about deferring and waiting for the council's decision and for the grant Thornton report which will outline those costs for the early adopters and a deployment plan for subsequent courts moving forward. On the Phoenix side, there's very little to report, what we've done in the report for the legislature is just remind them that it's a very successful project and program that's operated on behalf of the trial courts, with all of them receiving all of their financial services and reporting through that program and nine of that 58 courts receiving human resources and payroll services. It's a configureable application, there have been a number of requests from courts for additional services and I'm sure it's something that the council would want to consider moving forward and do you have anything.

>> It's actually seven. There were currently 11 courts wanting to get on to the payroll system moving forward.

>> Thank you.

>> Thank you.

>> So as the judge pointed out, this is an AOC recommendation that the council accept the report with the understanding that once the council makes a decision on deployment and go forward plans for CCMS, the AOC be directed to augment that report with that information and forward that to the legislature.

>> Judge Rosenberg.

>> If I may. I have two questions, both relating to CCMS, of course the council will be addressing this in detail and presumably will make some decisions next month. But the first question I have is, with regard to the numbers that you shared, you shared one number in the 300 million dollar range

>> 333.3 million dollars.

>> 330 less of course the 16 million refund, if you will.

>> That is a gross number, not net of that 16 million dollars that we still have that we're entitled to from DeLoitte.

>> Then you shared another number in the 500 million dollars.

>> 521.5 million dollars, that includes all of the ongoing maintenance and operations for V2 and V3.

>> So that number, the 521 million number does not include any portion of the 333, correct?

>> No. The 521 includes the 333.

>> Okay. That's the first clarification. So it includes that and includes future expenditures.

>> No. These are total program and project costs through this current fiscal year.

>> It includes nothing in terms deployment activities going forward. This is what we have spent from the inception of this program.

>> I was under the impression that the number was in the 300 million dollar range, but you're saying the number is 521 million.

>> 333 million is the development cost, the deployment costs, for V2 and V3. The development costs for V4 and the development costs for the document management system. Those are all of the development and deployment costs so far.

>> What years spread over --

>> If I'm spending money for groceries or gas, it's still money out of my pocket. What's the number?

>> 521 million dollars is everything spent on CCMS total including the ongoing maintenance and operation.

>> My second question is, I'm making a big assumption, assuming the council next month decides that we cannot ride the CCMS pony any longer, what are the --

>> Can we defer that to March calendar? This is not a five-minute conversation.

>> I think it would be better if we have a full day, we have all of the reports, much better position to have this discussion so we can really flush it out, because right now, it's 10 after 12:00, and I would like to eat. Seriously. And this is a discussion we can have, but to go down this road right now, we're going to be here for another half a day.

>> With all due respect to your stomach, the question can be answered with a number which will take less time than your comment. So my only question is, are there future costs if we were to stop it?

>> Yes.

>> Okay.

>> You can share that number next time.

>> We will.

>> Thank you.

>> So the only matter -- well, go --

>> Is whether or not this report to the legislature is approved and sent. So do you have further information on that?

>> Just to go, Judge Rosenberg, with your analogy, just so we understand the difference between the 500 million plus and 300 million plus number. The 300 plus number is the cost to buy your car, essentially, and the difference between 300 million and 500 million is the amount to gas, oil, repair, keep up maintenance, and so forth, and so on. So it's a different type of expense, and that's part of the ongoing discussion in terms of the total cost of the project going forward, is the difference between the cost of the development and deployment versus the cost of continuing maintenance, which you're going to spend either -- all of the courts are going to spend on some case management product and are already spending on case management products. Where I think spending about 100 million a year of branch wide on case management maintenance and support.

>> I think that points out the wisdom of Judge's remark, we will spend March discussing this with reports in front of us that guide us and have solid numbers that we can talk to and will be shared. At this point then, I'm going to call to question for the recommendation found on -- it's page one and two. That is to approve the report status and to direct the AOC to submit the report to the legislature.

>> So moved.

>> I'll second.

>> Seconded by Justice Ashmann-Gerst and Miller.

Any further discussion?

All in favor?

>> Aye.

>> Thank you very much. Carries unanimously.

>> We stand in recess for lunch.

>> We have one announcement.

>> Some of the internal committees are going to meet over lunch. CCMS is going to meet in the Golden Gate room.

>> RUPRO in Redwood. If you would get your lunch and then go to those rooms.

>> (Inaudible).

>> Talk to the chairs and decide which one. I think the information is essentially the same at all of them.

>> We're going to reconvene at 1:10. Thank you.

>> (Lunch recess held).

