

JUDICIAL COUNCIL MEETING
Minutes of the June 24, 2005, Meeting
San Francisco, California

Chief Justice Ronald M. George, Chair, called the meeting to order at 8:45 a.m. on Friday, June 24, 2005, at the Administrative Office of the Courts (AOC) in San Francisco, California.

Judicial Council members present: Chief Justice Ronald M. George; Justices Marvin R. Baxter, Candace D. Cooper, Richard D. Huffman, and Laurence Donald Kay; Judges J. Stephen Czulger, Eric L. DuTemple, Michael T. Garcia, Suzanne N. Kingsbury, Jack Komar, Douglas P. Miller, Heather D. Morse, William J. Murray, Jr., and Richard E. L. Strauss; Mr. David J. Pasternak, Ms. Ann Miller Ravel, and Mr. William C. Vickrey; **advisory members:** Judges Frederick Paul Horn and James M. Mize; Commissioner Patricia H. Wong; Ms. Tamara Lynn Beard, Ms. Tressa S. Kentner, and Mr. Alan Slater.

Absent: Judge Michael Nash; Assembly Member Dave Jones; Senator Joseph Dunn; Mr. Rex S. Heinke.

Others present included: Justice Eileen C. Moore; Judges Barbara J. Miller and Dennis E. Murray; Commissioner Ronald E. Albers; Mr. Anthony P. Capozzi, Ms. Deena Fawcett, Mr. Thomas V. Girardi, Mr. Jorge Guzman, Ms. Beth Jay, Mr. Jim Murray, Ms. Victoria Reierstael, and Ms. Sharol Strickland; **staff:** Ms. Michelle Abrazaldo, Ms. Shahla Ali, Mr. Michael Bergeisen, Mr. Dennis Blanchard, Ms. Ariel Boyce-Smith, Ms. Sheila Calabro, Mr. Philip Carrizosa, Mr. James Carroll, Ms. Casie Casados, Mr. Steven Chang, Ms. Roma Cheadle, Ms. Kim Davis, Mr. Robert Emerson, Ms. Nina Erlich-Williams, Mr. Bob Fleshman, Mr. Malcolm Franklin, Ms. Pearl Freeman, Ms. Susan Goins, Mr. Ruben Gomez, Ms. Christine M. Hansen, Mr. Burt Hirschfeld, Ms. Lynn Holton, Ms. Kathleen T. Howard, Ms. Melanie Jones, Mr. Kenneth Kann, Ms. Sally Lee, Ms. Deb Littlefield, Ms. Lynne Mayo, Mr. Frederick Miller, Mr. Lee Morhar, Ms. Vicki Muzny, Mr. Stephen Nash, Ms. Diane Nunn, Mr. Ronald G. Overholt, Ms. Christine Patton, Ms. Diana Poluyackh, Ms. Romunda Price, Ms. Mary Roberts, Mr. Michael Roddy, Ms. Rona Rothenberg, Ms. Nancy Spero, Ms. Pat Sweeten, Ms. Karen M. Thorson, Ms. Jennifer Turnure, Ms. Valerie Vindici, Mr. Michael Wright, Ms. Josely Yangco-Frona, Ms. Patricia M. Yerian, and Ms. Shaun Young; **media representatives:** Ms. Jill Duman, *The Recorder*; and Ms. Donna Domino, *San Francisco Daily Journal*.

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 June 24, 2005, that was sent to members in advance of the meeting.)

Public Comment Related to Trial Court Budget Issues

The Chief Justice noted that there had been no requests from the public to comment on trial court budget issues.

Approval of Minutes of April 15, 2005

The council unanimously approved the minutes of its April 15, 2005, business meeting.

Judicial Council Committee Presentations

Executive and Planning Committee

Justice Richard D. Huffman, chair of the Executive and Planning Committee (E&P), reported that the committee had met five times since the April council meeting.

On May 18, 2005, the committee met in person and reviewed the nominees for membership on the Judicial Council and developed recommendations for the Chief Justice. The committee accepted the County Law Library Task Force report on behalf of the council and referred the report to the Policy Coordination and Liaison Committee for further action. The committee also ratified an agreement of the Administrative Director of the Courts with the state Department of Personnel Administration and the state Department of Finance that resulted in a 3.7 percent salary increase for trial court judicial officers, commissioners, and referees effective January 1, 2005.

