

JUDICIAL COUNCIL MEETING
Minutes of the August 14, 2009, Meeting
San Francisco, California

Chief Justice Ronald M. George, Chair, called the meeting to order at 8:45 a.m. on Friday, August 14, 2009, 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, Tani Cantil-Sakauye, Brad R. Hill, and Richard D. Huffman; Judges George J. Abdallah, Jr., Lee Smalley Edmon, Peter Paul Espinoza, Terry B. Friedman, Carolyn B. Kuhl, Thomas M. Maddock, Dennis E. Murray, Winifred Younge Smith, Sharon J. Waters, and James Michael Welch; Mr. Raymond G. Aragon, Mr. Anthony P. Capozzi, Mr. Joel S. Miliband, Mr. James N. Penrod, and Mr. William C. Vickrey; advisory members: Judge Kenneth K. So; Commissioner Lon F. Hurwitz; Mr. Michael D. Planet, and Mr. Michael M. Roddy.

Absent: Senator Ellen M. Corbett, Assembly Member Mike Feuer, and advisory member Judge Mary E. Wiss.

Others present included: Justice Kathleen E. O’Leary; Judges Andrew P. Banks, Mary Ann O’Malley, Michael P. Vicencia, David S. Wesley, Erica R. Yew, and William J. Murray, Jr.; Mr. Philip Brozenick, Ms. Mary Flynn, Ms. Nancy Halpin, Mr. David Hoffman, Ms. Beth Jay, Ms. Rosa Junqueiro, Ms. Miriam Aroni Krinsky, Mr. Nicholas Kozuchenko, Mr. Frederick K. Ohlrich, Ms. Genevieve Richardson, and Ms. Kim Turner; **staff:** Mr. Peter Allen, Ms. Gwen Arafiles, Mr. Dennis Blanchard, Ms. Eunice Calvert-Banks, Ms. Nancy Carlisle, Mr. Philip Carrizosa, Mr. James Carroll, Ms. Tina Carroll, Mr. Steven Chang, Mr. Curtis L. Child, Mr. Kenneth Couch, Ms. Diane E. Cowdrey, Mr. Dexter Craig, Mr. Patrick Danna, Mr. Kurt Duecker, Mr. Mark W. Dusman, Mr. Robert Emerson, Mr. Ekuike Falorca, Mr. Malcolm Franklin, Ms. Pearl Freeman, Mr. Ernesto V. Fuentes, Mr. Scott Gardner, Mr. David Glass, Mr. Joe Glavin, Mr. Ruben Gomez, Mr. Burt Hirschfeld, Ms. Lynn Holton, Ms. Bonnie Hough, Mr. Kenneth L. Kann, Mr. Gary Kitajo, Ms. Leanne Kozak, Ms. Maria Kwan, Ms. Susan McMullan, Mr. Frederick Miller, Mr. Stephen Nash, Mr. Joseph Nguyen, Ms. Diane Nunn, Mr. Patrick O’Donnell, Mr. Ronald G. Overholt, Mr. Alan Oxford, Ms. Jody Patel, Ms. Christine Patton, Mr. Christopher Rey, Ms. Mary M. Roberts, Ms. Anne Ronan, Ms. Rona Rothenberg, Ms. Robin Seeley, Ms. Jeannine Seher, Ms. Marlene Smith, Mr. Curt Soderlund, Ms. Nancy E. Spero, Mr. Lee Willoughby, and Ms. Josely Yangco-Frona.

Public Comment Related to Trial Court Budget Issues

Chief Justice George noted that no requests to address the council had been received.

Approval of Minutes

The minutes of the March 12, April 23, and April 24, 2009, business meetings were approved.

Judicial Council Committee Presentations

The minutes of the meetings of the Judicial Council's internal committees—the Executive and Planning Committee, Rules and Projects Committee, and Policy Coordination and Liaison Committee—can be found in the Committee Reports tab in the Judicial Council binders. The minutes are also linked to the Judicial Council Committee Presentations title on the business meeting agenda, which is posted on the California Courts Web site at www.courtinfo.ca.gov/jc/meetings.htm.

Executive and Planning Committee

Justice Richard D. Huffman, chair of the Executive and Planning Committee (E&P), reported that the committee had met 13 times since the April 24, 2009, Judicial Council meeting: by teleconference on June 1, July 7, July 13, and July 22 and in person on May 11 and August 12. E&P also deliberated via e-mail on June 5, June 9, June 22, July 21, July 23, July 27, and July 28.

Justice Huffman reported that on May 11 the committee confirmed the conversion of five vacant subordinate judicial officer (SJO) positions in the Superior Courts of Alameda, Los Angeles, Orange, Santa Barbara, and Sonoma Counties, all effective July 1, 2009.