>> Next on our agenda is item M, we're back in session. Item M, the budget overview of fund types supporting the judicial branch. It is not an action item. I heard there are no material; is that right?

>> Good afternoon. We did hand out some PowerPoints and other materials.

>> We have the handouts so I'll have welcome.

>> We'll have Colin Simpson help me out, he's more knowledgeable than I am. If that's okay --

>> Welcome, Colin.

>> Good afternoon, everyone, I'm here to answer a call for information and education. What I've come to learn in my months here, there's a need to -- to inform folks who already know and those who don't know, how the budget works for the branch. In this particular discussion today I'd like to discuss the -- all the different funding sources that come into the branch, where they come from, what they're used for and give you a history of their expenditures. I don't know if you're aware of it but there are 16 funding sources that come into the branch. Most are familiar with the general fund, improvement fund, MOD fund, but we have 16 distinct funding sources. And that's not even including the local revenues available, generated at the trial court level.

Like I said, we'll go through the fund history, some of the statutory authorities. The statutory authorities, I'm not going to go through those in detail. We provided out of the department of finance uniform codes manual a description of every fund that the branch receives. If you're interested in looking at the statutory framework there's a brief description and who administers the fund. When there's ever a question about a fund we knew we could go to this department of finance web page and get the information about the fund. We wanted this resource to be available to all of you in the council when we discussed these going forward.

I'll start with the first, most important fund, the general fund. Clearly it's a -- it's been declining to us as a branch but it primarily comes from personal tax, corporate tax, sales tax and funds all aspects of the branch's operations. As you can see on this slide, it's been a declining funding source for us. And the red bars indicate some of the budgetary tricks that have been done at the state level where they've used local revenues to offset our general fund costs. In total, the total bars show what we've been spending and from 10-11 we were at approximately \$2 billion, now we're down to \$1.3 billion all told. It's been a precipitous decline in the last several years.

Next is the motor vehicle account, a small appropriation. It's not administered by the branch. We get about \$200,000 annually for the AOC to provide traffic citation forms, bail and penalty schedules. It's a small program but one of the funding sources outside the branch and it does provide a bit of revenue for us to perform a specific activity.

And we can go on. The federal trust fund does provide resources throughout the branch. The AOC, courts of appeal, HCRC, about a million dollars funds the HCRC operations, access to visitation is funded out of the federal trust fund. And its current authorized level is \$6.8 million, that's what our authority is. It doesn't mean we necessarily collect and expend that level of funds. You can see the difference between the 10-11 and 11-12, 12-13 numbers is because we have excess authority. The budget has provided us a certain sort of maximum spending ability but it's all based on what kinds of federal trust funds we can get, what we spend. So there's a difference. And authority can be good because it provides you some flexibility but there's times it can look like you're spending more than you have when you're going into a budget. I'll point that out in a later fund.

We get about \$1 million from the Millhouse services fund. That was part of the proposition to raise funds for overall statewide mental health improvements, a tax on million-dollar earners. We get about a million dollars that's spent in CFCC for these types of activities. And that's been a fairly stable funding source at about a million dollars year over year. These funds do not have fund balance for us, they are merely direct appropriations to the branch, not administered and managed by us. We don't collect the revenue, we get an allocation and appropriation out of the funds. So you'll just see the actual operations level and/or expenditure level.

Now one thing you might be more familiar with is the court interpreters fund, provided to the AOC for certified interpreters, standards, interpreter qualifications. You can see what I mean. This is one of our funds so it's administered by the branch. We have a fund balance as you can see in the green line. We have our own revenue stream and the expenditures. It's a small amount that's spent at this point. \$164,000 in 1213. A small amount but it's just part of the varied funding sources that the branch gets and that the AOC is spending for this effort. Next a family law trust fund. As you can see, the trust fund is used to administer mandatory mediation in contested custody and visitation matters and other family law-related activities. That again is a fund managed by us. And let me explain to you this issue of authority and how it shows in this particular chart.

Every piece of data that we provided to you is from the governor's budget. It is something that you can trace back, you can open the governor's budget and you'd be able to see a published verifiable document. 1213 is a budget amount. It's what we have in terms of authority, and in this particular case, the program manages to the revenues actually received. And so they are projecting in 11-12 about 1.9 million rather than the \$2.8 million shown as budgeted. It's, again, a matter of what you might have authority for if revenues came in in excess of what we expected. Then we would have some ability to spend those funds. But as good stewards of the fund we work within what we receive. As you can see the revenue's been fairly flat around the 2 million-dollar level.

