

JUDICIAL COUNCIL MEETING
Minutes of March 10, 1999, Meeting

The Judicial Council of California meeting began at 10:45 a.m. on March 10, 1999, at the Westin Hotel in Long Beach, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Justices Richard D. Aldrich, Marvin R. Baxter, Carol A. Corrigan, and Richard D. Huffman; Judges James A. Bascue, Paul Boland, J. Richard Couzens, Albert Dover, Brenda Harbin-Forte, Steven E. Jahr, Melinda A. Johnson, Ana Maria Luna, Michael B. Orfield, and Ronald L. Taylor; Mr. Michael Case, Mr. Maurice Evans, and Ms. Glenda Veasey; and **advisory members:** Justice William M. Wunderlich; Commissioner David L. Haet, Ms. Sheila Gonzalez, Mr. Joseph A. Lane, Mr. Stephen V. Love, and Mr. Frederick Ohlrich.

Absent: Senator Adam Schiff, Assembly Member Sheila James Kuehl, and Mr. Sheldon H. Sloan.

Others present included: Mr. William C. Vickrey; Justices Norman L. Epstein and Gary E. Strankman; Judges Wilson Curle, Ray L. Hart, John W. Kennedy, Jr., Stephen V. Manley, Patrick J. Morris, Kathleen E. O'Leary, and Edward D. Webster; Mr. James Curry, Ms. Jural Garrett, Ms. Sharon Gonterman, Ms. Beth Jay, Mr. Jay Johnson, Mr. J. Clark Kelso, Mr. Len LeTellier, Ms. Debbie Lizzari, Mr. David Long, Mr. John Montgomery, Mr. Jim Niehaus, Ms. Susan Null, Mr. Wayne Peterson, Ms. Yolande Williams, and Mr. Mark Willman; **staff:** Ms. Martha Amlin, Ms. Jessica Fiske Bailey, Mr. Michael Bergeisen, Mr. David Berkman, Ms. June Clark, Ms. Eunice Collins, Ms. Kate Harrison, Ms. Whitnie Henderson, Ms. Lynn Holton, Ms. Kate Howard, Ms. Melissa Johnson, Mr. Dennis Jones, Ms. Fran Jurcso, Mr. Ray LeBov, Ms. Kim McCord, Mr. Martin Moshier, Mr. Peter Shervanick, Ms. Dale Sipes, Ms. Linda Theuriet, Ms. Kiri Torre, Mr. Joshua Weinstein; **media representatives:** Ms. Jean Guccione, *L.A. Daily Journal*; Mr. Ken Ofgang, *Metropolitan News Enterprise*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated March 10, 1999, which was sent to members in advance of the meeting.)

Approval of the Minutes

Council action:

Justice Richard D. Huffman moved that the Judicial Council approve the minutes of the February 9, 1999, meeting.

The motion passed.

Council Committee Presentations

Reports on committee activities were included in the binder of Reports and Recommendations dated March 10, 1999.

Executive and Planning

Justice Huffman reported that the Executive and Planning Committee met two times by phone since February to set the agenda for the present meeting and to discuss two out-of-cycle nominations. The committee discussed nominees for vacancies on the Court Interpreters Advisory Panel and Trial Court Presiding Judges Advisory Committee and directed staff to forward recommendations to the Chief Justice.

Policy Coordination and Liaison

Justice Marvin R. Baxter stated that the Policy Coordination and Liaison Committee met once by phone since February. He reported that the Chief Justice's State of the Judiciary Address; the Fifth Annual Judicial-Legislative-Executive Forum, sponsored by the Judicial Council; and the Statewide Bench-Bar Coalition's "Day in Sacramento" were very successful events again this year.

Rules and Projects

Judge Brenda Harbin-Forte reported that the Rules and Projects Committee had not met since February. She noted the committee would meet in April to discuss comments received on proposals recently circulated.

COUNCIL ITEM 1 WAS APPROVED AS A CONSENT ITEM, PER THE SUBMITTER'S RECOMMENDATION.

Item 1 Conflict of Interest Codes for the Habeas Corpus Resource Center and the Task Force on Trial Court Employees

Conflict of interest codes for the Habeas Corpus Resource Center and the Task Force on Trial Court Employees are required by the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.). Conflict of interest codes set forth the rules and procedures by which a public agency's designated officers and employees are required to disclose certain personal financial interests. The financial interests that must be disclosed are those that could foreseeably be materially affected by decisions that these officers or employees are authorized to make or influence.

