

JUDICIAL COUNCIL MEETING
Minutes of the July 7, 2004, Meeting
San Francisco, California

The Judicial Council of California business meeting began at 8:35 a.m. on Wednesday, July 7, 2004, at the Administrative Office of the Courts (AOC) in San Francisco, California, on the call of Chief Justice Ronald M. George, Chair.

Judicial Council members present: Chief Justice Ronald M. George; Associate Justices Norman L. Epstein and Richard D. Huffman; Judges Eric L. DuTemple, Michael T. Garcia, William C. Harrison, Jack Komar, William A. MacLaughlin, Heather D. Morse, William J. Murray, Jr., Michael Nash, and Barbara Ann Zúñiga; Mr. Rex S. Heinke, Mr. David J. Pasternak, Ms. Ann Miller Ravel, Mr. William C. Vickrey, and Mr. Thomas J. Warwick, Jr.; **advisory members:** Judge Eric C. Taylor; Ms. Tressa S. Kentner and Mr. Alan Slater.

Absent: Associate Justices Marvin R. Baxter and Laurence Donald Kay; Assembly Member Ellen M. Corbett and Senator Martha M. Escutia; Judges Frederick Paul Horn and Richard Strauss; Commissioner Patricia H. Wong; and Ms. Susan Null.

Others present included: Associate Justice Richard D. Aldrich; Judges Suzanne N. Kingsbury and Douglas P. Miller; court Executive Officers Ms. Tamara Lynn Beard, Mr. John Montgomery, Mr. Ken Torre, and Ms. Kiri S. Torre; Sheriff Mark Tracy and Sheriff Greg Wilson; Mr. Joaquin Alcantar, Mr. James E. Herman, Ms. Beth Jay, Ms. Yun jin Joo, Ms. Judi Kirkham, Ms. Jacqueline Malloy, Ms. Kelly McCarthy, and Mr. Frederick K. Ohlrich; **staff:** Mr. Patrick Ballard, Mr. Eddie Basco, Mr. Dennis Blanchard, Mr. James Carroll, Ms. Tina Carroll, Mr. Steven Chang, Ms. Roma Cheadle, Ms. Mandy Covey, Ms. Kim K. Davis, Ms. Barbara Edwards, Mr. Sean Faro, Ms. Denise Friday, Mr. Mark Garcia, Mr. Ruben Gomez, Ms. Sheila Gonzalez, Ms. Christine M. Hansen, Ms. Lynn Holton, Ms. Nancy Leonard, Mr. Dag MacLeod, Ms. Lynne Mayo, Mr. Frederick Miller, Ms. Vicki Muzny, Ms. Diane Nunn, Mr. Ronald G. Overholt, Ms. Shawn Parsley, Ms. Christine Patton, Mr. Eric Pulido, Ms. Mary Roberts, Mr. Michael Roddy, Ms. Sonya Smith, Ms. Pat Sweeten, Ms. Marcia Taylor, Ms. Carol Thomas, Ms. Karen Thorson, Ms. Alla Urisman, and Ms. Pat Yerian; **media representatives:** Ms. Jill Duman, *The Recorder*; Mr. Philip Carrizosa, *San Francisco Daily Journal*; and Mr. Tyler Cunningham, *San Francisco Daily Journal*.

Except as noted, each council action described in these minutes was unanimously approved on the motion made and seconded. Tab letters and item numbers in these minutes refer to the binder of Reports and Recommendations dated July 7, 2004, that was sent to members in advance of the meeting. Italicization of a council action indicates a substantive change to the recommendations contained in the binder.

Public Comment Related to Trial Court Budget Issues

Chief Justice Ronald M. George noted that several members of Service Employees International Union No. 715 from Santa Clara County were present and introduced Kelly McCarthy, Yun jin Joo, Joaquin Alcantar, Jacqueline Malloy, and Judi Kirkham. None of the union representatives present indicated they they wished to address the council.