The committee then acted on behalf of the Judicial Council and adopted a Courthouse Naming Policy on an interim basis. The committee also directed the Administrative Director of the Courts to report to the council on the policy's implementation with any further recommendations by December 2011.

Also on May 11, the committee reviewed the nominations for upcoming council vacancies and determined its recommendations to the Chief Justice.

On June 1, the committee received a summary of the council members' responses to a survey of potential topics for future issues meetings and provided guidance to staff regarding complying with the council's requests when developing these meetings in the coming year.

The committee also reviewed summaries of investment return information for fiscal years 2007–2008 and 2008–2009 and approved, on behalf of the Judicial Council, additional investments for trial court monies.

Lastly, on June 1, the committee reviewed and approved recommendations regarding funding to develop and implement settlement support services for self-represented

litigants with money from the Trial Court Improvement Fund and Civil Mediation and Settlement Project Awards from the Judicial Administration Efficiency and Modernization Fund.

On June 9, the committee reviewed and approved a request from Judge Maureen Duffy-Lewis of the Superior Court of Los Angeles County for an unpaid sabbatical leave for the period September 21, 2009, to February 8, 2010.

On June 22, the committee confirmed the conversion of one vacant SJO position in each of the Superior Courts of San Francisco and Tulare Counties, effective July 1, 2009.

The committee also approved a request submitted by the Superior Court of Yolo County to exempt a vacant referee position from conversion to a judgeship, allowing the court to rehire to fill the vacancy, effective immediately.

During the July 7 meeting, the committee reviewed and approved, on behalf of the Judicial Council, a proposal that the state pay the part of a judge's or justice's retirement contribution that corresponds to any voluntary partial salary waiver.

The committee reviewed a staff recommendation to amend the California Rules of Court in conformance with the revised governance policies approved by the council in June 2008. It confirmed the proposed rules amendment was accurate and authorized staff to bring the proposal to the Rules and Projects Committee with E&P's recommendation to the Judicial Council to approve it at the August 14, 2009, meeting.

The committee approved initiation of a proposal to amend rule 10.2 of the rules of court to preclude presiding judges, with some exceptions, from concurrent service on the Judicial Council.

The committee also reviewed and approved a staff recommendation to revise the 2009–2010 allocation groups for SJO conversions and confirmed the conversion of a vacant commissioner position in the Superior Court of Orange County, effective July 7, 2009.

On July 13, the committee, acting on behalf of the Judicial Council, granted a request for an exception to the Judicial Council directive regarding minimum court clerk office hours. The exception request was from the Superior Court of Mendocino County to permit a court closure on July 15, 2009.

The Superior Court of San Bernardino County submitted a report on its plan to manage its budget by reducing hours in certain courts and the closing of a court branch. E&P found that no exception is required under the Judicial Council's directive regarding minimum court clerk office hours.

In light of the current budget situation in California and the likelihood of receiving future requests for such exceptions regarding court closures, the committee then discussed possible future procedures for handling such requests and requested that the AOC's regional administrative directors, in conjunction with the AOC's Office of the General Counsel, develop guidelines for E&P to refer to when determining exception requests in the future.

On July 21, E&P confirmed the conversion of three vacant SJO positions in the Superior Court of Los Angeles County. To date, 12 of the 16 SJO positions authorized for conversion in fiscal year 2009–2010 have been converted.

On July 22, the committee met to set the agenda for the August 14, 2009, council meeting.

During that meeting the committee also reviewed the annual report of the Trial Court Facility Modifications Working Group for fiscal year 2008–2009 and approved the working group's recommendations for funding and implementation of trial court facility modifications in fiscal year 2009–2010.

Justice Huffman reported that E&P reviewed a report submitted for the special Judicial Council meeting on July 29, 2009. The committee received a number of requests from individuals to speak at the July 29 meeting and evaluated those requests.

On July 28, E&P, acting on behalf of the Judicial Council, in advance of any mandatory statewide court closures, granted requests for court closures from the Superior Courts of Ventura and Mendocino Counties. The Superior Court of Ventura County was approved for a court closure day on the third Wednesday of each month, starting August 19, 2009. The Superior Court of Mendocino County was approved for a court closure day on August 19, 2009, similar to that which the committee had approved for July 15, 2009.

On August 12, E&P met to review final budget reports and finalize the agenda for the August 14 council business meeting. At that time the committee also reviewed and approved recommendations by the AOC's Office of the General Counsel regarding proposed criteria for use in evaluating requests for exceptions to the Judicial Council's Operating Guidelines and Directives on minimum hours for trial court clerk's offices. E&P also reviewed Judicial Council advisory committee nominations and formulated recommendations to the Chief Justice regarding vacancies on the Judicial Council's advisory committees.