On June 2, 2005, the committee met by telephone conference and reviewed materials and set the agenda for the June 24, 2005, Judicial Council business meeting. The committee approved, based upon staff's recommendation, several trial court implementation grant applications and authorized corresponding memoranda of understanding. The committee reviewed desired outcomes and the draft agenda for the Judicial Council planning meetings of June 22–23, 2005, which were based upon the initial findings of the "Public Trust and Confidence in the California Courts survey." Staff are to be commended for their superlative efforts on the 2005 planning meetings.

On June 9, 2005, the committee met by telephone conference and added one advisory (non-voting) court executive/administrator position to the Judicial Council for a single three-year term, commencing September 15, 2005, and ending September 14, 2008, at the request of the Chief Justice.

On June 10, 2005, the committee met by telephone conference to review further materials and finalize the agenda for the June 24, 2005, council meeting. The committee was briefed by staff on the status of the budget process and approved, on behalf of the council pursuant to rule 6.11(d) of the California Rules of Court, a negotiated calculation process

for allocation of the state appropriations limit funding adjustment for fiscal year 2005–2006. The staff report on which the committee based its action was circulated to the full council and ratified on June 16, 2005, by the council. Justice Huffman moved that the ratification be attached to the minutes of the June 24 council meeting and that the minutes reflect that the committee’s June 10 action was ratified by the council. (A copy of the ratification is attached to these minutes.)

Judges Michel T. Garcia and William J. Murray, Jr., asked, and the Chief Justice agreed, that the minutes reflect that they had signed the ratification. (A quorum of signatures had been received and the committee action was ratified before the signatures of Judges Garcia and Murray were received. For that reason, the ratification does not reflect their signatures.)

On June 17, 2005 the committee met in person and approved the minutes of its June 2, June 9, and June 10, 2005, meetings, and was briefed by the Administrative Director of the Courts on the subject of judicial compensation and benefits as part of the committee’s oversight of the implementation of the council’s operational plan, which includes developing a comprehensive compensation policy consistent with judicial independence. The judges in California have benefited from the significant efforts over many years by the Chief Justice and the Administrative Director of the Courts to obtain adequate judicial compensation.

Policy Coordination and Liaison Committee

Justice Marvin R. Baxter, chair of the Policy Coordination and Liaison Committee (PCLC), reported that the committee had met five times by telephone conference since the April council meeting, taking positions on 15 bills relating to the administration of justice. The two council-sponsored bills, Senate Bill 56 (Dunn) regarding new judgeships and Senate Bill 395 (Escutia) regarding facilities, are proceeding through the Legislature. The budget process to date was explained. On May 25, 2005, 42 members of the Bench-Bar Coalition, judges and attorneys, visited 69 legislators and staff in support of the council-sponsored bills and judicial branch priorities. The legislative session ends on September 19. The last day for the Governor to sign or veto bills passed by the legislature is October 9.

Rules and Projects Committee

Justice Laurence Donald Kay, chair of the Rules and Projects Committee (RUPRO), reported that the committee had met six times since the April council meeting.

On April 27, 2005, the committee met by telephone conference and authorized public circulation of two proposals in the special rules cycle, concerning the preservation of

mediation confidentiality and pre–voir dire conferencing in criminal cases. These proposals will come before the council at the October business meeting.

On May 10, 2005, the committee met by telephone conference to consider rules on jury system improvements. The committee authorized a proposal on juror note-taking for public circulation and referred two other proposals to advisory committees. The committee declined to proceed with three recommended rules.

On May 19, 2005, the committee met by telephone conference to consider rules pertaining to temporary judges, authorizing them for public circulation in the special rules cycle. They are expected to come before the council at the October meeting.

On May 24, 2005, the committee met in person and reviewed about half of the approximately 700 proposed criminal jury instructions. The remainder were to be reviewed in person on June 30. The jury instructions will come before the council at its August meeting.

On June 1, 2005, the committee met by telephone conference to consider revisions and additions to the civil jury instructions and recommended council approval at the June 24 meeting.