Council action:

The Judicial Council approved conflict of interest codes for the Habeas Corpus Resource Center and the Task Force on Trial Court Employees, effective March 10, 1999.

**Item 2 Approval of Format for Fiscal Years 1999–2001 Trial Court
Coordination Plan and Assessment of Trial Court Coordination
Progress in Nonunified Counties**

Judge Edward D. Webster, Chair of the Trial Court Coordination Advisory Committee (TCCAC), presented the report assisted by Ms. Fran Jurcso, committee staff coordinator. Judge Webster noted that trial court systems that have not unified are required to submit trial court coordination plans and coordination progress information as mandated by Government Code section 68112 and to be assessed by the TCCAC at six-month intervals.

Judge Webster said that 52 of 58 counties have voted to unify. Of the 6 nonunified counties, 3 are restricted from unifying because of the Voting Rights Act (Yuba, Monterey, and Kings Counties). Los Angeles, Kern, and Modoc are the other three nonunified counties.

Judge Webster reported that at its January 1999 meeting, the TCCAC considered new information provided by Monterey and Yuba Counties. Both counties submitted documentation regarding the selection of a single executive officer, which was the final required element for an assessment of “fully coordinated.”

Judge Webster indicated that the Judicial Council in the near future will want to discuss and set policy on countywide and districtwide coordination.

Judge Ronald L. Taylor asked what governance structure issue was of concern in Los Angeles County. Judge Webster responded that the Los Angeles judicial governance structure is made up of three parties: the presiding judge of the Los Angeles Superior Court; the presiding judge of the Los Angeles Municipal Court; and the president of the Los Angeles Municipal Courts Association. He reported that the administrative governance troika consisted of the court administrator for the superior court and 20 out of 23 courts; the court administrator for the Los Angeles Municipal Court and two other municipal courts; and a representative of three smaller municipal courts.

Judge Webster commented that the TCCAC has concerns that the administrative governance structure may not reflect a balanced representation of Los Angeles courts. Judge Webster said the committee will look into the situation and recommend action, if necessary, to the council.

Judge Paul Boland asked if the TCCAC will communicate with the Los Angeles governing committee before the April council meeting. Judge Webster said it would and as soon as possible, so that corrective action, if any, could be taken.

Council action:

Justice Huffman moved that the Judicial Council:

1. Adopt the proposed plan format for fiscal years 1999–2000 and 2000–2001 as mandated by Government Code section 68112;
2. Approve the overall assessment of Monterey and Yuba Counties as “fully coordinated”; and
3. Retain the overall assessment for Los Angeles County of coordination implementation consistent with rule 991 of the California Rules of Court and eligibility for pay parity in all districts until the April 1999 Judicial Council meeting.

The motion passed.

Item 3 Creation of the Drug Court Advisory Committee

Judge Patrick J. Morris, Chair of the Oversight Committee for the California Drug Court Project, and Judge Stephen V. Manley presented the report, assisted by Ms. Fran Jurcso, committee staff coordinator. Judge Morris stated that the Chief Justice appointed a task force, the Oversight Committee for the California Drug Court Project, in 1996 to provide recommendations to the Judicial Council regarding drug courts and direct the administration of grant funding from the Office of Criminal Justice Planning (OCJP). The Chief Justice directed the task force to report to the council by March 1999 on its recommendations for the extension, expansion, or replacement of the drug court committee and its responsibilities.

Mr. William C. Vickrey expressed his support for the creation of an advisory committee focused on drug courts. He commented that drug courts reflect the council’s initiatives for improving public trust and confidence in the court system. He noted the increased interest of local courts, the public, and other sectors of the government in drug courts and the importance of judicial participation in discussions with the Legislature and others on drug court policy and funding.

Mr. Vickrey stated that the creation of a drug court advisory committee was significant symbolically as well as in fact. He said he understood the council’s reluctance to create an advisory committee for every subject handled by the courts, task forces, or working groups. He suggested creating a drug court advisory committee for two years, during which time an evaluation of drug courts and other collaborative justice models would be commissioned. The advisory committee could be reexamined when the evaluation had been completed and analyzed.

Judge Morris reviewed possible tasks for a drug court advisory committee. He said that in addition to those assigned to all advisory committees, the committee could:

- Recommend policy regarding drug courts and other community-based treatment courts;
- Seek and advocate funding opportunities;
- Establish and maintain partnerships with other state agencies;
- Develop reporting, outcome, and evaluation criteria; and
- Suggest education and outreach activities.