Policy Coordination and Liaison Committee

Justice Marvin R. Baxter, chair of the Policy Coordination and Liaison Committee (PCLC), reported that the committee had met 6 times since the April 24, 2009, Judicial Council meeting.

Justice Baxter reported that PCLC took positions on 10 bills, including legislation requiring the removal of judicial officers' personal contact information from Internet Web sites, the transfer of jurisdiction of probationers, probation supervision, court staff retirement, dependent children, adoption, and probate. In addition, the committee approved for circulation for comment a proposed amendment to the Code of Civil Procedure regarding electronic service of documents.

Ten council-sponsored bills continue to move through the Legislature or have been signed into law. Assembly Bill 5 relates to discovery of electronically stored information, and Senate Bill 319, concerns juror sanctions. Justice Baxter announced that Judge Andrew P. Banks, chair of the working group that developed the AB 5 legislation, would be making a presentation to the council at today's meeting on a proposed rule of court to implement AB 5.

The Legislature will return from its summer recess on August 17. The last day for each house to pass bills is September 11, and the Governor will have until October 11 to sign or veto bills. PCLC will meet in the meantime several times to address last-minute bills and amendments.

Rules and Projects Committee

Presiding Judge Dennis E. Murray, chair of the Rules and Projects Committee (RUPRO), reported that the committee had met 6 times since the April 24, 2009, Judicial Council meeting: convening by teleconference on June 10, July 8, and July 14 and deliberating by e-mail on June 2, July 17, and August 7.

Judge Murray reported that on June 10 the committee met by telephone to consider two proposals to circulate for public comment on a special cycle. Following public circulation and further review by the advisory committees and RUPRO, the proposals are expected to come before the Judicial Council at its October 2009 business meeting.

On July 8, the committee met to review proposed revisions to the criminal jury instructions. The committee recommends approval of this proposal, which is Item 2 on today's consent agenda.

On July 14, the committee met to review a proposal to amend the rules of court to conform them to the new governance policies adopted by the Judicial Council in June 2008. The committee recommends approval of this proposal, which is Item 3 on today's consent agenda.

On June 2, the committee reviewed updated income figures on a fee waiver form that was approved by the council at its April 2009 meeting. The committee recommended approval of this correction, and it was adopted by E&P on behalf of the council.

On July 17, the committee reviewed a rule proposal for electronic discovery. The committee recommended approval of the proposal, which is Item 8 on today's discussion agenda.

Lastly, on August 7, the committee reviewed a rule proposal to implement the Judicial Council's action at the July 29 special business meeting concerning court closures. This proposal is being circulated for a one-week period, ending August 17, 2009. This proposal may be sent to the council as a circulating order.

Judicial Council Court Visit Report

Justice Tani Cantil-Sakauye, Team Leader, and Ms. Jody Patel, AOC Northern/Central Regional Office, made a presentation on court site visits to the Superior Courts of San Joaquin and Sacramento Counties with the participation of Ms. Josely Yangco-Frona.

Chief Justice's Report

Chief Justice George reported on the activities in which he had been involved since the last Judicial Council meeting.

Chief Justice George spoke with legislators in Sacramento on the state budget resolution and the implications of court closures, including a meeting earlier in the week with Senate President pro Tem Darrell Steinberg. He met on similar matters in Los Angeles with Governor Arnold Schwarzenegger and Los Angeles County Sheriff Lee Baca. He discussed appellate court security with Commissioner J. A. Farrow of the California Highway Patrol. He also met with the California Judges Association president, Judge Mary E. Wiss, on strategies and matters related to the recent budget outcomes.

Advocating for federal economic stimulus funding for the California Court Case Management System (CCMS), the Chief Justice went to Washington, D.C., accompanied by Supreme Court Justice Ming W. Chin, Mr. William C. Vickrey, Mr. Ronald G. Overholt, Mr. Curtis L. Child, and Ms. Sheila Calabro. They met with representatives of the U.S. Departments of Justice and Homeland Security and legislative leaders, including Senator Dianne Feinstein, Senator Barbara Boxer, House Speaker Nancy Pelosi, and other Democratic and Republican members of Congress. A delegation from the Department of Homeland Security will visit the AOC Southern Regional Office for a briefing on CCMS during the first week of September.

