

JUDICIAL COUNCIL MEETING
Minutes of October 15–16, 1998, Meeting

The Judicial Council of California meeting began at 2:05 p.m. October 15, 1998, at the Administrative Office of the Courts office in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Justices Marvin R. Baxter, Richard D. Aldrich, Carol A. Corrigan, and Richard D. Huffman; Judges James A. Bascue, Paul Boland, J. Richard Couzens, Steven E. Jahr, Melinda A. Johnson, Ana Maria Luna, and Michael B. Orfield; Mr. Michael Case, Mr. Maurice Evans, Mr. Sheldon H. Sloan, and Ms. Glenda Veasey; and **advisory members:** Justice William M. Wunderlich, Judges Albert Dover, Brenda Harbin-Forte, and Ronald L. Taylor, Commissioner David L. Haet, Ms. Sheila Gonzalez, Mr. Joseph A. Lane, and Mr. Frederick Ohlrich.

Absent: Mr. Stephen V. Love, Senator Adam Schiff, and Assembly Member Martha M. Escutia.

Others present included: Mr. William C. Vickrey; Judges Ray L. Hart, Frederick P. Horn, Lance A. Ito, Thomas Nuss (Ret.), Patricia K. Sepulveda, and Barbara Zuñiga; Mr. Eric Bishop, Mr. Carlos Cerecedo, Mr. Essam Elmahgoop, Ms. Beth Jay, Ms. Stephanie Moore, Ms. Shannon Raintree, Mr. Mark Willman; **staff:** Mr. Cliff Alumno, Ms. Martha Amlin, Mr. Starr Babcock, Ms. Jessica Fiske Bailey, Ms. Francine Batchelor, Mr. Michael Bergeisen, Ms. Lita Bond, Ms. Tina Burkhart, Ms. Debbie Chong-Manguiat, Ms. Deborah Collier-Tucker, Ms. Eunice Collins, Mr. Jeffrey Cuneo, Ms. Penny Davis, Ms. Lesley Duncan, Ms. Jane Evans, Mr. Michael Fischer, Ms. Denise Friday, Ms. Susan Hanks, Ms. Jaquelyn Harbert, Ms. Kate Harrison, Ms. Whitney Henderson, Mr. Jim Hill, Ms. Katharine Holland, Ms. Lynn Holton, Ms. Bonnie Hough, Ms. Kate Howard, Ms. Melissa Johnson, Mr. Dennis Jones, Mr. Ray LeBov, Ms. Stephanie Leonard, Ms. Catherine Lowe, Mr. Barry Lynch, Ms. Mimi Lyster, Ms. Karen Mohrhoff, Mr. Martin Moshier, Ms. Vicki Muzny, Ms. Diane Nunn, Ms. Nancy Piano, Mr. Victor Rowley, Mr. Frank Schultz, Ms. Lisa Shattuck, Ms. Dale Sipes, Ms. Marlene Smith, Ms. Marcia Taylor, Ms. Kiri Torre, Ms. Arline Tyler, Ms. Liz Vazquez-Avila, Mr. James Vesper, Ms. Cara Vonk, Ms. Kady von Schoeler, Mr. Joshua Weinstein, Ms. Johnita Wemken, Mr. Anthony Williams, Mr. Gary Williams, Mr. Jonathan Wolin, Mr. Joseph Wong, and Ms. Leda Young; **media representatives:** Ms. Jean Guccione, *L.A. Daily Journal*, Mr. Greg Mitchell, *The Recorder*.

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 binders of Reports and Recommendations dated October 15–16, 1998, which were sent to members in advance of the meeting.)

Minutes of the August 14, 1998, Meeting

Council action:

Justice Carol A. Corrigan moved that the Judicial Council approve the minutes of the August 14, 1998, meeting.

The motion passed.