Judge Boland asked how the drug court advisory committee would coordinate with other advisory committees, such as the Family and Juvenile Law Advisory Committee, working on similar or overlapping concerns. Judge Morris suggested informal liaison relationships between such committees.

Council action:

Justice Huffman moved that the Judicial Council approve in principle the creation of an advisory committee for the drug court project and direct staff to prepare a draft new rule governing the committee for presentation to the council in April 1999. The new rule should include a sunset provision that would allow the continued existence of the advisory committee to be evaluated in two years, and should also specify the committee's mission, scope, and membership.

Judge J. Richard Couzens expressed his concern about creating an advisory committee with such a narrow focus to address therapeutic justice and collaborative courts — on issues which the council has not adopted a long-term policy. He suggested an earlier sunset date may be warranted.

Council action:

Judge Couzens made a friendly amendment that the Rules and Projects Committee recommend the advisory committee's sunset date.

Justice Huffman did not accept the friendly amendment.

Justice Huffman said it is better to set a time frame when the committee is initially created; the two year term seems relatively short.

Judge Michael B. Orfield asked if there was precedent for creating an advisory committee with a sunset date. Mr. Vickrey responded that all committees must evaluate the need for their continued existence every five years. The sunset provision in this case is an acknowledgment that the issue of drug courts is dynamic.

Justice Richard D. Aldrich suggested a broader view of the topic. He commented that almost all criminal cases involve drugs and that jails are filled with drug addicts. Drug courts, as one of the most important issues facing the council, warrant an advisory committee.

Judge Melinda A. Johnson agreed that drugs are the cause of many criminal law issues but noted that the council already has a Criminal Law Advisory Committee.

Justice Baxter expressed concern that funding for drug courts not be affected in the event that a collaborative court advisory committee is established. He suggested the committee be named the Community Court Advisory Committee. Justice Huffman agreed with the focus of Justice Baxter's remarks.

Council action:

Justice Huffman amended his earlier motion to include direction to staff to be as inclusive as possible in the draft rule and to recommend an appropriate committee name.

Judge Morris stated that drug courts were the most visible therapeutic courts and reference to them should be in the committee name. He expressed concern that if the term "drug courts" were not in the committee name a wrong message might be sent to the public and Legislature about the council's focus.

Council action:

The motion passed that the Judicial Council approve in principle the creation of an advisory committee for the drug court project and direct staff to prepare for presentation to the council in April 1999 a draft rule governing the committee that is as inclusive as possible and recommends an appropriate committee name. The new rule is to include a sunset provision that would allow the continued existence of the advisory committee to be evaluated in two years, and to specify the committee's mission, scope, and membership.

Item 4 Update on Fiscal Year 1998–1999 Budget Issues and Allocation Recommendations

Judge Ray L. Hart, Chair of the Trial Court Budget Commission (TCBC), presented the report assisted by Ms. Kiri Torre, Director of the AOC's Trial Court Services Division.

ONE PERCENT RESERVE: Judge Hart said the TCBC concurred with the AOC's recommendations to defer allocation of previously approved programs under the statewide projects (\$3 million) and court coordination incentives (\$4 million) portion of the one percent reserve fund. This decision would allow \$16.5 million to be allocated to fund trial court operations consistent with the accompanying TCBC recommendations. Two programs totaling \$450,000 would be set aside using one percent reserve Funds to fund the following: Community-focused court planning efforts and Proposition 220 preclearance litigation costs.

Ms. Sheila Gonzalez asked if the community-focused court planning funds were going to be distributed to the Community-Focused Court Planning Implementation Committee or to local courts based on a formula. Judge Hart responded that every county will receive funds under the direction of the implementation committee.

Judge Hart outlined the funding issues resulting in part from the transition to trial court funding and also described the TCBC's recommended solutions.

CIVIL FEE SHORTFALL: Judge Hart indicated that the AOC was projecting an annualized civil fee shortfall of \$86 million. He said this shortfall needed to be addressed in order to provide trial courts the full funding level they were advised they would receive in fiscal year 1998–1999. He noted that the TCBC recommendation would dedicate three available funding sources to backfill this shortfall in fiscal year 1998–1999. He indicated that the first two funding sources were available permanently and that the third funding source, the one percent reserve, totaling \$11.2 million, should be permanently funded through another source.

