

## **JUDICIAL COUNCIL MEETING**

### **Minutes of April 27, 2001, Meeting**

The Judicial Council of California meeting began at 8:45 a.m. on Friday, April 27, 2001, at the office of the Administrative Office of the Courts in San Francisco, 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 Gail A. Andler, Aviva K. Bobb, Leonard P. Edwards, Brad R. Hill, Steven E. Jahr, Ana Maria Luna, Ronald B. Robie, Ronald M. Sabraw, and Ronald L. Taylor; Mr. Michael Case and Mr. John J. Collins; and **advisory members:** Judges William C. Harrison and Wayne L. Peterson, Commissioner Bobby R. Vincent, Mr. Arthur Sims, and Mr. Alan Slater.

**Absent:** Senator Martha Escutia; Assembly Member Darrell Steinberg; Judge Donna J. Hitchens; Ms. Pauline W. Gee, Mr. Rex Heeseman, and Mr. Frederick Ohlrich.

**Others present included:** Mr. William C. Vickrey; Judges Robert B. Freedman, Michael Nash, and Diane E. Wick; Mr. Greg Abel, Mr. Sam Barnum, Mr. Fernando Belerra, Jr., Mr. Hal Cohen, Ms. Alice Collins, Mr. Jake Dear, Ms. Karen Jahr, Ms. Beth Jay, Mr. Darrol Miller, Mr. A. Ramstein, Ms. Inger Sorgahen-Edwards, Mr. Greg Wolff; **staff:** Ms. Heather Anderson, Ms. Jessica Fiske Bailey, Mr. Michael Bergeisen, Mr. James Carroll, Ms. Tina Carroll, Ms. Donna Clay-Conti, Mr. Blaine Corren, Ms. Lesley Duncan, Mr. David Foster, Ms. Janet Grove, Ms. Tina Hansen, Ms. Lynn Holton, Ms. Susan Hough, Ms. Kate Howard, Mr. Mark Jacobson, Ms. Melissa Johnson, Ms. Camilla Kieliger, Mr. John Larson, Mr. Bob Lloyd, Mr. Frederick Miller, Ms. Suzanne Murphy, Ms. Vicki Muzny, Mr. Lyle Nishimi, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Eraina Ortega, Mr. Ronald Overholt, Mr. Daniel Pone, Mr. Darien Pope, Mr. Martin Riley, Ms. Mary Roberts, Ms. Sonya Smith, Ms. Marcia Taylor, Ms. Karen Thorson, Mr. Courtney Tucker, Ms. Leah Wilson, Mr. Jonathan Wolin, Mr. Joseph Wong, Mr. Christopher Wu, Ms. Pat Yerian; **media representatives:** Ms. Donna Domino, *The Los Angeles Daily Journal*, and Mr. Bob Egello, *The San Francisco Chronicle*.

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 April 27, 2001, which was sent to members in advance of the meeting.)

### **Council Committee Presentations**

#### *Executive and Planning Committee*

Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee had met twice since the last council meeting. The committee considered items submitted for the council's April business meeting, determined readiness for council action, and set the agenda. The committee reviewed a report about the English judicial system's use of experts in the discovery process and directed staff to ask the Civil and Small Claims

Advisory Committee to consider changes to Code of Civil Procedure section 2034 regarding experts in the discovery process. The committee reviewed nominations for the Task Force on Self-Represented Litigants and the Task Force on Judicial Service and forwarded its recommendation to the Chief Justice. The committee also approved guidelines on developing a Judicial Sabbatical Pilot Program, for which the new Task Force on Judicial Service will draft policies and procedures for council approval. Additionally, the committee directed staff to draft a response to a Court Interpreters Advisory Panel report about the model contract that the AOC provides to the courts for guidance in their negotiations with individual interpreters.

The committee approved a motion, on behalf of the council, to reallocate fiscal year 2000–2001 funding of child support commissioners and family law facilitators.

#### *Policy Coordination and Liaison Committee*

Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee had met twice since the last council meeting. Justice Baxter reported that the committee had taken positions on 18 bills concerning civil procedure, court security, court employees, criminal law, domestic violence, juvenile dependency, jury service, probate, traffic, and trial court funding. He also reported that Chief Justice George’s “State of the Judiciary” address to the joint session of the Legislature was delivered on March 20, 2001, and that the Seventh Annual Judicial-Legislative-Executive Forum was well attended by representatives from all three branches of government.

#### *Rules and Projects Committee*

Judge Steven E. Jahr, chair, reported that the Rules and Projects Committee had met three times since the last council meeting. The committee reviewed 50 proposals for changes to rules, forms, and standards, of which 48 are now circulating for public comment. The comment period ends on June 12, 2001. The committee also reviewed proposals circulated during the winter cycle.

### **Judicial Council Court Visit Report**

Judge William C. Harrison reported on recent visits to the Superior Courts of Tulare and Kings Counties undertaken by several members of the council. Judge Harrison stated that the visits provided insights into the operations, challenges, and creative responses of mid-sized court systems located in primarily agricultural centers with diverse populations. Judge Harrison reported that specific concerns raised by local personnel in both courts included: additional commissioner positions under Assembly Bill 1058, court security and facilities needs, juvenile dependency funding, the courts’ financial status, technology, staff vacancies, and staff training and education.

### **Special Comment**

In response to Judge Harrison’s report, Mr. William C. Vickrey stated that the Administrative Office of the Courts’ Human Resources Division is working to address court salary issues. He also stated that staffing standards currently being developed will

eventually be used when allocating funding for existing judicial positions as well as for each new judgeship position.

### **Special Comment**

Justices Marvin R. Baxter and Richard D. Huffman presented Chief Justice Ronald M. George with a special resolution by both houses of the Legislature honoring the fifth anniversary of the Chief Justice's judicial branch leadership. Justices Baxter and Huffman commended the Chief Justice for his efforts in promoting court and community collaborative efforts that have done much to earn the public's trust and confidence in the courts and the rule of law.