Next is the appellate court trust fund, as the name implies, funds, appellate courts and the courts of the Supreme Court, their operations. It's one of their funding sources. They're primarily a general fund operation but they have a small amount of this trust fund, and recently they did get a fee increase that went along with the legislation associated with the L.A. coliseum issue and reviews. There is a little increase at the expenditures are in the 4 million-dollar range. The appellate courts are about \$200 million so it's a small aspect of their overall budget but an area where they have specific fees that they collect and expend.

Court facilities trust fund is what fund this comes from, the county facility payments that came with the transfer of the facilities to the branch. And they fund the operations, repair, and maintenance of court facilities. The funds are about approximately 100 million-dollar level and we spend essentially what we get in in that particular fund, as you can see at the very, very bottom we keep a minimal balance as we are expending those funds on necessary court maintenance and operations.

You're familiar with the judicial branch Workers' Compensation Fund. It is, as necessary, 56 courts participate in that program. As well as other judicial branch entities. There's a fund

balance in order to ensure we have sufficient resources to pay our claims. 10-11 pass year claims were -- we have a healthy balance in that fund. Next is an appropriation the branch received when significant corrections legislation was implemented several years ago in an effort to reduce the felony probation failures. There was a Community Corrections performance incentive fund in which when a county reduces the number of felony probation failures they're able to generate a level of savings from the state so we get a small portion, about \$615,000, to administer that program, provide training to counties, and work with the department of finance to verify the data. So again, a small piece of a large program, important to the overall state programs.

State court facilities construction fund, we're all familiar with this particular fund. I think what we'd like to go on to is the next slide that shows how its expenditures, though flat, and its fund balance, have participated in benefiting the branch in terms of its reductions. You can see there was a transfer. So the fund balance did take a large reduction in 11-12. So that'll be indicative of the next few slides in which we see fund balances large and then dwindling as we've been addressing our shortfalls.

The immediate and critical needs account again was one with a large fund balance and it was swept and funds were taken out of the funds to help both the state general fund problem as well as our branch need to address the budget reductions. We have very large increases in expenditures in 12-13 of approximately \$300 million because we're starting to ramp up our debt service payments in our capital program.

We will go through this to explain the flow of funds for the trial courts so you understand the fees and funds part of trial court funding.

>> Good afternoon. There are three primary sources of funding. This is rather uncomfortable. The primary sources, they are court users, county and state general fund. The primary sources are the 50/50 revenue split which relates to specific criminal fines, fees and forfeitures that are deposited in the county treasury, and a certain -- revenues that exceed the level of 1997-98 amounts must be split 50/50 with the state.

Thanks, that makes it easier. The trial court trust fund, the primary sources come from court users and counties. Approximately 658 million come from maintenance of effort payments from the county as well as additional moneys coming from the court users in the form of fees, fines, and assessments as well as other miscellaneous revenues. The trial court trust fund also receives money in the amount of roughly \$890 million in fiscal year 11-12 in the general fund. It also funds modernization in the amount of 18.7 million. From there it flows to trial court operations. \$2.04 billion flow from the trial court trust fund. In addition, there is a small amount of funds that flow directly to the courts from the trial court improvement and modernization fund.

>> So next we're going to focus on the trial court trust fund and give you a flavor for the level of revenues and expenditures that we have from the trust fund. What I'll note is that a number of these funds we'll be discussing fund trial court operations as well as trial court operations that are performed at the AOC. There will be some small amounts of these funds funding programs at the AOC as well.

So we have estimated resources here. This is all the revenues and funding sources coming in. As I said, you can tie to the governor's budget. The only adjustment is the second to the bottom line of the almost \$92 million was a prior year adjustment, a technical adjustment but it's in the governor's budget. As you can see it ties to the flow chart that Colin did go through in terms of fund, funds flowing into the TCTF. I'll have Colin talk about the expenditures. Folks are interested in how you reconcile what it is that's the governor's -- or the appropriation level in the budget and how the funds get distributed throughout the branch.

>> The trial court trust fund we've listed the expenditures in order of the amount of the expenditures. The beginning reflects the baseline allocated to the courts excluding the sheriffs security reduction applied during the current fiscal year. We have judicial compensation, reimburse including the court interpreter program and court-appointed counsel. Record keeping and micrographics, children's waiting room and some expenditures this year only related to sheriffs security as well as other expenditures, including CCMS, Phoenix, program 4555 local assistance grants. And assigned judges and the other allocations to trial courts including the net reduction of \$42 million allocated to the courts and charges related to the judicial branch Workers' Compensation Fund.