DOWNWARD COUNTY ADJUSTMENTS: Judge Hart advised council members that the AOC had confirmed with the courts the amounts of the Department of Finance (DOF) determination of the downward payments by counties to their respective courts based on past errors in reporting of costs to the state. After applying the appropriate downward adjustments to court budgets and the state's contribution to backfill a portion of the remaining reduction, the TCBC was recommending that a total of \$9.8 million from available funding be used to permanently backfill the remainder of the downward adjustment. He indicated that the impact of that recommendation was to stabilize the court budgets that would otherwise have faced budget reductions and corresponding reductions in services to the public.

FISCAL YEAR 1997–1998 DEFICIT: Judge Hart reported an additional \$2 million one-time deficit resulting from unpaid fiscal year 1997–1998 obligations that the TCBC recommended addressing using available funding.

UNDERFUNDING DUE TO REPORTING ERRORS: Judge Hart also noted that underreporting errors and omissions from fiscal year 1996–1997 totaled \$10.3 million. The TCBC recommended solving this problem by allocating funding — some permanent authorizations and others one-time allocations — to 13 counties.

COURT-APPOINTED COUNSEL: The TCBC also recommended solutions to fund increased costs of \$3.2 million to fund court-appointed counsel representation as follows: (1) \$3.8 million to fund workload growth; (2) \$2.5 million to fund underreported costs; and (3) reducing funding by \$3.1 million to seven court systems that received overfunding in this area.

COURT INTERPRETERS: Finally, Judge Hart said the TCBC recommended allocating \$2.6 million to implement rate increases for court interpreters to levels authorized by the Judicial Council in January.

DISCUSSION

Judge James A. Bascue asked if there was money in the budget for tort liability insurance to cover judges, a new issue resulting from state trial court funding. Mr. Vickrey stated this year's budget does not provide for funding for insurance beyond that which was funded in fiscal year 1994–1995. Meetings are being held with the DOF and the California State Association of Counties (CSAC) to discuss earmarking money from the Judicial Administration Efficiency and Modernization Fund to address insurance issues. Mr. Vickrey said the council would seek funding from the Legislature to support local courts with significant judgments against them.

Judge Bascue asked if the Assigned Judges Program would be negatively affected by any of the shortfalls. Judge Hart said there was a decline in the amount available for assigned judges and that legislators perceive a lower level of need for assigned judges because of unification. Mr. Vickrey noted that considerable funding for the Assigned Judges Program has been provided to support the three-strikes relief effort. The program funding ends this year, and discussions are being held with the Legislature and executive branch about allocating money to restore those funds.

Judge Albert Dover asked whether any money would remain in the one percent reserve if the council approves the TCBC recommendations as presented. Judge Hart replied that \$4.6 million would remain in the reserve.

Council action:

Ms. Gonzalez moved that the Judicial Council approve allocations as follows, effective in the current fiscal year:

1. ONE PERCENT RESERVE: \$10 million reserve: Redirect all available funding (i.e., \$2,550,000 for statewide projects and \$4 million for court coordination incentives) to the \$10 million reserve, for a total of \$16,550,000 to address the trial court funding transition needs as recommended by the TCBC.
2. \$3 million for statewide projects: Dedicate the remaining \$450,000 for:
 - a. Community-focused court planning efforts (\$375,000)
 - b. Proposition 220 preclearance litigation costs (\$75,000)
3. CIVIL FEE SHORTFALL: Apply the permanent funding made available by the state (\$43 million) and upward Department of Finance (DOF) county maintenance of effort (MOE) adjustments (\$31.7 million); and allocate an additional \$11.2 million to permanently resolve the remainder of the civil fee shortfall.
4. DOWNWARD COUNTY ADJUSTMENTS: Make other appropriate reductions in base budgets resulting from the DOF county MOE adjustments (\$8.3 million in non-rule 810 allowable and \$15 million where there were alternative funding sources) to ensure optimal use of all available funding; apply \$27.8 million in state General Fund appropriation backfill; and allocate an additional \$9.8 million to permanently backfill the downward MOE adjustments for the court systems that cannot absorb those reductions.
5. FISCAL YEAR 1997–1998 DEFICIT: Allocate \$2 million from the fiscal year 1998–1999 trial court funding appropriation as a one-time backfill to address the \$2 million debt carried forward at the conclusion of fiscal year 1997–1998.
6. COURT-APPOINTED COUNSEL: Allocate a total of \$3,225,779 million for court-appointed counsel as follows:
 - a. Provide \$3,781,611 for growth in workload;
 - b. Provide \$2,551,355 to fund underreported costs; and
 - c. Reduce funding by \$3,107,187 in seven court systems that received duplicate funding in this area.
7. COURT INTERPRETERS: Allocate funds to implement the Judicial Council directive to raise the rates for court interpreters as follows:
 - a. Allocate \$2,577,808 to fund compensation increases for contract/extra help interpreters in all courts, as authorized by the Judicial Council.
 - b. Allocate \$66,962 to adjust salaries and benefits of staff interpreters equivalent to \$180 per day as authorized by the Budget Act of 1998–1999; and
 - c. Allocate \$1,000 each to the court systems in Alpine and Sierra Counties to establish a base budget, and maintain a reserve of \$57,320.