On June 15, 2005, the committee met by telephone conference and authorized public circulation of proposals concerning discovery objections and publication of the Judicial Council jury instructions.

Court Site Visit Reports

Judge Heather D. Morse reported orally on the February 2–4, 2005, visits by council members to the Superior Courts of Kings, San Luis Obispo, and Santa Barbara Counties at the February 18, 2005, business meeting. The written report from those visits is submitted to the council for this June meeting. Judge Morse encouraged council members to attend these site visits in the future so they will gain perspective on the challenges faced by specific courts as well as statewide branch needs facing the council. Justice Baxter amplified on Judge Morse’s comments on the large number of habeas corpus writs received by the Superior Court of Kings County due to its considerable prison population. The Chief Justice requested staff to look at providing assistance to that court in this regard.

Judge Michael T. Garcia reported on the March 29–30, 2005, visits by council members to the Superior Courts of Riverside and San Bernardino Counties. The written report is submitted for this June meeting. Both courts have significant geographical challenges and have experienced considerable population growth. While the San Bernardino County dependency court facility is new and functional, the main courthouse is inadequate. Mr.

David J. Pasternak commended the judges in both courts for having a positive attitude in spite of the facilities and caseload challenges. He also stated that the San Bernardino courthouse is so inadequate that, rather than improve or rebuild the current building, a new courthouse should be considered. Commissioner Patricia H. Wong expressed concern that the commissioners in these courts with family law assignments, when absent, were not temporarily replaced by assigned judges. Judge Frederick Paul Horn expressed concern about security in the San Bernardino courthouse.

Chief Justice's Report

Chief Justice Ronald M. George reported that, since the April meeting, he attended and spoke to a joint meeting of the Riverside and San Bernardino County Bar Associations and attended the dedication of the new dependency court building in San Bernardino. At that visit he heard significant appreciation for the efforts on Judicial Council-sponsored bills for more judgeships and for improving court facilities.

The Chief Justice also reported on visits to the California Counties Association, and to the Superior Courts of Los Angeles and San Francisco Counties in connection with Juror Appreciation Week. In addition, the Chief Justice addressed those attending the Bernard E. Witkin Judicial College.

The Chief Justice reported on his recent efforts on the council's legislative program regarding the budget, access to justice, and judicial independence with members of the Legislature and their staff, members of the Bench-Bar Coalition, and various bar associations.

CONSENT AGENDA

Item 1 Approval of an Additional Subordinate Judicial Officer Position (AB 1058 Commissioner) in the Superior Court of San Bernardino County as Authorized by Government Code Section 71622(a) and Family Code Section 4252

AOC staff recommend that the council approve, pursuant to Government Code section 71622(a) and Family Code section 4252, an additional full-time subordinate judicial officer for the AB 1058 child support commissioner program in the Superior Court of San Bernardino County due to the increased caseload of the local child support agency.

Council action

The Judicial Council, pursuant to Government Code section 71622(a) and Family Code section 4252, approved the establishment of an additional position of AB 1058 child support commissioner in the Superior Court of San Bernardino County.

Item 2 Revisions to Base Allocations for Child Support Commissioner and Family Law Facilitator Programs for Fiscal Year 2005–2006

The Family and Juvenile Law Advisory Committee recommends that the council approve revised base allocations for the child support commissioner and family law facilitator programs for FY 2005–2006.

Council action

The Judicial Council, effective July 1, 2005:

1. Approved the revised base allocations for the child support commissioner program for FY 2005–2006, and
2. Approved the revised base allocations for the family law facilitator program for FY 2005–2006.

Item 3a Facilities: Authorization for the Administrative Director of the Courts (or Designee) to Approve the Property Acquisition Agreement for a Building Site for the Court of Appeal, Fourth Appellate District, Under Government Code Section 69204(a)

AOC staff recommends that the Judicial Council authorize the Administrative Director of the Courts or his designee to approve and execute the property acquisition agreement for the Court of Appeal, Fourth Appellate District, Division Three, in Orange County, under Government Code section 69204(a), provided that the terms and conditions are substantially the same as those presented to the council at the April 15, 2005, business meeting. In the event that the terms and conditions of the acquisition agreement are materially different from those presented at the April 15, 2005, meeting, AOC staff recommends that the council authorize its Executive and Planning Committee either to approve the acquisition agreement and related documents or to send the matter to the Judicial Council for further consideration.

