

JUDICIAL COUNCIL MEETING
Minutes of June 13, 2001, Meeting

The Judicial Council of California special meeting began at 3:00 p.m. on Wednesday, June 13, 2001, at 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 Carol A. Corrigan and Richard D. Huffman; Judges Gail A. Andler, Aviva K. Bobb, Brad R. Hill, Steven E. Jahr, Ana Maria Luna, Ronald B. Robie, Ronald M. Sabraw, and Ronald L. Taylor; Mr. Michael Case, Ms. Pauline W. Gee, and Mr. Rex Heeseman; and **advisory members:** Commissioner Bobby R. Vincent, Mr. Frederick K. Ohlrich, Mr. Arthur Sims, and Mr. Alan Slater.

Participating by telephone: Justices Richard D. Aldrich and Marvin R. Baxter; and **advisory members:** Judges William C. Harrison and Wayne L. Peterson.

Absent: Judges Leonard P. Edwards and Donna J. Hitchens; Senator Martha Escutia, Assembly Member Darrell Steinberg, and Mr. John J. Collins.

Others present included: Mr. William C. Vickrey; Ms. Beth Jay, Mr. Michael Roddy; **staff:** Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. Matthew Bobb, Mr. James Carroll, Ms. June Clark, Ms. Sheila Gonzalez, Mr. Jim Hill, Ms. Lynn Holton, Mr. Mark Jacobson, Ms. Melissa Johnson, Mr. J. Clark Kelso, Mr. Ray LeBov, Mr. Frederick Miller, Ms. Suzanne Murphy, Mr. Ronald Overholt, Mr. Alex Ponce de Leon, Mr. Jack Urquhart, Ms. Alice Vilardi, and Ms. Pat Yerian; **media representatives:** Ms. Donna Domino, *The Los Angeles Daily Journal*, and Ms. Sonia Giordani, *The Recorder*.

The sole action item on the agenda was unanimously approved on the motion made and seconded. (Chapter and page numbers refer to the binder of Reports and Recommendations dated June 13, 2001, which was sent to members in advance of the meeting.)

Special Comment:

Chief Justice George welcomed members of the council and others in attendance. The Chief Justice and Mr. William C. Vickrey introduced Mr. Michael Roddy who will assume duties as the northern and central valley Regional Director of the Administrative Office of the Courts (AOC) on July 16, 2001. Chief Justice George also acknowledged Judge Ana Maria Luna, who will shortly take a leave of absence, for her valuable contributions to the council.

Chief Justice George briefed the council on Assembly Constitutional Amendment 1 (ACA 1), which was introduced in the Legislature by Assembly Member Joe Nation. The Chief Justice indicated that he and Mr. Vickrey had met informally with Assembly Member Nation following introduction of ACA 1 in order to discuss the general nature of this proposal. The Chief Justice stressed that Assembly Member Nation was eager for

the council to study his proposal and to work with the council in effecting any necessary changes or new approaches.

As a means of facilitating this working relationship, the council established the Working Group on Judicial Selection, chaired by Justice Roger W. Boren, to study ACA 1. Other members of the working group included Justice Joanne C. Parrilli and Judges Paul Boland, J. Richard Couzens, Terry Friedman, William C. Harrison, Judith McConnell, Vernon K. Nakahara, Teresa Sanchez-Gordon, and Brian C. Walsh. The Chief Justice thanked the members of the working group and its AOC staff for preparing their report on such short notice in order that the council might provide the Legislature with a response to the proposals of ACA 1 by June 15, 2001, as requested.

DISCUSSION AGENDA

Item 1 Report on Assembly Constitutional Amendment 1 (Nation): Superior Court Elections

Mr. J. Clark Kelso, Esq., presented the report on behalf of the Judicial Council's Working Group on Judicial Selection and its chair, Justice Roger W. Boren.

Mr. Kelso briefed the council on the inspiration for ACA 1, explaining that Assembly Member Joe Nation had expressed concerns about perceived excesses in open-seat superior court elections.

The working group's process included:

- Research to prepare background materials relevant to ACA 1;
- A survey of all California judges to assess their reaction to the retention election provisions of ACA 1; and
- Four meetings (one of which was attended by Assembly Member Nation) to prepare an analysis, formulate options, and approve a final report.

The working group's conclusions, Mr. Kelso reported, are that ACA 1's retention election provisions:

- Might actually undermine judicial independence because judges would be appearing much more frequently on the ballot than is the case under the current contested election system;
- Might exacerbate the problem of campaign fund raising since these changes would periodically expose *all* superior court judges to the ballot;
- Might fuel more aggressive campaign speech because, in contrast to the current system of contested elections, opponents in a retention race would not be limited

by the Code of Judicial Ethics, and this could put great pressure on a judge facing this type of opposition to respond in kind;

- Might substantially increase the salience of judicial races in smaller counties, thereby exposing judges in these counties to more opportunities for political and partisan influence and potentially requiring them to engage in much more substantial campaign activities under ACA 1 than under current law; and
- Would create an unwieldy ballot in larger counties, as well as increase the cost of printing the ballot and ballot pamphlet in those counties.