The Chief Justice reported on his appearances since the previous council meeting at the Lawyers' Club of San Francisco; the American Bar Association; the Peace Officers annual memorial dinner with the justices of the Supreme Court; a steering committee meeting on former U.S. Supreme Court Justice Sandra Day O'Connor's annual conference regarding fair and impartial courts in Washington, D.C.; and a meeting with the editorial board of the *Los Angeles Times*, which resulted in an editorial on judicial

independence. He made a presentation to members of the L.A. Times Historical Society and attended a biannual State/Federal Judicial Council meeting on matters of mutual concern among state and federal judges. At the June 30 meeting of the California Blue Ribbon Commission on Children in Foster Care, he announced that he would extend the commission's charge through June 30, 2012, to oversee recommended reforms of the state's juvenile dependency courts and foster care system. He also attended a gathering of the Legal Aid Society–Employment Law Center in San Francisco to present its annual Mathew O. Tobriner Public Service Award. He visited the B. E. Witkin Judicial College of California for new judges, venued this year in San Jose while the University of California, Berkeley campus facility routinely used for this purpose is refurbished. The Judicial College is a program mandated by rule of court in judicial education requirements and requires on-site attendance in order to allow judges a hands-on learning opportunity and interaction with faculty.

At a meeting of the Conference of Chief Justices in New Mexico, the Chief Justice exchanged perspectives on how various state judiciaries are coping with budget crises beyond California. Of the states represented, North Dakota and Montana are the only two not facing severe financial hardship, due to state revenue based on energy resource production.

The conference was an opportunity, as Justice Louis Brandeis stated years ago, for 48 state laboratories to share solutions to common issues. Most of the state court systems, operating under budget constraints, were implementing ad hoc measures to solve their fiscal problems, with little public notice: court employee layoffs; elimination of drug courts, domestic violence courts, or complex litigation courts; and creating case backlogs and dismissals. The Chief Justice remarked that the end result of these varied measures is to diminish the quality of justice. These reactive measures reinforce the wisdom in the action taken by California's Judicial Council last month to exercise its authority, with the Legislature's and Governor's accord, to close the courts one day a month and reevaluate the outcome in January. Given the council's mission statement to improve and increase access to justice, court closure is a painful step to take. However, it better preserves access to justice than engaging in other measures that would be even more deleterious to the quality of justice and harmful to the public.

He acknowledged the opposition, inside and outside of California's judiciary, to the authority the council has been given to declare one uniform day each month for court closures statewide in order to manage severely reduced resources for the judicial branch. He observed that some of the most vocal opposition to court closures has been presented by individuals who have shown little or no interest in the past in the council's efforts to maintain and increase access to justice.

As part of a voluntary effort of many California judges and justices to join the branch's cost-saving efforts, the Chief Justice has personally committed to voluntarily waive one

day's salary each month, an option that amounts to a 4.62 percent pay reduction. He encourages all justices and judges to set the same example and has issued an appeal to all judicial officers to consider a voluntary judicial salary waiver. Ms. Marcia M. Taylor, director of the AOC Appellate and Trial Court Judicial Services Division, informed Chief Justice George that 218 judges from the Assigned Judges Program have voluntarily waived a compensation equivalent to 430 days of donated time. He commended these volunteers and expressed his hope that this response sets an example for active judges to donate one day's work each month, especially now that legislation has allowed retirement system benefits to be adjusted for those who volunteer for the judicial salary waiver. He added that all should set an example and not ask of court and judicial branch employees, who are subject to involuntary furloughs, what judges and justices are not willing to undertake themselves. The Chief Justice anticipates that a substantial majority of judges will elect to join the retired and assigned judges in this voluntary measure. He noted his appreciation to the California Judges Association and Judicial Council members for supporting this effort.

The Chief Justice expressed his gratitude to the five departing council members, who contributed so much during their tours of service, signaling the end of their service at the meeting's conclusion: Judges Peter Paul Espinoza, Carolyn B. Kuhl, Thomas M. Maddock, and Mary E. Wiss; and Mr. Raymond G. Aragon. He indicated how pleased he was that the new members bring to the council's work a wealth of wide experience, extending across all parts of the state. He concluded by stating, "We're very blessed to have such terrific talent contributing time and effort to the work of the council for the benefit of the entire California judiciary and the public we serve."

This concluded the Chief Justice's report.

Administrative Director's Report

Mr. William C. Vickrey reported on the following matters that occurred since the last council meeting.

The Administrative Director of the Courts thanked Justice Cantil-Sakauye for leading the council's visits to the Superior Courts of San Joaquin and Sacramento Counties and for her earlier report on those visits. He observed that although the court visits require time on the part of council members, the visits provide valuable information that contributes to council deliberations during the course of the year.