Likewise, acting on behalf of the Judicial Council, Justice Huffman and Judge Steven E. Jahr presented Chief Justice George with a council resolution honoring his five years of service. Judge Jahr stated that the Chief Justice's enthusiasm, particularly for the council's goals of access, fairness, and diversity, has been infectious and inspirational.

### **Approval of the Minutes of the January 31, 2001, Meeting**

*Council action:*

Justice Huffman moved that the Judicial Council approve the minutes of the January 31, 2001, meeting of the Judicial Council.

The motion passed.

## **CONSENT AGENDA**

### **ITEM 1 RULES, FORMS, AND STANDARDS**

#### **Item 1A Postadoption Contact Agreements (amend Cal. Rules of Court, rule 1180; and revise forms ADOPT-200, ADOPT-215, ADOPT-310, ADOPT-315, ADOPT-320, and ADOPT-325)**

The proposed amendments to rule 1180 of the California Rules of Court and revisions to the adoption forms incorporate the provisions of California law permitting adoptive parents and birth relatives, including the birth parents, to enter into a postadoption contact agreement.

*Council action:*

The Judicial Council, effective July 1, 2001, amends rule 1180 of the California Rules of Court and revises forms ADOPT-200, ADOPT-215, ADOPT-310, ADOPT-315, ADOPT-320, and ADOPT-325 to:

1. Change all references to kinship adoption agreements to “postadoption contact agreement”;
2. Clarify the parties to and the voluntary nature of the postadoption contact agreement;
3. Clarify the process for filing the postadoption contact agreement; and
4. Correct earlier inadvertent omissions and give appropriate weight to important information.

**Item 1B      *Miscellaneous Technical Changes to Rules (adopt Cal. Rules of Court, rule 981.5; repeal chapter headings 1–5 of title two, division V, rules 701–708 and 982.4; and amend the heading for chapter 1 of title two, division I, rules 39.51, 227.10, 851, 981, 1456, 6.702, and 6.756)***

Advisory committees, court personnel, members of the public, and staff have identified errors in rules in light of changes in statutes and resulting from inadvertent omissions.

*Council action:*

The Judicial Council approves:

1. Effective April 27, 2001, amending rule 981 to allow the procedure for alternative effective dates to apply to rules on internal court management and to correctly cross-reference subdivision (b); and
2. Effective July 1, 2001:
  - a. Adopting rule 981.5 with an extended expiration date to allow courts sufficient time to complete pilot projects;
  - b. Repealing rules 701–708; the headings for chapters 1, 2, 3, 4, and 5 of title two, division V; and rule 982.4 to reflect trial court unification; and
  - c. Amending
    - i. the heading for chapter 1 of title two, division I, to include rule 200;
    - ii. rule 39.51 to correctly cross-reference Penal Code section 987.2;
    - iii. rule 227.10 to correctly cross-reference rule 4.114;
    - iv. rule 851 to reference Vehicle Code section 42005;
    - v. rule 1456 to correctly cross-reference paragraph (5) of subdivision (f);
    - vi. rule 6.702 to correctly reference the Administrative Office of the Courts’ Secretariat Office; and
    - vii. rule 6.756 to include the definition of “records.”

**Item 1C      *Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee’s Sale (adopt form MC-095)***

After a trustee’s sale of real property under a deed of trust, surplus proceeds sometimes remain. Civil Code section 2924j provides a statutory procedure for a trustee to deposit

these surplus proceeds with the court. A recent statutory amendment to section 2924j requires the Judicial Council to adopt a form to accomplish the filing authorized by the section.

*Council action:*

The Judicial Council, effective July 1, 2001, adopts the *Petition and Declaration Regarding Unresolved Claims and Deposit of Undistributed Surplus Proceeds of Trustee's Sale* (form MC-095) for mandatory use.

**Item 1D Civil Harassment and Workplace Violence Forms: Technical Amendments (revise forms CH-100, CH-110, CH-150, WV-100, WV-110, and WV-150)**

The Judicial Council has previously approved optional forms for use by parties petitioning for injunctive relief in civil harassment and workplace violence proceedings. However, the Legislature recently enacted statutory amendments to the Code of Civil Procedure providing that parties' use of the petition and response forms in these proceedings "shall be mandatory." (See Code Civ. Proc., §§ 527.6(1), 527.8(1).)

*Council action:*

The Judicial Council, effective July 1, 2001, revises the following forms to make them mandatory, to conform them to statutory changes, and to make other technical improvements:

1. *Petition for Injunction Prohibiting Harassment* (form CH-100);
2. *Response to Petition for Injunction Prohibiting Harassment* (form CH-110);
3. *Instructions for Lawsuits to Prohibit Harassment* (form CH-150);
4. *Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee* (form WV-100);
5. *Response to Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee* (form WV-110); and
6. *Instructions for Petitions to Prohibit Workplace Violence* (form WV-150).

**Item 1E Miscellaneous Technical Changes to Forms (revise forms 982(a)(27), 1285, 1285.10, 1286.75, 1292.17, 1296.13C; 1296.90, JV-200, NC-100, and SC-101; and revoke forms 982.4(1) and 982.4(2))**

Advisory committees, court personnel, members of the public, and staff have identified errors in forms resulting from changes in statutes and inadvertent omissions.

*Council action:*

The Judicial Council, effective July 1, 2001, revises the following forms as noted below:

1. Form 982(a)(27) to include a signature line for an attorney;
2. Forms 1285 and 1285.10 to give correct instructions about due dates;
3. Form 1286.75 to include signature and date line;
4. Form 1292.17 to correctly reference paragraph 3;
5. Form 1296.31C to clarify tax issues and make the form more usable for both temporary and permanent support orders;
6. Form 1296.90 to correctly refer to form 1296.91;
7. Form JV-200 to allow juvenile and family court information to be reflected in the caption;
8. Form NC-100 to reflect the repeal of Code of Civil Procedure section 1279; and
9. Form SC-101 to include the correct address for the State Bar of California.