Approval of Minutes of June 23, 2004

Mr. William C. Vickrey noted that, with respect to the court-appointed counsel item, the council had taken two actions: (1) directed staff to respond to the issues and concerns raised in letters submitted about the Dependency Representation, Administration, Funding, and Training (DRAFT) program and, similarly, (2) directed the DRAFT Pilot Program Implementation Committee to carefully consider the issues and concerns raised in letters of comment on the DRAFT program. Mr. Vickrey asked that these directives be included in the list of council actions. The council approved the minutes of the June 23, 2004, meeting, with that change.

Judicial Council Committee Presentations

Executive and Planning Committee

Justice Richard D. Huffman, chair of the Executive and Planning Committee, reported that the committee had met once since the June council meeting, to develop the agenda and approve materials for the July meeting.

Policy Coordination and Liaison Committee

Judge Barbara Ann Zúñiga, vice-chair of the Policy Coordination and Liaison Committee (PCLC), reported that the committee had met once since the June council meeting. During that meeting, the PCLC took a support position on Assembly Bill 2905, which deals with relocation costs for public officials.

The committee was set to meet again on July 8, 2004.

Rules and Projects Committee

Justice Norman L. Epstein, chair of the Rules and Projects Committee (RUPRO), reported that the committee planned to meet twice before the August meeting, with the annual meeting for review of proposed rules planned for September 9. The committee had not met since the June meeting.

CONSENT AGENDA

No consent items were submitted for council action.

DISCUSSION AGENDA

Item 1 Methodology for Allocation of Fiscal Year 2004–2005 Unallocated Reductions for Trial Courts

Ms. Christine M. Hansen presented this item with the participation of Ms. Sheila Gonzalez, Ms. Christine Patton, Mr. Michael Roddy, and Ms. Vicki Muzny.

The Budget Act of 2004 will likely contain unallocated reductions in state trial court funding. The total amount of unallocated reductions included in the Governor's May Revision proposal is \$72.5 million, of which \$50 million represented a one-time reduction and \$20 million represented a permanent, ongoing reduction. In addition, the 2003 Budget Act included a reduction of \$2.5 million associated with administrative operations savings; this reduction is also ongoing.

Based on input and recommendations from the Trial Court Executive Management Budget Working Group, Court Executives Advisory Committee, and Trial Court Presiding Judges Advisory Committee, Administrative Office of the Courts (AOC) staff will present options and recommendations for allocating the ongoing and one-time reductions among the trial courts in an equitable manner. To minimize the impact of the reductions on the courts' operations statewide, the methodology will take into consideration such factors as adjusted baseline budget, growth funding, workload, and available reserves. The approved reductions should be implemented as soon as possible after enactment of the budget to enable courts to absorb them over the entire fiscal year.

Council action

The Judicial Council:

1. Approved the following actions to address a portion of the \$50 million in one-time allocations and \$20 million in ongoing allocations for the trial courts for fiscal year 2004–2005:
 - Ongoing reduction of \$900,000, generated by salary savings from the Assigned Judges Program (program 35);
 - Ongoing reduction of \$100,000 from the judicial salaries budget (program 25);
 - One-time reduction of \$1 million from the Assigned Judges Program; and
 - One-time reduction of \$8 million from the Trial Court Improvement Fund (savings that result from projects' being paid for through one-time savings in the General Fund generated by temporary cost-saving measures implemented in the judiciary budget).

2. Approved the utilization of trial court reserves, as recommended by the AOC executive team. This includes all amounts above \$100,000 or 10 percent of the fiscal year 2004–2005 annual allocations—whichever is greater—plus any confirmed legally committed reserves and funding set aside for critical projects and any items approved by the AOC executive team during the appeals process, which would be utilized as an offset for a portion of the fiscal year 2004–2005 one-time reduction.
3. *Adopted the following as an ongoing policy for reserves: “10 percent of annual allocations or \$100,000, whichever is greater, plus confirmed legally committed reserves and critical projects.” With respect to this reserve policy the council directed staff to*
 - a. *provide definitions to trial courts clarifying what qualifies as “legally committed reserves” and funding set aside for “critical projects,” and*
 - b. *present further recommendations on the implementation of the reserve policy at a subsequent council meeting.*
4. Approved the allocation of the remainder of the fiscal year 2004–2005 one-time reduction and the ongoing reduction, using the proposed methodology—which factors in case weights, adjusted base funding, clustering of courts by number of JPEs, weighted filings, and the following reduction levels:
 - Courts in the low reduction level would have a .8 percent reduction applied for the one-time reduction and no ongoing reduction;
 - Courts in the medium reduction level would have a 1.9 percent one-time reduction and a 1.3 percent ongoing reduction, for a total of 3.2 percent for the fiscal year; and
 - Courts in the high reduction level would have a 3.1 percent one-time reduction and a 2.1 percent ongoing reduction, for a total of 5.2 percent for the fiscal year.