Mr. Kelso reported that the judicial survey conducted by the working group revealed a divided judiciary on the question of the retention election provisions of ACA 1. He reported the following opinion data on ACA 1 based on a total of 375 responses received:

- Strongly disagree with ACA 1: 40.5%
- Disagree with ACA 1: 12.3%
- No opinion on ACA 1: 2.4%
- Agree with ACA 1: 13.9%
- Strongly agree with ACA 1: 30.9%

The survey data, Mr. Kelso informed the council, revealed no significant differences of opinion on ACA 1 between small and large counties.

Commissioner Bobby R. Vincent asked what questions were asked on the judicial survey. AOC staff attorney Mr. Mark Jacobson responded that the working group had used a single question featuring the same five possible responses to ACA 1 indicated in the reported response data. The survey also invited comments and included a summary of ACA 1's provisions.

In summary, the working group concluded that the retention election provisions of ACA 1 do not appear to solve the problems that inspired its introduction because the provisions do not lessen the need for fund raising and may not lessen the amount of partisan or inappropriate campaign speech. Furthermore, judicial independence may well be undermined by ACA 1's passage, particularly in counties with relatively few judges, and a retention system in larger counties does not seem practical.

Mr. Kelso reported that the working group looked at a number of alternatives to ACA 1 but was unable to reach consensus on a best proposal and, therefore, made no recommendations in its report. Alternatives considered by the group included:

- Establishing a trigger to expose particular judges to a retention election. This alternative would provide a means of limiting the number of retention elections.
- Eliminating or curtailing open-seat elections. This proposal most directly responds to Assembly Member Nation's concerns as it gives the Governor

exclusive power to fill vacancies on the superior court while still allowing for the possibility of contested elections.

- Adjusting the timing of superior court elections—either when the first election would occur or the length of the term of office.
- Improving public education about judicial races.
- More effectively regulating campaign conduct and speech by possibly supplementing comments to the Code of Judicial Ethics to provide specific examples of acceptable and unacceptable election behaviors, and/or involving county bar associations in establishing local processes for policing judicial races (as is done in Santa Clara County).

Mr. Kelso concluded the presentation by indicating that the working group's final report was distributed to the council and that, in a subsequent telephone meeting, the Judicial Council's internal committee chairs reviewed the report in order to make specific recommendations to the council. Mr. Kelso informed the council that the unanimous recommendation of the internal committee chairs was that the Judicial Council should oppose ACA 1's proposal to replace the current system of electing superior court judges with a system in which all superior court judges are appointed by the Governor and periodically stand for retention election. The reasons supporting the decision to oppose ACA 1 are set forth on pages 20–23 of the Working Group on Judicial Selection's final report, dated June 7, 2001. Furthermore, the Judicial Council's internal committee chairs recommended that the council should express to the Legislature its willingness to form a broadly representative commission or task force to undertake a more comprehensive study of issues relating to judicial elections in California and make recommendations to the Legislature for any changes to the existing system of judicial elections.

Justice Richard D. Aldrich indicated his agreement with the working group's analysis, which appears on pages 20–23 of the group's final report, particularly with regard to the problems of disseminating information on all the judges who would be required to stand for retention election under the provisions of ACA 1.

Justice Richard D. Huffman reiterated the necessity of soliciting broad-based participation in studying alternatives to ACA 1 in order to ensure that subsequent recommendations would have a greater likelihood not only of achieving legislative approval, but also of serving the purposes of the judicial community.

Mr. Rex Heeseman inquired about the timeline for producing a final report by any commission or task force established for the purposes of studying alternatives to ACA 1.

Justice Huffman opined that the first step would be to advance the notion of a commission to the Legislature before making decisions about report deadlines.

Chief Justice Ronald M. George suggested that a report of such comprehensive proportions would likely require a substantial time investment—with a due date of

perhaps as late as January 2003—in order to ensure time for the Legislature to act and for judges to respond accordingly in terms of their own election and re-election plans.

Judge Ronald L. Taylor reported that in his discussions with superior court judges in his county, several had indicated concerns that ACA 1 might well pose a fundamental denial of due process to judges preparing for judicial elections—particularly those judges distracted by the responsibilities of high-profile cases coming to trial at or near the time of retention elections. Judge Taylor indicated his support for the recommendations of the Judicial Council’s internal committee chairs.

Council action:

Justice Richard D. Huffman moved that the Judicial Council approve the recommendations of the Judicial Council’s internal committee chairs dated June 12, 2001, as follows:

1. The council oppose ACA 1 for the reasons given in the Working Group on Judicial Selection’s report (pp. 20–23); and
2. The council express to the Legislature its willingness to form a broadly representative commission or task force to undertake a study of issues relating to judicial elections in California and to make recommendations to the Legislature for any changes to the existing system of judicial elections.

The motion passed.

Special Comment:

The Chief Justice invited Judge William C. Harrison, President of the California Judges Association (CJA), to voice the association’s position on ACA 1. Judge Harrison reported that the CJA was opposed to ACA 1 as drafted; however, he further indicated the association’s position that the concerns raised by Assembly Member Nation in drafting ACA 1 should indeed be addressed. He expressed confidence that actions undertaken by the council today would begin that process.

Chief Justice George assured Judge Harrison that his wishes would be for the CJA to be represented on any subsequent commission or task force established for the purpose of studying alternatives to ACA 1.

There being no further business, the meeting was adjourned at 3:45 p.m.

Respectfully submitted,

William C. Vickrey
Secretary