The Judicial Council, also effective July 1, 2001, revokes forms 982.4(1) and 982.4(2) to reflect trial court unification.

**Item 2      Translating Domestic Violence Restraining Order Forms: Approval of Process**

California Code of Civil Procedure section 185(b) requires the Judicial Council, as it deems appropriate, to make translations of domestic violence protective order forms available in languages other than English.

*Council action:*

The Judicial Council, effective July 1, 2001, approves:

1. The following translation process:
  - a. Translators with a court or legal specialization, who are accredited by the American Translators Association in tested languages or who are deemed qualified based on experience, education, and references, are to produce the translations; and
  - b. Certified or registered interpreters with a written translation background are to review translations for clarity and accuracy.
2. For translation into Spanish, Korean, Vietnamese, and Chinese the following forms, to be numbered using their standard form numbers, followed by the first letter of the name of the target language:<sup>1</sup>
  - a. Form 1295.90, *Emergency Protective Order (CLETS)*;
  - b. Form 1296.15, *Application and Order for Reissuance of Order to Show Cause*;
  - c. Form 1296.31A, *Child Custody and Visitation Order Attachment*;

- d. Form 1296.31B, *Child Support Information and Order Attachment*;
- e. Form 1296.31E, *Domestic Violence Miscellaneous Orders Attachment*;
- f. Form DV-100, *Application and Declaration for Order*;
- g. Form DV-100A, *Child Custody, Visitation, and Support Attachment to Application and Declaration for Order*;
- h. Form DV-110, *Order to Show Cause and Temporary Restraining Order (CLETS)*;
- i. Form DV-120, *Responsive Declaration to Order to Show Cause or Notice of Motion*;
- j. Form DV-130, *Restraining Order After Hearing (CLETS)*;
- k. Form DV-140, *Proof of Service*;
- l. Form DV-150, *Domestic Violence Restraining Orders Instruction Booklet*;<sup>2</sup>
- m. Form MC-150, *Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*; and
- n. Form MC-220, *Protective Order in Criminal Proceeding (CLETS)*.

<sup>1</sup> For example, the Spanish translation of form MC-220, *Protective Order in Criminal Proceeding (CLETS)*, will be numbered MC-220S. The English-language form title will be placed at the bottom of each translated form.

<sup>2</sup> Only the informational portions of the booklet will be translated, not the detailed, step-by-step instructions. The target users of this form are most likely to use the informational portions because the detailed instructions are more useful to the English reader who is helping the litigant complete the English-language form. Moreover, the entire form is over 90 pages; the cost of translation is excessive given the potential usefulness.

**Item 3            Litigation Management Committee Internal Policies (approve committee approach)**

This item was deferred.

**Item 4            Ignition Interlock Devices: “Interest of Justice” Exceptions (amend Cal. Rules of Court, rule 4.325)**

The Judicial Council adopted rule 4.325 (formerly rule 530) in order to satisfy a legislative directive in former Vehicle Code section 23246. Section 23246 required that the council create a rule of court incorporating that section’s express statutory language regarding the “interest of justice” exceptions to ignition interlock device (IID) installation requirements related to driving under the influence (DUI) offenses. Several years after the council adopted rule 4.325, Vehicle Code section 23246 was amended to remove interest of justice exceptions for IID requirements and was renumbered as section 23575. As a result, the rule no longer had any express authority or practical application. In 2000, the Legislature added new interest of justice exceptions to the Vehicle Code for IID installation requirements related to driving with a suspended or revoked license. However, it did not reenact authority for the council to articulate the interest of justice exceptions.

*Council action:*

The Judicial Council, effective July 1, 2001, amends rule 4.325 of the California Rules of Court to correct statutory references and delete the list of grounds for exceptions to the statutory IID requirements.

## **DISCUSSION AGENDA**

### **Item 5                      Counsel for Children (amend Cal. Rules of Court, rule 1438)**

Ms. Diane Nunn introduced Judge Michael Nash, Co-chair of the Family and Juvenile Law Advisory Committee, and Supervising Judge of Dependency Court in Los Angeles. Judge Nash presented the committee's report. He informed the council that the rule under discussion, rule 1438 of the California Rules of Court is derived from Senate Bill 2160 (Stats. 2000, ch. 450), which amends section 317 of the Welfare and Institutions Code to (1) require the appointment of counsel for a child in a dependency action unless the court finds the child would not benefit from such an appointment, (2) require that an attorney appointed for a child have a caseload and training that assures adequate representation of the child, and (3) delete the child welfare agency's attorney from the list of attorneys eligible to represent the child. The bill requires the Judicial Council to promulgate rules, effective July 1, 2001, that establish caseload standards, training requirements, and guidelines for counsel appointed for the child, consistent with other provisions of the statute.

Judge Nash also explained that SB 2160 repealed section 326 of the Welfare and Institutions Code, regarding appointment of a guardian ad litem, and added section 326.5, requiring the Judicial Council to adopt a rule of court, effective July 1, 2001, for appointment of a guardian ad litem as required by the Child Abuse Prevention and Treatment Act (CAPTA; 42 U.S. C. § 5106 et seq.). CAPTA requires that, for any state to remain eligible for funding related to the act, state law must provide for the appointment of a guardian ad litem, who may be an attorney or a Court Appointed Special Advocate (CASA), for any child who is the subject of abuse and neglect proceedings. (42 U.S.C. § 5106a(b)(2)(A)(ix).)

With regard to committee recommendation number 1, Judge Nash explained that rule 1438 is designed to give guidance to the trial courts in accordance with the intent of the Legislature—that is, all children must be represented through either section 317 or 326.5 of the Welfare and Institutions Code. Judge Nash cited a letter received from Assembly



Member Darrell Steinberg that corroborates this as the Legislature's intent. Given the complexity of a child's case and service issues, Judge Nash said that a finding that the appointment of counsel would not benefit the child would be, and should be, very rare indeed.