Council action

The Judicial Council, under rule 6.183(b)(1) of the California Rules of Court, and effective immediately:

1. Authorized the Administrative Director of the Courts, or his designee, to approve the real property acquisition agreement and related documents for purchase of the selected site within the Santa Ana Civic Center as the site for the new Court of Appeal building, provided that the terms and conditions are substantially the same as those presented to the council at its April 15, 2005, business meeting; and
2. In the event that the terms and conditions of the acquisition agreement are materially different from those presented at that meeting, then the council

authorized its Executive and Planning Committee either to approve the acquisition agreement and related documents or to send the matter to the Judicial Council for further consideration.

Item 3b Court Facilities Planning: Five-Year Infrastructure Plan, Fiscal Year 2006–2007

AOC staff recommends the adoption of the *Five-Year Infrastructure Plan, Fiscal Year 2006–2007*, for appellate and trial court and AOC facilities and the submission of the plan to the California Department of Finance, pursuant to Government Code section 70391, and that staff be directed to request fiscal year 2006–2007 funding from the Department of Finance for major trial court capital projects ranked #numbers 1, #4 and #5, in the plan.

Council action

The Judicial Council

1. Adopted the *Five-Year Infrastructure Plan Fiscal Year 2006–2007* and directed staff to submit it to the California Department of Finance in July 2005; and
2. Directed staff to request FY 2006–2007 funding from the Department of Finance for projects ranked #numbers 1, #4, and #5.

Item 4 Report to the Legislature on Superior Court Purchase and Lease of Electronic Recording Equipment (Gov. Code, § 69958)

AOC staff recommends approving submission of a mandated report to the Legislature, pursuant to Government Code section 69958, regarding purchases and leases of electronic recording equipment that will be used to record superior court proceedings.

Council action

The Judicial Council approved the submission of this report.

Item 5 Annual Report of Fiscal Year 2003–2004 Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings (Gov. Code, § 68086(c))

AOC staff recommends approval of a mandatory report to the Legislature concerning past year court reporter fees collected in accordance with Government Code section 68086(a)(1) and 68086(a)(4) and of expenditures related to court reporters in superior court civil proceedings.

Council action

The Judicial Council approved the report as submitted to the Legislature.

Item 6 Approval of Travel Expense Reimbursement Policy and Procedures for Trial Court Judges and Employees

AOC staff recommends adoption of revised policies, schedules, and procedures for trial court business-related travel expenses as required annually by Government Code section 69505.

Council action

The Judicial Council:

1. Effective July 1, 2005, adopted the revised policies, schedules, and procedures for trial court business-related travel expenses contained in the *Trial Court Financial Policies and Procedures Manual* under policy section AOC FIN 8.03, Travel Expense Reimbursement for Trial Court Judges and Employees;
2. On expiration of a memorandum of understanding or agreement by and between a recognized employee organization and a trial court, entered into before July 1, 2005, the policies mentioned above apply. (These policies do not change any terms of a memorandum of understanding or agreement by and between a recognized employee organization and a trial court entered into before July 1, 2005.); and
3. Trial courts that process their travel expense claims through their counties will be required to follow this reimbursement policy regardless of the rates that the counties may allow.

Item 7 Judicial Council Jury Instructions: Approve Publication of Revisions and Additions to Civil Instructions Under Rule 855(d) of the California Rules of Court

The Advisory Committee on Civil Jury Instructions recommends approval of the publication of revisions to the Judicial Council of California civil jury instructions that were first published in September 2003 and last amended in February 2005.

Council action

The Judicial Council, effective June 24, 2005, approved for publication in a summer update, under rule 855(d) of the California Rules of Court, , the revisions prepared by the Advisory Committee on Civil Jury Instructions.

DISCUSSION AGENDA

Item 8 Judicial Council Distinguished Service Awards for 2004–2005

This item was removed from the agenda.