Adding to the Chief Justice's remarks about the retired judges' voluntary participation in the judicial salary waiver, Mr. Vickrey noted that there are on average more than 100 retired judges who continue to serve on assignment in the courts each day as part of the Assigned Judges Program. Eighteen recent retirees have just joined the program and recently completed an orientation to begin their new role with the branch.

He raised the issue of the branch Resource Allocation Study (RAS model), commenting that in the past year the council has discussed the need to update assessment methodology for statewide judgeship needs and the distribution of resources for judicial personnel. The method for assessing judgeship needs has been affected by changes in state and federal requirements that affect workload activities and caseload count, leading the AOC to appoint the Senate Bill 56 Working Group to update the RAS model. The effort will include follow-up with the Legislature on the working group's findings and recommendations.

A Risk Assessment Pilot Project led by Mr. Roger K. Warren has received more than \$300,000 in grant awards from the State Justice Institute and the National Institute of Corrections. The funding is for pilot projects on the use and results of evidence-based sentencing in addressing the causes of crime and recidivism. Mr. Vickrey noted the ongoing discussion of evidence-based sentencing in the Legislature and two pieces of related legislation introduced recently in the state Senate. One, authored by Senator Mark Leno, would provide \$45 million in grants to be administered by the Judicial Council for probation departments to implement evidence-based practices with the expected outcome that the cost savings would generate a revenue stream to enhance probation services. The program requires evaluation and would serve to further the partnership between courts and probation departments, while advancing the council's interest in strengthening probation and its services to the courts. Another bill, introduced under the leadership of Senator Denise Moreno Ducheny, would provide \$10 million for piloting court reentry programs to address parole violations, a subject of much interest in the Legislature. This initiative will require a partnership between the AOC and the California Department of Corrections and Rehabilitation, with the council assuming oversight of the \$10 million allocated to support the courts, judges, and court staff involved in hearings under the programs.

The Superior Court of San Bernardino County is expected to make an early transition to the Phoenix Human Resources System in anticipation of its county's withdrawal of payroll services in the upcoming year. The loss of county administrative services raises concerns in times when court operations are already subject to fiscal restraints.

Planning efforts are under way for 33 new courthouses, including the completion of two courthouse projects in Santa Ana and Fresno Counties. In Santa Ana, the courthouse of the Court of Appeal, Fourth Appellate District, Division Three, was on time and under budget. The site selection for this courthouse had developed into a controversy and therefore that decision was made by the council in 2005. Mr. Vickrey commented that it is rewarding to find that the site now meets with general approval. The courthouse is viewed as the crown jewel of the Orange County government center in Santa Ana and all concerned seem pleased with the outcome. Mr. Vickrey also reported on the completion of the new Fresno Juvenile Delinquency Court. Justice Brad R. Hill, a member of the council, made an appearance at the court's opening

ceremony. Mr. Vickrey credited the project as a successful partnership between the Superior Court of Fresno County, Fresno County, and the AOC Office of Court Construction and Management (OCCM). Some financing for the facility came from state construction funds.

Mr. Vickrey summarized other capital projects: 21 projects in the first phase of site selection and acquisition at a total value of \$3 billion with 5 projects in the design phase, 3 projects under construction, and another 26 projects in the planning stage. The proposal phase for the Long Beach Courthouse, a performance-based infrastructure project, is beginning. Chief Deputy Director Ronald G. Overholt has been engaged in the Long Beach Courthouse project to establish cooperation among the City of Long Beach, Los Angeles County, and the superior court and to involve the executive and legislative branches in the bid selection for a developer. A final decision as to the developer is expected by December. The California Environmental Quality Act declaration for the project was signed a week earlier with no findings of environmental issues. The property contains two blocks free of buildings, with approval to close the street between those two blocks for construction. This project is an opportunity for the judicial branch, the Governor's office, and the Legislature to evaluate the performance-based infrastructure model for courthouse construction.

The Office of Court Construction and Management completed approximately 1,000 renovation projects to correct severe building deficiencies at a cost of \$18 million. More than 700 projects are under way, along with ongoing daily facilities maintenance, as part of the AOC's courthouse facilities management function. Mr. Lee Willoughby, director of OCCM, and his staff in Sacramento are responsible for responding effectively to more than 6,000 calls a month, received seven days a week, 24 hours a day—the problems range from fires and plumbing to an infestation of bats.

Mr. Vickrey pointed out the task forces and working groups that have met since the council's last meeting. He reminded members of the nearly 350 judges and the large number of court staff and attorneys who volunteer their time on these judicial branch projects to review issues and provide proposals on branchwide improvements to benefit the public and ensure the administration of justice. Among those groups, a Presiding Judges/Court Executive Officers Rules and Roles Analysis Working Group has formed to examine the roles and responsibilities of presiding judges and court executive officers in the evolution from county-funded to state-funded court operations. The working group is charged with recommending rules revisions which clarify the roles of presiding judges and court executive officers as well as addressing other related administrative issues.