Judge Nash also opined that a CASA who is not an attorney couldn't meet the Legislature's requirements since a typical CASA who is a volunteer lay advocate cannot truly represent the child's legal and other interests in complex legal proceedings.

Justice Baxter asked Judge Nash if he believed the advocacy afforded children was consistently in the best interest of the child from the point of view of the judicial officer. Judge Nash replied that he believed there to be a variation in the quality of the representation afforded children. He attributed this inconsistency to training issues and caseload issues. However, despite these issues, Judge Nash said that attorneys appointed for the children provide an enormous service in investigating and articulating the children's needs and in helping the court to make the appropriate decisions on their behalf.

Justice Richard D. Huffman asked Judge Nash if a CASA who is not an attorney were appointed guardian ad litem, would the court then also be obligated to appoint counsel to represent the guardian ad litem.

Judge Nash replied that an argument for such action could be made under section 326.5 of the Welfare and Institutions Code since the guardian ad litem would be unable to address adequately the child's case and service issues in court proceedings. Judge Nash also stated that the expenses for court-appointed counsel in this sort of situation would most probably be paid for with trial court funds.

Justice Huffman asked if the Family and Juvenile Law Advisory Committee had begun developing guidelines to distinguish the role of the guardian ad litem in a dependency versus a civil context. Justice Richard D. Aldrich echoed this concern. Judge Nash replied that the definition of guardian ad litem under section 326.5 of the Welfare and Institutions Code refers back to CAPTA.

Justice Huffman stated that he believed that under section 326.5, the appointment of a guardian ad litem refers to a role in a dependency proceeding only, and that perhaps rule 1438 ought to articulate the guardian's role more precisely.

Ms. Diane Nunn added that under section 317(e) of the Welfare and Institutions Code, attorneys are required to investigate the needs of the child beyond the scope of the juvenile proceedings and report to the court other interests of the child that may need to be protected by the institution or through other administrative or judicial proceedings. She also reported that the Family and Juvenile Law Advisory Committee would be submitting proposed guidelines for guardians ad litem for the January invitation to comment.

Justice Aldrich asked Judge Nash about the qualifications of the county bar attorneys appointed to pursue tort actions on behalf of minors. Judge Nash reported that general qualifications are established through the county bar's lawyer referral service and involve a minimum number of years of service and caseload caps.

Commissioner Bobby R. Vincent asked if any efforts could be made to educate attorneys around the state about the issues addressed in rule 1438 of the California Rules of Court and related statutes. Judge Nash said that he saw no problem in promulgating this information in a timely manner.

Judge Nash discussed committee recommendation number 2, which deals with changes to rule 1438(c)(5). Judge Nash stated that the committee was prepared to accept the Rules and Projects Committee's revisions to this portion of the rule and asked Ms. Nunn to list the revisions.

Ms. Nunn reported the following changes in the rule (from the version presented in the meeting binder):

Page 23, line 3 should read: "...represented by an attorney is entitled to competent counsel."

Page 23, lines 41 and 42 should read: "...appointed under this rule must not maintain a maximum full-time caseload in excess of that which allow them to meet requirements set forth in [paragraph] (4)."

Page 24, lines 1-23 are struck.

Judge Nash summarized the committee's remaining recommendations for amendments to rule 1438. He stated that recommendation number 3 makes changes to the training requirements for court-appointed counsel to include relevant topics such as substance abuse and domestic violence. Recommendation number 4 clarifies aspects of the standards of representation applied to counsel for children, specifically those related to the attorney's contacts with the child. Judge Nash stated that in light of the Judicial Council's previously expressed concerns, further changes would need to be made to recommendation number 5, which addresses guidelines for the appointment of CASAs. Judge Nash said that committee recommendation number 6 addresses required amendments to local rules on the representation of parties in dependency proceedings and in proceedings under the Penal Code arising from neglect or abuse of the child (rule 1438(a)).

Judge Steven E. Jahr, chair of the Rules and Projects Committee (RUPRO), referenced RUPRO's proposals to the extent that they were inconsistent with the proposals forwarded by the Family and Juvenile Law Advisory Committee. Judge Jahr stated that RUPRO found two areas needing a different approach. The first concerned whether there should be a specified numerical caseload limit. Judge Jahr pointed out that the recommendation on page 2 of the RUPRO report sets forth the proposed adjustment to

rule 1438(c)(5)(A). He further noted that as a consequence, subdivisions (c)(5)(B) and (C) of that rule would be deleted as they derive from the numerical model.

Another counter-recommendation related to the caseload issue is detailed on page 2 of the RUPRO report. Judge Jahr stated that this portion of RUPRO's counter-recommendations addresses rule 1438(c)(5)(A) and recommends that it be amended as noted in the report, and that the council direct staff to conduct a dependency counsel workload study and draft further rule amendments establishing either numerical standards or performance standards based on that study's findings.

The second part of RUPRO's counter-recommendations addresses the discretion that statute affords the court in appointing counsel for children and is located on page 1 and the top of page 2 of the RUPRO report. Judge Jahr explained that RUPRO's recommendations are based on the conviction that section 317 is unambiguous in the discretion conferred upon trial judges to appoint or not appoint counsel for a child. Thus, the members of the Rules and Projects Committee felt that the rule amendments proposed by the Family and Juvenile Law Advisory Committee were not consistent with that legislative conferral of discretion.

Justice Huffman moved that the council pass the advisory committee's recommendations as amended by RUPRO. He then asked the council to consider that section 317's unambiguous conferral of discretion to appoint counsel might well leave the door open for courts to reallocate funds designated for the provision of counsel to other purposes.

Chief Justice George asked Mr. William C. Vickrey what steps the council could undertake to ensure that funds designated for the provision of counsel under the circumstances being discussed are used only for that purpose.

Mr. Vickrey replied that the council could pass a motion directing the Administrative Office of the Courts (AOC) to impose line-item controls on that portion of the trial court budget so that these funds could not be reallocated for other purposes. Ms. Tina Hansen, Chief Financial Officer of the AOC, corroborated Mr. Vickrey's opinion.