>> So this slide is important because it shows we can break down all of the spending that happens annually in the trust fund and the point here also is that the trust fund has also excess appropriation authority. There is -- let's say that the budget says we are appropriated a certain amount. We only have cash to fund those levels of \$2.9 billion so there's a gap. And that's okay because if -- to the extent that we had revenues increase and we bump up above that 2.9 billion we have authority to spend that money. Also we have flexibility in our budget so that if we actually exceed that 3 billion, that we can go to the department of finance and legislature and request that they increase that authority. But -- so for someone to look at the budget act and see that we, say, have a 3 billion-dollar trust fund budget, we don't have that full amount of money to spend. So there's an amount less than that. Then you can break down the actual allocation of the cash that we have against the allocations in all these other spending that Colin just discussed. I think that's an important point when folks say, well, we should allocate all the funds. There's not enough cash to even match the budget act appropriation.

The trust fund has had some declines primarily because of the sheriffs allocation of \$500 million going away, reducing the trust fund expenditures. But we are keeping in line our revenues and expenditures and maintaining a fund balance which Colin can discuss the method why we have a declining fund balance.

>> The significant impact or fact related to our declining fund balance is the use of the trial court trust fund to offset reduction to say the trial courts. However, as you may notice, in 11-12 and 12-13 we see small growth in that fund balance. 11-12 mostly related to a prior-year adjustment and 12-13, that's relate to do a reduced level of expenditures that would relate to CCMS. When I say that I mean both funds redirected for CCMS, 66.4 million, as well as the moneys allocated to CCMS of another 34.5.

>> Next we're going to discuss the improvement fund. We know that there is multiple funding sources and the trial courts and the AOC receive funds from the improvement fund, and it's

something that's been used for budgetary solutions in the past. And we'll have Colin discuss the resources coming in to the improvement fund.

>> So the primary resources are 50/50 revenue split previously discussed. As well as the 1% transfer from the trial court trust fund based on the 45 -- program 4510 appropriation as well as the 2% of moneys, 2% of the finding fee and forfeiture moneys related to criminal cases. And these must be used exclusive to pay for automated systems for the trial courts. In addition we have other revenues, mostly jury instruction royalties and interests and a transfer from the fund required by statute. For TCIF estimated expenditures we have three categories. We split one into two distinct items. Statewide programs there is a statewide administrative and technology element as well as other statewide programs. For the statewide administrative infrastructure it has the TCTF California courts (inaudible) licensing program and Phoenix. For statewide programs, that includes such things as domestic violence and the law interpreter program as well as self-help. In the urgent needs we assume full expenditure of the urgent needs moneys as the judicial council directed any of the moneys not spent in this year would be rolled over. And lastly the trial court programs, primarily the workers compensation reserve.

>> And so it's important to know that as we see that expenditures have declined from 8-9 and stabilized in 10-11, 11-12 and 12-13, this as well as the M0d fund had been part of budgetary solutions and are important funds to the branch. Any discussions about how the funds will be used as well as budget solutions going forward as Colin mentioned, a number of very important programs funded out of the improvement fund.

>> The Mod fund is important for the branch providing funds for education, technology, and so we do have about \$21 million of resources coming in to the fund that's a direct general fund transfer so it's not a revenue that comes from fines and fees, but it's an actual general fund transfer which has not been touched by the department of finance or the legislature but we have used it as a means to address our budgetary shortfalls.

>> The modernization fund expenditures, there are three categories. The statewide technology projects is primarily made up of telecommunication support and data integration and Phoenix. For the other programs, primarily the court administrative -- sorry, this is primarily the complex civil litigation program, the most significant source of funding. And then in the other -- the education development programs, these are court administration and judicial education programs.

>> The next slide shows we did take part of the mod fund, \$20 million, to address our shortfall this last fiscal year. So that means there was a long process of evaluation by the trial court budget working group in looking at all the various programs funded out of the mod fund and the improvement fund. So you can see on the next slide the \$21 million of reductions that were painfully taken by the budget working group as they recommended it to the council.

I think what we're trying to say here in terms of doing this presentation is that there are a lot of tough decisions in making the budget work coming up this year. And we think it's important that you get an understanding now of what are all the funds, where do they go, to what extent the fund balances have declined. The next slide will show that we have as a branch had precipitous

decline in our fund balance since we have been using them to take funds out of to bolster our court operations.