Several regional discussions with the presiding judges have occurred in response to the council's direction to the AOC to assure that technical assistance is provided to the courts as they implement the council's court closure decision. Most recently,

representatives of 33 courts from around the state participated on a conference call briefing each other on experiences and lessons learned from court closures.

Mr. Vickrey highlighted the requirement in Senate Bill 1407 that the branch, in connection with courthouse construction, seek “economic opportunities” from local governments and others to better maximize the benefits to the state. The AOC has requested local governments to inform us of any such opportunities for consideration in siting new construction. Mr. Vickrey characterized these ventures as successful partnerships and expressed appreciation of the significant support contributed from local governments in the form of free and reduced cost of land and other support services.

Referring to the California Court Case Management System, Mr. Vickrey called attention to the leadership of Supreme Court Justice Ming W. Chin and Judge Terence L. Bruiniers, chair and vice-chair of the Court Technology Advisory Committee, for providing policy oversight on the system’s statewide development. Beyond the advisory committee, hundreds of judges and a large number of court staff across the state are assisting by serving as subject-matter experts to review software and evaluate the system’s functionality. Mr. Vickrey and Mr. Ronald G. Overholt witnessed at the Court Technology Advisory Committee’s last meeting an impressive demonstration of the system’s e-filing capability. The AOC remains on target to have the system’s V-4 software completed by the end of 2010. Other system features that the council has directed the AOC to include are progressing, such as the statewide protective order registry, which will provide important information on court orders for use by courts and law enforcement officers. Twenty-five courts have expressed interest in eventually accessing this feature of the system.

Judges and judicial branch employees have access to a wide selection of education and training electives, in addition to requisites such as the Judicial College and new judges’ orientation required by the California Rules of Court, provided through the AOC Education Division/Center for Judicial Education and Research (CJER). To save costs, CJER has rescheduled many offerings on an alternating-year schedule. A number of programs are offered regionally for the convenience of staff and judges. Regional programs can be tailored to court-specific areas of interest.

According to the most recent judicial vacancy report, nine new superior court judgeships have been authorized as a result of the conversion of vacant commissioner positions. Mr. Vickrey remarked that the trend in the number of judicial vacancies appears to have tapered down from 8 percent to 3 percent.

Finally, Mr. Vickrey recommended two reports to the council members for their information: *Justice Is the Business of Government: Report of the 2009 Summit on the Critical Role of Fair and Impartial State Courts*, published by the American Bar

Association in collaboration with the National Center for State Courts (NCSC); and the *National Affairs Briefing Book*, published by the National Center for the State Courts. The NCSC briefing book describes the effects of proposals for federal legislation and programs on state courts, including pending legislation to authorize \$15 million in federal grants to states to support state court interpreter programs and a tax intercept program that authorizes the U.S. Department of the Treasury to intercept tax refunds and remit to state courts the amounts owed for unpaid fines and penalties.

Mr. Vickrey indicated that he would be happy to respond to any questions. There being none, his report was concluded.

CONSENT AGENDA (Items 1–3)

Item 1 Equal Access Fund: Distribution of Funds for IOLTA-Formula Grants

The State Bar Legal Services Trust Fund Commission submitted its annual report on distribution of Equal Access Fund grants. In that report, the commission requested that the Judicial Council approve distribution of \$14,625,000 according to the statutory formula set out in the State Budget and reported that it has complied with the guidelines set forth for distribution of those funds. The Budget Act authorizing the Equal Access Fund provides that the Judicial Council must approve the commission's recommendations if the Judicial Council determines that the awards comply with statutory and other relevant guidelines.

Council action

The Judicial Council voted to follow the recommendation of the State Bar Legal Services Trust Fund Commission and approved the distribution of \$14,625,000 in Interest on Lawyers' Trust Accounts (IOLTA) Formula Grants for fiscal year 2009–2010, according to the terms of the State Budget, and approved the commission's determination that the proposed budget of each individual grant complies with statutory and other guidelines.

Item 2 Criminal Jury Instructions: Approve Publication of New and Revised Instructions

The Advisory Committee on Criminal Jury Instructions recommended approval of the publication of the revisions and additions to the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*. The additions and revisions will improve the clarity, accuracy, and breadth of the instructions.

Council action

The Judicial Council, effective August 14, 2009, approved for publication under

rule 2.1050 of the California Rules of Court the criminal jury instructions prepared by the Advisory Committee on Criminal Jury Instructions. The new and revised instructions will be officially published in a new edition of the *Judicial Council of California Criminal Jury Instructions*.