Special Comment

Chief Justice Ronald M. George welcomed new members Justice Richard D. Aldrich, Judges James A. Bascue, Steven E. Jahr, and Ronald L. Taylor, Commissioner David L. Haet, and Mr. Frederick Ohlrich to the Judicial Council.

Council Committee Presentations

Reports on committee activities were included in the binders of Reports and Recommendations dated October 15–16, 1998.

Executive and Planning

Justice Richard D. Huffman reported that the committee met by conference call four times since the August meeting of the council, and he referred council members to the minutes of those meetings in the binders. He stated that the committee asked staff to revise its recommendations of which budget change proposals (BCPs) to forward to the Department of Finance. The committee requested that staff increase the BCPs for infrastructure and trial court funding support. He noted that the committee voted to endorse the budgets of the Supreme Court and Courts of Appeal and the revised budget for the Administrative Office of the Courts (AOC) and to forward them to the council for approval.

Justice Huffman also reported that, per the Judicial Council directive that the Executive and Planning Committee review and approve the final disbursements of drug court mini-grants, the committee approved 36 drug court mini-grants to 19 counties.

Policy Coordination and Liaison

Justice Marvin R. Baxter reported that the Policy Coordination and Liaison Committee met once by conference call since August. The committee focused on Judicial Council–sponsored legislation. He noted that 11 of 13 council-sponsored bills passed the Legislature and were signed into law by the Governor.

Rules and Projects

Judge Brenda Harbin-Forte reported that the minutes of recent Rules and Projects Committee meetings were included in the binders for the present meeting. She noted that the committee's recommendations on items on this agenda were inserted in the pocket of the binder.

COUNCIL ITEMS 1–3 WERE APPROVED AS CONSENT ITEMS, PER THE SUBMITTERS' RECOMMENDATIONS.

ITEM 1 RULES, FORMS, AND STANDARDS

~~**Item 1A** Item 1A moved to end of *Discussion Agenda*, following Item 14. Telephone Appearance in Municipal and Superior Court Adoption of Rules 298 and 598 of the California Rules of Court and Repeal of Rule 827)~~

Item 1B Rules on Appeal: Extensions of Time to File Motions for Attorney Fees on Appeal (Cal. Rules of Court, rule 870.2(b)–(e))

The Appellate Advisory Committee proposed amendments to rule 870.2 to (1) allow a party to postpone seeking attorney fees for an appeal that occurred before the end of the litigation until after the litigation has ended, and (2) allow the party to seek those attorney fees on appeal in the same motion in which the party seeks to recover trial court attorney fees. The amendments would also allow the time for filing a motion to recover attorney fees on appeal, as well as trial court attorney fees, to be extended by stipulation of the parties or by court order.

Council action:

The Judicial Council, effective January 1, 1999, amended rule 870.2(b)–(e) as follows:

1. Amend subdivision (b) to combine the claim for attorney fees on appeal before the rendition of judgment in the trial court with the claim for trial court fees.
2. Amend subdivision (c) to permit stipulations for continuances of 60 days to make a motion for attorney fees on appeal.
3. Move the last paragraph of subdivision (b) to new subdivision (d) to give the court the same power to extend the time for filing motions for attorney fees on appeal as it has for motions for trial court fees.
4. Reletter former subdivision (d) as (e).

Item 1C Fax Filing in Juvenile Court (Cal. Rules of Court, rules 1406.5 and 2002, and Form JV-520)

The Juvenile Law Subcommittee of the Family and Juvenile Law Advisory Committee recommended adoption of proposed rule 1406.5 and related proposed form JV-520 that would establish a procedure for the filing of juvenile court petitions by fax. The proposed amendment to rule 2002 creates a reference to the new juvenile court fax filing rule in the general fax filing rule. The provisions under rule 1406.5 would apply only to courts that provide for fax filing by local rule or other written instruction. Fax filing procedures for juvenile cases were developed in response to requests from courts and county welfare departments.