Courts that have a reserve adjustment would receive a 50 percent one-time reduction credit against their additional one-time reduction.
5. Directed staff to review the adequacy of base funding for courts that are at the low end of the cost-per-filing comparison for their cluster, with the intent of submitting a request to the Judicial Council for fiscal year 2004–2005 to provide one-time emergency funds, if warranted, and seek ongoing permanent funding from the state Department of Finance in the fiscal year 2005–2006 budget process.

6. Delegate authority to the Administrative Director of the Courts to make adjustments to the allocations while we await final decisions on the reserves. A change in the amount of the reserves that can be applied to the reduction will affect the allocation to all courts.
7. Directed staff to present recommendations to the council at a future meeting to provide for reimbursement to courts that have experienced reductions in their levels of Trial Court Trust Fund (TCTF) reserves as a result of the implementation of this policy. The rate of reimbursement is not to exceed 50 percent of the excess TCTF reserves. Reimbursements are subject to an improvement in the state fiscal environment but should occur no later than June 2009. Any reimbursement will be subject to offsets in the affected court's one-time reductions as well as any budget augmentations secured to resolve ongoing underfunding issues. *The council instructed staff to return to it in August with criteria for reimbursing reserves when courts fall below the established reserve limit and have demonstrated need.*
8. Approve the allocation of the FY 2004–2005 \$2.5 million consolidated administration reduction, on a one-time basis, by applying a prorated reduction of the entire \$2.5 million against trial courts' FY 2004–2005 total baseline budget (excluding interpreter, court-appointed counsel, and reimbursable jury expenses), as displayed in column D of Attachment 2.
9. Authorized staff to redirect \$5 million from the Litigation Management Program, one time, to address the recently identified \$5 million in one-time reductions.

Item 2 Recommendation on Methodology and Allocation of \$22 Million Trial Court Security Reduction and New Security Funding Pending in the Fiscal Year 2004–2005 May Revision

Justice Richard D. Aldrich and Mr. Michael Roddy presented this item, with the participation of Ms. Hansen.

The state Budget Act of 2003 included General Fund reductions of \$11 million in fiscal year 2003–2004 and \$22 million in fiscal year 2004–2005 associated with the implementation of policies to achieve efficiencies in security practices in the trial courts. In addition, the May Revision for fiscal year 2004–2005 includes \$28.779 million in new funding for increases in salary, retirement, and other benefits for court security staff.

The Working Group on Court Security and AOC staff recommend that the Judicial Council approve the allocation of \$28.779 million in new security funding and the

ongoing \$22 million reduction in security funding, on a transitional basis, and the establishment of a \$4 million fund for courts that suffer severe effects from the transition.

Council action

The Judicial Council:

1. Approved the allocation of the \$28.779 million in new security funding pending in the State Budget, as indicated in column F of Attachment 1.
2. Approved the allocation of the \$22 million ongoing security reduction on a transitional basis, applying half of the reduction in a prorated manner (column C of Attachment 1) and utilizing the proposed methodology, applying standards to functional security areas (column D of Attachment 1), for the second \$11 million.
3. Approved the establishment of a \$4 million fund from the carryover of emergency funding from prior years. A court can apply for relief from the fund one time if it can demonstrate that the use of the recommended transitional reduction allocation methodology has had a severe adverse impact on its security plan in fiscal year 2004–2005. *A court may receive relief from this fund if its reduction is greater than it would have been had reductions been allocated on a prorated basis.*
4. Directed staff to continue working with county sheriffs and other stakeholder groups on the possible submission of a deficiency request for one-time security funding in fiscal year 2004–2005, to partially offset the reduction for that year.
5. Approved a permanent funding standard of 1.9 deputy sheriff positions per entrance screening station. The working group has agreed that this funding standard is appropriate and can be used for determining future court security budget allocations.
6. Approved a permanent funding standard of 1 sergeant position per 12 nonsupervisory security positions. The working group has agreed that this funding standard is appropriate and can be used for determining future court security budget allocations.
7. Approved a fiscal year 2004–2005 funding cap of 1.44 positions per judicial position equivalent in the areas of internal security, internal transportation, and courtroom security. The working group strongly believes that there is not enough information about court operations in these areas to develop standards that can be used for future funding. This funding cap is being used solely to