Item 9 Facilities: Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan for a New Building in Santa Ana for the Court of Appeal, Fourth Appellate District, Under California Code of Regulations, Title 14, Sections 15025 and 15074

Ms. Kim Davis, Office of Court Construction and Management presented this item with the participation of Mr. Melvin Kennedy, Office of the General Counsel.

AOC staff recommends approval of a resolution adopting a mitigated negative declaration and mitigation monitoring plan for the Court of Appeal, Fourth Appellate District, Division Three, in Orange County.

Council action

The Judicial Council, in accordance with rule 6.183(b)(1) of the California Rules of Court, and effective immediately, approved the resolution adopting a mitigated negative declaration and mitigation monitoring and reporting plan for the Court of Appeal, Fourth Appellate District, Division Three, in Orange County.

Item 10 Specific Trial Court Budget Allocations for Fiscal Year 2004–2005 and Fiscal Year 2005–2006

Mr. Ronald G. Overholt, AOC Chief Deputy Director, and Ms. Christine M. Hansen, Director, Finance Division, presented this item with the participation of Ms. Vicki Muzny, Finance Division.

AOC staff recommends that the Judicial Council approve year-end adjustments in FY 2004–2005 funding for court-appointed counsel related costs. Staff also recommends that the council approve FY 2005–2006 funding for the trial courts, which includes limited new allocations that are not subject to the State Appropriations Limit allocation methodology, the permanent allocation of prior year reductions, and the restoration of one-time reductions. (Note: Allocations subject to the State Appropriations Limit allocation methodology will be considered by the Judicial Council at the next business meeting following enactment of the State Budget.)

Council action

The Judicial Council:

Court Appointed Counsel—Family Code section 3150

1. Approved the proposed methodology for funding Family Code section 3150 expenditures in the amount of \$1.152 million for 14 courts from the Court

Appointed Counsel baseline budget, on a one-time basis only, in fiscal year 2004–2005.

Court Appointed Counsel—Dependency

2. Approved the use of savings from other statewide reimbursement programs, to the extent available, to fund the shortfall in dependency counsel on a one-time basis once the actual costs for fiscal year 2004–2005 have been determined.

Workers' Compensation

3. Directed that in fiscal year 2005–2006, the ongoing funding received in the Budget Act of 2003 in the amount of \$4.074 million be permanently allocated to each participating court to the extent its fiscal year 2005–2006 program costs exceed its fiscal year 2004–2005 baseline funding.

Workers' Compensation

4. Directed that the \$1.740 million in fiscal year 2003–2004 program savings be allocated on a one-time basis to each participating court with a fiscal year 2005–2006 program deficit.

Workers' Compensation

5. Approved the policy that each participating court's share of claims costs be based upon an exponential ratio of losses and payroll, that the costs of the excessive claim insurance and the loss prevention program be based upon each court's relative percentage of payroll to the total payroll for all the courts in the program, and that the cost of the third party administrator be based upon each court's relative percentage of losses to the total losses for all the courts in the program.

Subordinate Judicial Officer Retirement

6. Approved funding of subordinate judicial officer rate driven retirement changes in the amount of \$762,972 in fiscal year 2005–2006, through the redirection, on a one-time basis, of reimbursable jury program funding. In future years, it is anticipated that either judicial officer compensation will be included in the State Appropriations Limit process or a budget change proposal will be submitted to the state Department of Finance to request funding.

\$2.5 Million Consolidated Administration Reduction

7. Approved the permanent allocation to the courts of the \$2.5 million consolidated administration reduction in the amounts allocated in fiscal year 2004–2005.

Restoration of One-Time Unallocated Reduction

8. Approved full restoration of the fiscal year 2004–2005 one-time reduction funding to the courts at the same level at which the funding was reduced. If

additional adverse changes are made to the overall trial court budget beyond what has been approved by the Joint Legislative Budget Conference Committee, this item will need to be reconsidered and a new recommendation may be presented to the council.

Circulating Orders

The copy of the June 16, 2005, ratification order is for information only; no action was necessary.

Appointment Orders

Copies of appointment orders are for information only; no action was necessary.

There being no further public business, the meeting was adjourned at 11:00 a.m.

Respectfully submitted,

William C. Vickrey
Administrative Director of the Courts and
Secretary of the Judicial Council

Attachment