Justice Aldrich offered his opinion that RUPRO's proposed counter-recommendations open section 317 to a degree that defeats the policy behind the statute's passage. Justice Aldrich cited the previously referenced letter from Assembly Member Darrell Steinberg to corroborate the Legislature's intent in passing the statute. Justice Aldrich voiced his concern that RUPRO's counterproposals were not restrictive enough to prevent a court from refusing to appoint counsel for a child in dependency proceedings. Therefore, he stated that he would be unable to support Justice Huffman's motion.

Justice Carol A. Corrigan recommended that the council consider bifurcating recommendation number 1 from recommendation number 2 as amended and recommendations number 3, 4, 5, and 6 as presented.

Justice Huffman indicated that he was willing to accept bifurcation of his motion.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council, effective July 1, 2001, approve all recommendations except those affecting rule 1438(b), as specified below, including technical corrections as noted:

1. Adopt technical corrections to rule 1438(c) as follows: changing “must” to “is” and deleting “who is”;
2. Adopt phased-in caseload standards for counsel for children (rule 1438(c)(5)) by changing rule 1438(c)(5)(A) to read:
  - “...attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than ~~the following:~~ that which allows them to meet requirements set forth in (3) and (4).”;
  - ~~(i) Effective July 1, 2002, 100 — 500 child clients per attorney;~~
  - ~~(ii) Effective July 1, 2004, 100 — 300 child clients per attorney; and~~
  - ~~(iii) Effective July 1, 2007, 100 — 150 child clients per attorney.~~
  - ~~(B) For an attorney working part time or with a caseload including other types of cases, the maximum caseload must be a reasonable prorated equivalent of the above guidelines based on the amount of time worked, the amount of other types of cases handled, or both.~~
  - ~~(C) For an attorney whose caseload is within the maximum range, the attorney is eligible for appointment to further cases only if:~~
    - ~~(i) The attorney certifies that he or she is able to fulfill the duties of counsel for the child; and~~
    - ~~(ii) The presiding juvenile court judge determines that the attorney continues to be eligible for appointment.~~
3. Add relevant topics to the training requirements for court-appointed counsel (rule 1438(c)(3));
4. Clarify aspects of the standards of representation as applied to counsel for children (rule 1438(c)(4));
5. Establish guidelines for appointment of a Court Appointed Special Advocate (CASA) as a guardian ad litem if an attorney is not appointed for the child (rule 1438(e));
6. Require amendments to local rules regarding the representation of parties in dependency proceedings (rule 1438(a)); and
7. Delete the Advisory Committee Comment.

The motion passed.

After a short break the council took action on the remaining recommendations of the Family and Juvenile Law Advisory Committee as amended by the Rules and Projects Committee.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council, effective July 1, 2001, further amend RUPRO's amendments to rule 1438(b) of the California Rules of Court and adopt these as follows:

1. Specify the findings necessary for the court to conclude that the child would not benefit from the appointment of counsel (rule 1438(b)) by changing rule 1438(b)(1) to read as follows:

“(1) In order to find that a child would not benefit from the appointment of counsel, the court must find all of the following:

(A) The child understands the nature of the proceedings;

~~(B) The child understands and is capable of applying the applicable statutes and rules of court to the child's case;~~

~~(C)~~(B) The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case; and

~~(D)~~(C) The child is able to effectively advocate for the child's interests. Under the circumstances of the case, including whether the child is placed in foster care, the child would not gain any significant value benefit by being represented by counsel.”

The motion passed.

The council next considered a remaining motion on a budget issue related to rule 1438(b).

*Council action:*

Justice Richard D. Huffman moved that the council direct staff to draft policy with regard to funding for court-appointed counsel. Specifically, the draft policy should prevent courts from reallocating funds designated for court-appointed counsel in dependency cases without approval of the Judicial Council. Furthermore, the policy should require courts to account for those funds and invest the council with the ability to address allocation of those funds outside of their authorized purposes.

The motion passed.

**Item 6                      Miscellaneous Budget Allocation Items**

Ms. Tina Hansen reported that the council's approval was being sought on five budget allocation items, and outlined the issues as follows:

- I. \$12.95 Million in Negotiated Salary Increases (NSIs) for Fiscal Year 1999–2000

Ms. Hansen informed the council that in fiscal year 1999–2000 the trial courts had identified NSIs totaling \$32.95 million for court and security staff. The Judicial Council allocated and approved \$20 million in NSI funding to the trial courts from funds appropriated in the Budget Act of 1999. This left an unfunded balance of \$12.95 million. This would be a one-time allocation as the courts have already received ongoing funding for these costs in the current year. This allocation will reimburse courts for the NSI costs that they have had to fund in fiscal year 1999–2000 from other areas of their operational budgets. The \$12.95 million in deficiency funding was recently approved by the Legislature.

## II. Extraordinary Expenses in Mariposa County Homicide Case

Ms. Hansen informed the council that the Superior Court of Mariposa County has requested emergency funding for unbudgeted expenditures that they have been required to make this fiscal year. The triple homicide case of *People v. Cary Anthony Stayner* is currently awaiting trial before this court. This case has received substantial publicity for a variety of reasons. At the present time, the case is scheduled for preliminary hearing in June of 2001. Ms. Hansen told the council that the court is requesting reimbursement for extraordinary costs expended to date, primarily for reporter transcripts and security, on this case. While these amounts are quite modest at present—only \$4,928—absorbing these costs has been and will continue to be a strain on the court’s modest operations budget. While it is difficult to assess how long the actual trial of the case may last, the court administrator estimates that it could take up to six times as long as the preliminary hearing and could cost up to \$300,000, again, primarily because of daily reporter transcripts and security costs.