Item 3 Judicial Administration Rules: Conforming to Policy and Practice (amend Cal. Rules of Court, rules 1.4, 10.1, 10.2, 10.10, 10.11, 10.12, 10.13, 10.14, 10.30, 10.34, 10.70, 10.80, 10.81, and 10.101; renumber rule 10.45 as rule 10.107)

This proposal from the Executive and Planning Committee and the Administrative Office of the Courts conformed the California Rules of Court to the new governance policies adopted by the Judicial Council in June 2008. The governance policies established the Judicial Council's internal operating guidelines, including how the council makes policy; how it is organized; the responsibilities of its members, officers, and committees; its relationship with advisory committees and task forces; and its relationship with the AOC. With these amendments, the judicial administration rules of court reflect the council's internal operating procedures as stated in the council's new governance policies.

Council action

The Judicial Council, effective August 14, 2009, to be consistent with the revised Judicial Council governance policies adopted in June 2008:

1. Amended rules 1.4, 10.1, 10.2, 10.10, 10.11, 10.12, 10.13, 10.14, 10.30, 10.34, 10.70, 10.80, 10.81, and 10.101 of the California Rules of Court; and
2. Renumbered rule 10.45 as rule 10.107.

DISCUSSION AGENDA (Items 4–8)

Item 4 Court Facilities: Site Selection and Acquisition Policy

Mr. Lee Willoughby, Mr. Burt Hirschfeld, Ms. Eunice Calvert-Banks, and Ms. Rona G. Rothenberg, AOC Office of Court Construction and Management, presented this item.

The Judicial Council adopted the *Site Selection and Acquisition Policy for Court Facilities* on June 29, 2007. Since then, the AOC has been using the policy to guide site selection and acquisition for nine new courthouse projects initially funded in fiscal year 2007–2008. Based on this experience, the AOC recommended several refinements to the policy to identify the conditions in which sites with various characteristics may or may not be considered, selected, or acquired for court capital projects and to clarify the responsibilities of the AOC and the project advisory group selected by each court in site evaluation and selection. The refinements included

revisions suggested by members of the courts. Public comments to the proposed policy revisions and responses were published as part of the report.

Council action

The Judicial Council, effective August 14, 2009, adopted the revised *Site Selection and Acquisition Policy for Judicial Branch Facilities*.

Item 5 National Pro Bono Week Celebration Resolution and Approval of Dissemination of Pro Bono Toolkit

Justice Kathleen E. O’Leary, chair, Task Force on Self-Represented Litigants; Ms. Nancy Halpin, pro bono attorney, Latham & Watkins LLP; Ms. Genevieve Richardson, director of pro bono activities, Bay Area Legal Aid; and Ms. Bonnie Hough, AOC Center for Families, Children & the Courts, presented this item.

The American Bar Association has designated the week of October 25–31, 2009, as the first National Pro Bono Week Celebration. The celebration offers an opportunity to recognize the valuable pro bono contributions made by lawyers throughout the year and to increase pro bono participation to help narrow the justice gap. In recognition of this event, the Judicial Council’s Task Force on Self-Represented Litigants prepared a Pro Bono Toolkit to assist judges in encouraging pro bono service by California attorneys.

Council action

The Judicial Council adopted a resolution that recognizes the National Pro Bono Week Celebration. The council also approved dissemination of a Pro Bono Toolkit that will provide guidance to judges on ways that they can encourage pro bono service by California attorneys.

Thank-You Letter From the Superior Court of Alpine County

Following the break, Administrative Director of the Courts William C. Vickrey read a letter from Presiding Judge David L. De Vore of the Superior Court of Alpine County. Presiding Judge De Vore expressed his thanks to AOC staff, Ms. Jody Patel, Mr. Chad Finke, Mr. Frank Koenig, Mr. Steven Crooks, Mr. Fred Stetson, and Ms. Hiroko Nagata as well as other AOC staff who worked closely with the court and Alpine County, to engage an exterminator to treat the county-owned historic courthouse for a bat infestation. In the letter, Presiding Judge De Vore praised all of the AOC staff who assisted in obtaining an emergency closure order and eradicating the problem with a minimum of disruption of service to the public.

Item 6 Fiscal Year 2010–2011 Budget Proposals for the Supreme Court, Courts of Appeal, Judicial Council/Administrative Office of the Courts, and Trial Courts

Mr. Stephen Nash, Ms. Gwen Arafiles, and Mr. Steven Chang, AOC Finance Division, presented this item.