The funds have been declining, and so the options become more narrow, the decisions nonetheless are very difficult in terms of all the programs that we have to evaluate before we decide to fund or not fund them. Like I said in the beginning, the 16 funds make up a number of -- large part of the overall court operations funds. But there are local revenues that do not flow through the state that do assist trial courts in meeting their constitutional obligation. And with that I think I'll conclude reminding you that the scope these funds have provided in terms of budgetary relief, \$620 million, almost, of reductions, offsets from all these funds have been taken action upon by the council to address the shortfalls. And they are becoming more difficult and smaller. The base from which these kinds of decisions could be made are narrowing. And so we have to just make an informed decision. So that was the intent today was to educate and inform so that you can think about this now rather than waiting until July to hear the report from the budget working group about what the decisions are to balance the budget. So with that if there are any questions, please feel free.

>> Judge Rosenberg?

>> Just a technical question, and thank you for the report. You said we derive funds from 16 funds?

>> 16 appropriations.

>> That confused me. As I counted up the funds that are identified on this chart there are 17. And the funds identified in the presentation, there were 15. So which is it?

>> Oh, yes, my fault. There's reimbursements is one more where we receive funds, passed through from other state agencies. Primarily the 1058 funding, \$54 million for that. There's approximately \$4.6 million for drug courts and then \$30.5 million that the judicial branch facilities program received for costs of performing services by either -- for courts either paid by the counties or the courts.

>> So if I were to use this packet that identifies -- just pages from the manual, there are 17 funds identified, is that the packet that I should be using?

>> Yes, there's one -- there are two we have no appropriation authority, no expenditures out of but I wanted to be inclusive to let you know there are a couple of small funds like revolving fund for -- so that would be the exhaustive list.

>> They're included like that architectural revolving fund.

>> Anything it touches directly or indirectly you have the statutory framework. Heaven help us if you look at the code for all of that but if you'd like they're there for you to look at.

>> Thank you.

>> Any further questions? Yes, Alan Carlson.

>> Looking at a couple slides past the chart where the money flows that says 2011-12 trial court trust fund estimated resources?

>> Page, Alan?

>> 15. So basically this is -- so if somebody said how much money do you get in fees, how many of your trial court's supported by fees, that would be 734 million, the second one?

>> Yes.

>> How much is pure general fund, whatever tax money goes in, they're giving at 888, 889 million? So more pure general fund money than anything else but it's not even half.

>> Yes and I believe that used to be a much greater percentage. Some of our budget solutions are not reflected here because we've increased our fees and revenues. General fund has declined so it's been a combination of fee, revenue increases and internal directions that have filled the gap over the last four years.

>> And the MOEs, that's what they spent on trial courts before we shifted sort of?

>> Mm-hmm.

>> And maintenance.

>> They got credit on some stuff so that's not the full amount.

>> I would defer to you on that history, so --

>> All right.

>> Yeah, okay.

>> And if you have any questions that you can't think of now that you will have, you know, over time, please feel free to e-mail me and we will get to you right away.

>> Further questions? This has been very helpful. I think it helped to clarify all of the discussions we have out there. About branch expenditures, branch funds and what the judicial council has done over the last four years trying to meet the needs and recently in 2011 when you show the 20 million taken from the mod fund and the effort to go through the programs to decide where would be the least harmful place to take the money's been very helpful.

>> Good.

>> That concludes your presentation, thank you. That concludes our business meeting for February of the judicial council. Two things as is our norm, I do like to conclude our meeting with a few brief remembrances of our judicial colleagues recently deceased. They are Judge Russell Schooling and Judge Karl Jaeger. I understand they were both retired and both served in the superior court of Los Angeles County. We honor them not only for their service to the courts but also to the cause of justice.

>> I wanted to mention that this week former Marin County judge passed, Judge McGivern died this week. He served 1998 through 2006 and died after a short illness.

>> Thank you, Kim, we appreciate your bringing the judge's death to our attention.

>> A judge in Santa Clara County, Ralph Brogdon passed away last evening.

>> And a final one, a legend, Lynn "Buck" Compton passed away at 90.

>> We express our remorse and our feelings go out to the families and the survivors, we add them to our list. We thank them. Before we conclude, I want to remind council that our next meeting is a special session. You should have received notice, March 27th, devoted to branch technology and CCMS. The materials for that meeting are being prepared, they're not available. They will be distributed as soon as they are available. It is contingent upon receipt of the grant Thornton continued report. It will be in in time for us to provide that report and materials necessary for you to understand the history of CCMS and the branch in time for us to have a thorough public discussion. Thank you for your time here, appreciate that, safe travels, and Nancy will announce transportation connections. Thank you.

>> Vans will take you to the two airports beyond the golden gate plaza building. Thank you very much.