## III. Authority to Allocate Year-End Savings

Ms. Hansen explained that staff is requesting that the Judicial Council delegate to the Administrative Director of the Courts the authority to allocate one-time year-end savings, if available, each year. These are trial court funds that are only available to be used before June 30 of each year. The extent of these savings, Ms. Hansen reported, would not be known until very near the end of each fiscal year, providing insufficient time to go through the normal process for recommending allocation of funding to the council. This delegation of authority would allow the Administrative Director of the Courts to determine where one-time funding needs exist in the courts and to allocate the available funds as needed in a relatively short period of time. For this fiscal year, this delegation will allow the AOC to allocate funds for underreporting or deficiency issues that are either currently lacking information or pending decisions on the 2001–2002 budget.

#### IV. Allocation of Funding for Fiscal Year 2000–2001 Security Negotiated Salary Increases (NSIs)

Ms. Hansen informed the council that the Budget Act of 2000 contained \$57.5 million to fund NSIs. This includes: (a) \$12.95 million to address the remaining unfunded balance of fiscal year 1999–2000 NSIs and (b) \$7.21 million to address the annualization of fiscal year 1999–2000 NSIs (to be realized in fiscal year 2000–2001), as well as \$37.3 million for fiscal year 2000–2001 NSIs. Approximately \$30.1 million of the \$37.3 million for fiscal year 2000–2001 has been allocated to the trial courts for their court employees on the basis of a 4 percent increase for 10 months and \$128 dollars per person for medical benefits. The remaining \$7.2 million is to be allocated to the trial courts for their security staff.

Courts provided their fiscal year 2000–2001 security NSI information to AOC staff in two ways: (a) through the fiscal year 2000–2001 budget process and (b) as an update to that budget process. The latter process was utilized because many courts did not know what their fiscal year 2000–2001 security NSIs would be at the time of the submission of that year's NSI request to the Governor and Legislature. Every court that indicated through either process that they had security NSIs implemented in fiscal year 2000–2001 was contacted by staff to verify that these NSIs actually occurred during the fiscal year. This is the information that was used in the recommendation for this item.

#### V. Allocation for Elder and Dependent Adult Protective Order Processing

Ms. Hansen advised the council that the Budget Act of 2000 provided \$1.175 million for fiscal year 2000–2001 to address workload associated with the processing of elder and dependent adult protective orders, as provided for in Assembly Bill 59 (Stats. 1999, ch. 561). This legislation authorizes elders and dependent adults to seek emergency protective orders to protect themselves from nonrelative cohabitants under the Domestic Violence Protection Act (DVPA) for non-financially related abuses. It also creates a new protective order for elder and dependent adult abuse that includes financial abuse.

Courts are not permitted to charge filing fees for a petition or response related to a protective order. It was anticipated that the legislation would increase the number of petitions courts would receive. The AOC sought and was awarded funding to offset the cost of the additional work resulting from passage of this bill. The budget bill language requires that these funds may only be used for processing elder and dependent adult abuse protective orders. Any funds that are not used for this purpose must revert to the General Fund. The \$1.175 million was based on an estimate of approximately 6,358 of these new orders being filed annually and applying a \$185 filing fee for estimated costs to the courts for processing the orders. This funding must be allocated by the end of the fiscal year or it will revert to the General Fund.

*Council action:*

Justice Richard D. Huffman moved that the council approve:

1. The allocation of \$12.95 million to be distributed to the trial courts per staff recommendations to satisfy the remaining unfunded fiscal year 1999–2000 NSIs;
2. The one-time payment of \$4,928 to the Superior Court of Mariposa County to address the extraordinary costs incurred to date in the case of *People v. Cary Anthony Stayner* and the delegation to AOC staff of the authority to provide that court with up to \$350,000 in one-time funding through the end of the referenced trial on an as-needed basis, with reimbursements only to be made based on actual expenditures as provided in writing by the court administrator;
3. The delegation of authority to the Administrative Director of the Courts to allocate one-time year-end savings, if available, each year;
4. The allocation of funding for fiscal year 2000–2001 implementing year costs for security NSIs per staff recommendations, noting that the Superior Court of Napa County has not yet verified their NSIs and that should staff receive verification, the court will be included in the allocation; and
5. The delegation of authority to staff to allocate funding for elder and dependent adult protective order processing costs before the end of the fiscal year.

The motion passed.

**Item 7                      Allocation for Underreporting of Fiscal Year 1996–1997  
Expenditures and Deficiency Requests**

Ms. Tina Hansen reported that in the transition to state funding, which began on January 1, 1998, expenditures from fiscal year 1996–1997 (i.e., the most current expenditure data available at that time) were used as the basis for establishing the authorized budgets for the countywide trial court systems. Subsequently, court systems and counties began to identify errors in reporting of expenditures for fiscal year 1996–1997 that, if confirmed, would result in consideration for an additional allocation to their authorized budgets. Ms. Hansen advised the council that these reporting errors primarily involved services that a county had provided to a court system but that were not included in the final Quarterly Financial Report (QFR) that was submitted to the Administrative Office of the Courts (AOC) after the end of fiscal year 1996–1997. This resulted in an artificially low baseline for the affected courts at the time trial court funding came into effect. Previously, the Judicial Council has authorized the allocation of over \$16 million in ongoing or one-time funds to 38 trial court systems to address such errors in reporting.

Ms. Hansen said that the Judicial Council, at its business meeting on April 28, 2000, determined that nearly two and a half years after the implementation of state trial court funding, it needed to establish a deadline to address any remaining fiscal year 1996–1997 underreporting issues. A memo was sent to all the trial courts on May 24, 2000, asking



that they forward any such requests to the AOC by December 31, 2000. Ms. Hansen reported that in addition to requests for funding due to errors in reporting that were submitted as a result of the May 2000 memorandum, funding requests were received in at least two other ways. One of these was through budget change requests (BCRs) for fiscal year 2001–2002 that were submitted for the most part as county/state transition requests that were removed from the BCR review process and directed to staff to be included in the underreporting analysis. The other funding requests that were received from courts during approximately the same period of time were deficiency and/or emergency requests.