8. UNDERFUNDING DUE TO REPORTING ERRORS: Allocate a total of \$7.9 million to address underfunding due to errors in reporting:
- a. Allocate \$5,533,786 to the authorized budgets of the 12 countywide court systems in which fiscal year 1996–1997 reporting errors and/or omissions have been confirmed.¹
 - b. Orange County Superior Court:
 - i. Allocate \$1.2 million to the court on a one-time basis to address the carry forward of \$1.2 million in canceled orders in fiscal year 1996–1997 to fiscal year 1997–1998.
 - ii. Increase the court’s fiscal year 1998–1999 base budget by \$1.2 million to address the underreporting of expenditures in fiscal year 1996–1997 due to the cancellation of orders by the county to fiscal year 1997–1998.
 - iii. Encourage the court to utilize on-hand Micrographics Automation Recordkeeping System (MARS) Fund balance to address fiscal year 1997–1998 carry-forward deficit.
 - iv. Encourage the court to implement additional cost-reduction measures to remain within the authorized budget.
 - v. Encourage the court to resolve the outstanding fee dispute with the county; the resolution may provide additional funding to the court to address the fiscal year 1997–1998 carry-forward deficit.

The motion passed.

Item 5 Appellate Process Task Force Interim Report

Justice Gary E. Strankman, Chair of the Appellate Process Task Force, presented the report assisted by Mr. Joshua Weinstein, committee counsel. Justice Strankman stated that the task force was formed in 1997 with a broad mission to study the appellate courts and to recommend to the council how the function, structure, and workflow might be revised to enhance the efficiency of the appellate process. He noted that the task force has a diverse membership and is composed of a justice from each appellate district, trial court bench officers, attorneys, academics, and clerks of the court.

Justice Strankman said initial study identifies great discrepancies in the numbers of writs filed per court, per justice, and per writ attorney and in the numbers of pending, fully briefed appeals. The task force is circulating for comment seven initial recommendations, including:

¹ *Staff note:* The 12 countywide systems are: Humboldt (\$46,800), Los Angeles (\$3,813,000), Monterey (\$139,720), Napa (\$354,255), Placer (\$80,000), San Benito (\$106,863), San Bernardino (\$150,000), Sutter (\$55,000), Trinity (\$14,000), Tulare (\$604,064), Tuolumne (\$50,000), Yolo (\$120,084).

- The creation of separate districts from the four stand-alone divisions in Ventura, San Diego, San Bernardino, and Orange Counties;
- Amending rule 1032 of the California Rules of Court to require the Administrative Presiding Justices Advisory Committee to submit an annual report to the Chief Justice and Supreme Court addressing the workload and backlog of each district and division to identify possible ways to equalize caseloads; and
- Creating a pilot project to evaluate the use of appellate referees to handle certain causes on appeal.

Judge Bascue asked whether the task force was going to address the issue of trial court preparation of records in death penalty cases. Justice Strankman said the task force made no specific recommendations to trial courts in this report. He noted that some courts hold court reporters and clerks in contempt of court for delay in preparing records.

Chief Justice George expressed his concern that trial courts comply with Assembly Bill 195, which requires among other things that trial courts certify the trial record in death penalty cases for completeness no later than 90 days after the entry of the imposition of the death sentence.

Mr. Joseph A. Lane said the final solution to this problem will require technology and will start with creating an electronic transcript from the beginning.

For information only; no action necessary.

Circulating Order — CO-99-01:SCA 4 Certification of Mono County

For information only; no action necessary.

The meeting was adjourned at 2:30 p.m.

Respectfully submitted,

William C. Vickrey
Secretary