make the remainder of the \$22 million funding reduction, after the reductions for the other three functional areas have been established.

8. Directed the working group and staff to develop standards for internal security, internal transportation, and courtroom security.
9. Directed the working group and staff to conduct further analyses on holding cells, control rooms, and other areas not addressed in the funding standards. At this time, it is recommended that these areas be funded to the levels of projected fiscal year 2004–2005 actual positions and median salary and benefit costs.
10. Directed staff to present to the council the final standards in all security areas after they have been developed.
11. Directed staff to obtain information on security costs from courts that will open new facilities in fiscal year 2004–2005 or 2005–2006, so that a request can be submitted to the state Department of Finance for the funding to provide security for them.
12. Directed staff to bring to the council any recommended adjustments to the ongoing allocation of the \$22 million security reduction for fiscal year 2005–2006 after the final standards have been developed.
13. Adopted the Guidelines for Alternatives in the Provision of Court Security Services in the Trial Courts (Attachment 3) and directed staff to distribute them to the trial courts and sheriffs throughout the state, with both entities instructed to consider the guidelines in discussions toward carrying out specific security budget reductions and containing future growth in court security costs.
14. *Delegated to the Administrative Director of the Courts the authority to make technical adjustments to the recommended reductions in security funding.*

Item 3 Allocation of New Trial Court Funding Included in the Pending Fiscal Year 2004–2005 Budget

Ms. Christine M. Hansen presented this item.

The Budget Act of 2004 is expected to provide new funds for trial courts in a variety of program areas. The funding was based on budget proposals submitted at the direction of the council at its August 29, 2003, meeting. AOC staff recommends to the Judicial Council an approach toward allocation of funds for court staff salaries and benefits, court staff retirement, increased charges for county-provided services, subordinate judicial officer salaries and benefits, costs of prisoner hearings, and costs of homicide trials. The

recommendations are contingent on the levels of funding remaining as in the May Revision.

Council action

The Judicial Council:

1. Directed staff to pursue with the state Department of Finance additional funding for the full cost of fiscal year 2004–2005 salary and benefit increases as current-year adjustments during fiscal year 2004–2005.
2. Deferred allocation of any funding provided in the Budget Act for the salary and benefit needs of the trial courts, pending further discussions with the state Department of Finance. If additional funding is not approved, staff will consider funding options and present a recommendation to the council at a future meeting.
3. Authorized the allocation of funding included in the pending State Budget for fiscal year 2003–2004 increases to the courts, consistent with the manner in which increases were identified in the Spring Proposal (column A of Attachment 1).
4. Deferred the allocation of any funding for fiscal year 2004–2005 retirement increases.
5. Directed staff to pursue with the state Department of Finance funding for all fiscal year 2004–2005 increases in retirement costs, and the additional fiscal year 2003–2004 increases not included in the pending State Budget, as current-year adjustments during fiscal year 2004–2005.
6. Allocated funds for increases in county-provided services to those courts that have increases occurring in fiscal year 2004–2005 and that are included in the Spring Finance Proposal, as indicated in column B of Attachment 1.
7. Allocated \$1.438 million for salary and benefit increases for subordinate judicial officers that occurred in fiscal year 2003–2004, as indicated in column C of Attachment 1.

INFORMATIONAL ITEMS

Circulating Orders

No circulating orders had been approved since the last business meeting.

Appointment Orders

No appointment orders had been signed since the last business meeting.

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 to the Judicial Council