Ms. Hansen advised the council that 32 courts made approximately 93 requests for funding in the total amount of \$24.2 million. Thirty-seven requests were reviewed as deficiency items totaling \$11.5 million—just over \$9 million in ongoing and almost \$2.5 million in one-time requests. Fifty-six of the requests were reviewed as underreporting errors totaling \$12.6 million—\$12.4 million in ongoing and almost \$300,000 in one-time requests.

*Council action:*

Justice Richard D. Huffman moved that the items indicated in Finance Division Attachment A (of the meeting binder) be funded on a one-time basis in the amount of \$2,749,019 as errors in reporting of fiscal year 1996–1997 expenditures and that the items in Finance Division Attachment B be funded on a one-time basis in the amount of \$372,701 as deficiency requests.

The motion passed.

**Item 8                      Deferral of Jury Service for Breastfeeding Mothers (adopt Cal. Rules of Court, rule 859)**

Mr. John Larson informed the council that rule 859 as included in the meeting materials represents a revision of the rule that was originally circulated for comment. In response to comments received, a new rule 859 was proposed rather than an amendment of rule 860. Rule 860 pertains to granting excuses from jury service. Assembly Bill 1814 (Stats. 2000, ch. 266), the legislation mandating the proposed rule, only required a rule to allow for the deferral or postponement of jury service for mothers of breastfeeding children, not their excuse from that service. Thus, the new rule was drafted in order to provide greater clarity. The proposed rule was subsequently reviewed and approved by the Presiding Judges and Court Executives Advisory Committees through their respective Executive Committees and was circulated among the membership of the Task Force on Jury System Improvements.

Mr. Larson informed the council that members of the Rules and Projects and the Executive and Planning Committees expressed concern that rule 859 as originally proposed could lead to abuses of the jury summons process and result in increased numbers of unwarranted deferrals. In response to these concerns, the proposed rule was amended to make explicit the requirement that the written request for deferral from jury service for a mother who is breastfeeding a child be made under penalty of perjury. A mechanism for requesting this deferral in writing will be included in the model statewide juror summons being developed by AOC staff.

*Council action:*

Justice Richard D. Huffman moved that the council adopt the proposed amended version of new rule 859 of the California Rules of Court, effective July 1, 2001, to read as follows:

“A mother who is breastfeeding a child may request that jury service be deferred for up to one year, and may renew that request as long as she is breastfeeding. If the request is made in writing, under penalty of perjury, the jury commissioner must grant it without requiring the prospective juror to appear at court.”

The motion passed.

**Item 9                                      Reference Procedures and Ethics Standards for Temporary Judges, Referees, and Judicial Arbitrators (amend Cal. Rules of Court, rules 244–244.2, 1604, and 1606)**

Ms. Heather Anderson reported on the background of the rules under consideration and stated that many of the proposed amendments result from the work of the Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System.

Judge Robert B. Freedman, chair of the Alternative Dispute Resolution Subcommittee of the Civil and Small Claims Advisory Committee, addressed the four key reasons for the subcommittee’s recommendations as follows:

- First, recent legislation made a number of changes to the statutes relating to references (Code Civ. Proc., § 639 et seq.). The rules of court relating to references (rules 244.1 and 244.2) need to be updated to correspond with these statutory changes.
- Second, concerns have been raised recently about using the reference procedure to appoint a person to conduct a mediation. Such a dual appointment creates an inherent conflict for the appointee because, by statute, referees report back to the court (see § 643) while mediators are prohibited from reporting to the court (see Evid. Code, §

1121). The committee is recommending that the rules 244.1 and 244.2 be amended to prohibit such dual appointments.

- Third, the Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System, recommended amending the rules of court relating to temporary judges, referees, and judicial arbitrators to enhance compliance with and enforcement of ethical standards for these neutrals.
- Fourth, there has been some confusion regarding whether current subdivision (g) of rule 244 is intended to address compensation of temporary judges by the court. The committee is recommending that the rule be amended to reflect the original intent, which appears to have been only to address situations in which the parties are compensating the temporary judge.

Judge Brad R. Hill expressed concern that precluding court-appointed referees from conducting a mediation, if there is a stipulation from all parties, might well place a roadblock in the way of parties who want to settle. He explained that in lengthy cases the referee would be in a unique position to move the parties to settlement.

Judge Freedman responded that the proposed amendments do accommodate the concerns raised by Judge Hill by acknowledging that a referee can conduct a settlement conference and by permitting an appointed referee to serve as a mediator once the reference procedure has been completed. Judge Freedman stated that the subcommittee's primary concern in proposing the rule amendments is the very important policy in favor of protecting the confidentiality of mediation proceedings.

Judge Ronald B. Robie stated that he was not in favor of the proposed prohibition on dual appointments, particularly when the parties stipulate.

Mr. Michael Case commented on the proposed rule amendments requiring all referees who are former California judicial officers to be members of the State Bar (active or inactive). Mr. Case stated that the minutes of the council's meeting should reflect that the State Bar is considering which bar status, active or inactive, is most appropriate for former judicial officers who engage in private judging and arbitrating. Mr. Case stated that the State Bar would have more comprehensive information on this particular issue at a later date.