Approval of the Judicial Council is required before submission of budget requests for the Supreme Court, Courts of Appeal, Judicial Council/Administrative Office of the Courts, and trial courts. Budget change proposals (BCPs) for fiscal year 2010–2011 are due to be submitted to the California Department of Finance by September 14 of this year. Action by the council at its August business meeting was needed to enable staff to transmit proposals to the Department of Finance by the due date that would address various service and programmatic needs in the next fiscal year.

Council action

The Judicial Council, effective August 14, 2009:

1. Approved the submission of budget change proposals to the state Department of Finance for FY 2010–2011 that will communicate funding needs identified on behalf of the Supreme Court, Courts of Appeal, Judicial Council/Administrative Office of the Courts, and trial courts. The BCPs identified baseline resource needs associated with increased costs and workload related to the provision of services to the courts and the public, as well as internal infrastructure needs to support judicial branch operations;
2. Delegated authority to the Administrative Director of the Courts to make technical changes to these BCPs as necessary to address updated information, including the ability to develop additional proposals to meet any critical needs identified during the development of the 2010–2011 State Budget; and

The council discussed the impact on the trial courts of recently announced additional one-time funding reductions. Mr. Vickrey recommended and the council:

3. Approved that staff include a letter with the BCPs to document the impact of the reductions and to propose ways in which some of the reductions facing the trial courts may be offset, reduced, or made limited term; and directed staff to forward a copy of the letter to legislative leaders.

Item 7 Recommendations Regarding Possible Reduction Adjustments for Severely Underresourced Courts

Mr. Stephen Nash, AOC Finance Division, presented this item.

In response to direction by the Judicial Council at its July 29, 2009, business meeting, staff presented options for lessening the impact of the reductions allocated to the most underresourced courts as identified by the Resource Allocation Study (RAS) model, with consideration given to the level of the courts' fund balances.

Council action

The Judicial Council was presented with five options regarding allocation adjustments for severely underresourced courts. During the discussion, a sixth option was proposed and approved. The Judicial Council, effective August 14, 2009:

- Approved a one-time offset of \$1,015, 854 for the Superior Court of San Joaquin County.¹
- Approved the allocation of the \$1,015, 854 one-time reduction offset of the Superior Court of San Joaquin County to be proportionately distributed as a one-time reduction among the other fifty-seven trial courts, increasing each court's share of the \$190.13 million ongoing reduction.
- The council also directed AOC staff to monitor the financial challenges and issues in the eight other courts that had been identified as at least 30 percent underresourced based on the RAS methodology—the Superior Courts of Fresno, Glenn, Placer, Sacramento, San Bernardino, Tehama, Tulare, and Yuba—and to make recommendations regarding allocations that might be needed in response to unexpected financial issues that may arise.

Item 8 Electronic Discovery: Early Case Management (amend Cal. Rules of Court, rule 3.724)

Judge Andrew P. Banks, chair, Discovery Subcommittee of the Civil and Small Claims Advisory Committee, and Mr. Patrick O'Donnell, AOC Office of the General Counsel, presented this item.

The Civil and Small Claims Advisory Committee recommended that rule 3.724 of the California Rules of Court be amended to require parties in civil cases to meet and confer regarding issues relating to the discovery of electronically stored information before the initial case management conference. The rule amendment will ensure that parties and the courts address issues relating to electronic discovery early in the course of litigation. The rule amendment will implement and make more effective Assembly Bill 5, new legislation on the discovery of electronically stored information.

¹ The Superior Court of San Joaquin County's fund balance had been adjusted downward by an additional \$6.4 million for local courthouse construction fund monies that were incorrectly transferred to the court's operating fund instead of the state Court Facilities Trust Fund, as cited by the AOC Internal Audit Services.

Council action

The Judicial Council, effective August 14, 2009, amended rule 3.724 of the California Rules of Court to require that parties, when they meet and confer before the initial case management conference in a civil case, consider any issues relating to the discovery of electronically stored information.

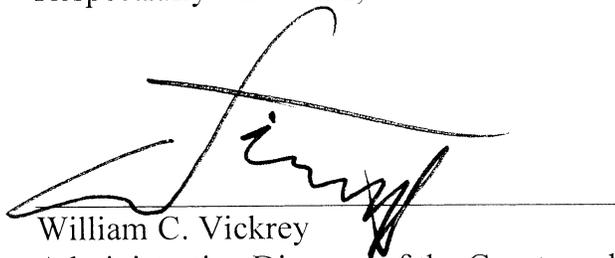
There were no Circulating Orders since the last business meeting.

Appointment Orders since the last business meeting.

[Appointment Orders Tab]

There being no further public business, the meeting was adjourned at 12:13 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Vickrey', is written over a horizontal line. The signature is stylized and cursive.

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