*Council action:*

Justice Richard D. Aldrich moved that the council adopt amendments to the California Rules of Court, effective July 1, 2001, as follows:

1. Amend rules 244, 244.1, and 244.2, relating to temporary judges and referees, to:
  - a. Correspond to amendments to the reference statutes;
  - b. Clarify that the reference procedure may not be used to appoint a person to conduct a mediation;
  - c. Require that all referees who are former California judicial officers be members of

- the State Bar (active or inactive) and that orders appointing referees include the referee's bar number;
- d. Clarify that requests for disqualification of all temporary judges are determined as provided in Code of Civil Procedure sections 170.1–170.5;
  - e. Establish new time limits for temporary judges and referees to make required disclosures;
  - f. Require that temporary judges and referees disclose any matter subject to disclosure under relevant subdivisions of canon 6 of the Code of Judicial Ethics;
  - g. Modify the existing requirement for disclosure of specified prior business relationships;
  - h. Require temporary judges and referees to certify that they are aware of and will comply with canon 6 of the Code of Judicial Ethics and with other ethical requirements; and
  - i. Clarify that rule 244 does not prohibit a court from compensating temporary judges.
2. Amend rule 1604, relating to the composition of panels of arbitrators in the judicial arbitration programs, to require:
    - a. All arbitrators who are former California judicial officers to be members of the State Bar (active or inactive); and
    - b. All arbitrators to certify that they are aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and with other ethical requirements.
  3. Amend rule 1606, relating to the disqualification of arbitrators in the judicial arbitration program, to require arbitrators to make the same disclosures as temporary judges and referees.

The motion passed.

## **Item 10                      Second Interim Report of the Task Force on Court Facilities**

Mr. Bob Lloyd, Manager, AOC Facilities Unit, stated that the Task Force on Court Facilities was established by the Trial Court Funding Act of 1997, which gave the task force a broad charter requiring them to study all aspects of court facilities. Mr. Lloyd reported that the task force's *Second Interim Report* was issued on March 31, 2001, and distributed for comments to the trial courts, county agencies, members of the Judicial Council, the Governor's staff, and the Legislature. Comments are due June 1, 2001, and the task force hopes to issue its final report on October 1, 2001.

Mr. Lloyd explained that the interim report contains three sets of guidelines, one for trial courts, one for appellate courts, and a companion document for building courthouses to accept technology. He also reported that the interim report attempts to forecast future facilities needs over 20 years. These guidelines, coupled with an evaluation and planning process designed by the task force, resulted in the development of individual county court

reports. The task force sent staff to all of the state's 451 court sites, which together represent over 10 million square feet of usable space. Mr. Lloyd reported that 20 percent of the buildings examined are more than 40 years old, 70 percent are more than 20 years old, 43 are designated as historic sites, and only 5 sites are physically deficient. Mr. Lloyd informed the council that 117 sites have major functional deficiencies. The principal deficiencies are in building security, perimeter and interior circulation, and holding facilities. One third of the buildings require major Americans With Disabilities Act (ADA) renovations, and 187 may require seismic upgrades. The annual support cost is \$140 million to keep the buildings operating and maintained, plus an additional \$27 million in annual lease costs.

Mr. Lloyd informed the council that repairs to existing facilities would cost approximately \$2.8 billion. And additional \$2 billion will be required to meet projected growth.

Mr. Lloyd stated that the task force's recommendations included the following:

1. The state should assume full responsibility for court facilities, and that transfer should occur over a three-year period.
2. The counties should retain responsibility for existing facility maintenance costs through a maintenance of effort (MOE) obligation.
3. Counties should be responsible for retiring the debt on existing facilities before title to a particular facility is transferred to the state.

Mr. Lloyd stated that the task force's recommendations, in summary, are that the Judicial Council become responsible not only for conducting the negotiations necessary to transfer facilities, but also for establishing the long-term resources for managing in consort with the local courts. This arrangement would be very similar to those practiced by the University of California and the California State University systems. The timeline proposed by the interim report for transition is to have legislation enacted by January 1, 2003, and to adopt a three-year process, to be completed by January 2006, for negotiating the disposition of the 451 court facilities.

In the event that the proposals are adopted, Mr. Lloyd informed the council that the Judicial Council and the Administrative Office of the Courts would be entering a new business area requiring many new resources as well as careful consideration of important policy decisions. Likewise, Mr. Lloyd stated that defining in statute the facility guidelines put out by the task force as a measure of suitable and necessary court facilities would help to clarify what is needed in the state's courts.

Judge Wayne L. Peterson commended Mr. Lloyd for his work with the task force in discharging its formidable charge.

Judge Diane E. Wick and Chief Justice George commended Justice Daniel J. Kremer in absentia for his outstanding chairmanship of the Task Force on Court Facilities.

Mr. Alan Slater asked Mr. Lloyd what efforts are being made to keep the data underlying the task force's recommendations current.

Mr. Lloyd reported that his office has embarked on a facilities planning process to develop master plans in each of the state's 58 counties that will guide future efforts. Furthermore, additional AOC staff has been employed to maintain the database underlying the task force's report, including necessary updates.

Mr. William C. Vickrey reminded the council that the Judicial Council's budget allocates funding for the purposes of the task force. Furthermore, he stated that those funds could currently be converted to staffing and consulting resources necessary to maintain the task force's work over the last three years. However, Mr. Vickrey informed the council that the state Department of Finance does not agree with this arrangement, as they believe the council ought first to address legislation structuring the transfer of facilities and then subsequently make decisions about resources to maintain the database. Mr. Vickrey expressed his concern that the loss of funding to keep the database current would compromise the council's and the AOC's ability to be effective advocates for the courts and to protect the state's interest in terms of the costs of construction and the operating cost implications of facility decisions.

*Council action:*

Justice Richard D. Huffman moved that the council adopt the task force's recommendations as follows:

1. That the Judicial Council review comments received from the courts and the findings and recommendation contained in the task force's *Second Interim Report*;
2. That the Judicial Council delegate to the Executive and Planning Committee the authority to approve the report after consideration of the comments; and
3. That the task force pay direct attention in subsequent drafts of the report to the near-term problems associated with transition of title and responsibility.

The motion passed.

### **Circulating and Appointment Orders Approved**

#### **Circulating Order CO-01-03: Information Sheet on Waiver of Court Fees and Costs (Form 982(a)(17)(A))**

For information only; no action necessary.

**Circulating Order CO-01-04: Family Law Interpreter Pilot Project Report**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Task Force on Jury  
Instructions, Civil Subcommittee**

For information only; no action necessary.

The meeting was adjourned at 2:15 p.m.

Respectfully submitted,

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William C. Vickrey  
Secretary