Council action:

The Judicial Council, effective January 1, 1999:

1. Adopted new rule 1406.5 on fax filing procedures in juvenile court.
2. Revised rule 2002 on fax filing to reference the new juvenile court fax filing rule.
3. Adopted for mandatory use *Facsimile Filing Cover Sheet—Juvenile* (Form JV-520).

Item 1D New and Amended Juvenile Law Rules and Forms (Cal. Rules of Court, rules 1401, 1403, 1413, 1422, 1431, 1432, 1439, 1441, 1446, 1456, 1460, 1461, 1462, 1463, 1466, 1498, and 1499; and Forms *Juvenile Dependency Petition (Version One)* (JV-100), *Juvenile Dependency Petition (Version Two)* (JV-110), *Orders Under Section 366.26 of the Welfare and Institutions Code* (JV-320), *Order for Prisoner’s Appearance at Hearing Affecting Prisoner’s Parental Rights and Waiver of Appearance* (JV-450), *Paternity Inquiry — Juvenile* (JV-500), *Statement Regarding Paternity (Juvenile Dependency)* (JV-505), *Proof of Service — Juvenile* (JV-510), and *Petition for Disclosure of Juvenile Court Records* (JV-570))

The Family and Juvenile Law Advisory Committee recommended the adoption of various new and amended forms and California Rules of Court to conform to statutory changes and to make the juvenile law rules and forms more clear and effective. Several changes to the juvenile law rules and forms relate to judicial activities mandated by recent legislation (Stats. 1997, ch. 793; Assem. Bill 1544), including concurrent planning for permanency and adoption and reunifying children and parents in many cases, and the resolution of paternity issues in the juvenile court handling a dependency case. Amendments to the rules also set forth the procedure to be followed when the court has doubts about the mental condition of children before the court. Other proposed changes are merely technical amendments to conform to statute or to clarify existing provisions.

Council action:

The Judicial Council, effective January 1, 1999:

1. Amended rules and forms to conform to Assembly Bill 1544 (Stats. 1997, ch. 793) to:
 - a. Require “concurrent planning” for children removed from home in dependency cases: rule 1460 (Six-month review hearing) and rule 1461 (Twelve-month review hearing).
 - b. Expand the definition of “relative” and require new procedures for assessment of such “relatives” as potential caretakers for children detained out of home: rule 1401 (Definition; construction of terms) and rule 1446 (Grounds for detention; factors to consider and findings; detention with a relative).
 - c. Require new procedures for identifying and resolving paternity issues in dependency actions and clarify that the juvenile court has exclusive jurisdiction over Family Code section 7630 or section 7631 paternity actions where that court also has jurisdiction over a dependency action concerning the same child: rule 1403 (Proper court; determination of child’s residence; exclusive jurisdiction), rule 1413 (Paternity), rule 1422 (Continuances), rule 1441 (Commencement of hearing — explanation of proceedings; paternity inquiry), rule 1456 (Orders of the court), rule 1460 (Six-month review hearing), rule 1461 (Twelve-month review hearing), rule 1462 (Eighteen-month review hearing), and forms *Paternity Inquiry — Juvenile* (JV-500) and *Statement Regarding Paternity (Juvenile Dependency)* (JV-505).
 - d. Change title of Form JV-505 from *Paternity — Waiver for Rights (Juvenile Dependency)* to *Statement Regarding Paternity (Juvenile Dependency)* to more accurately reflect the purpose of the form.
 - e. Clarify that the court need not order services to parents who relinquish a child for adoption or waive their right to services: rule 1413 (Paternity), rule 1456 (Orders of the court), rule 1460 (Six-month review hearing), rule 1461 (Twelve-month review hearing), rule 1462 (Eighteen-month review hearing), and the form *Statement Regarding Paternity (Juvenile Dependency)* (JV-505).
2. Adopted rule 1498 to specify the procedures whereby the court may order the treatment and evaluation of the mental condition of a child before the court when the court believes the child is mentally disabled or may be mentally ill.
3. Renumbered rule 1499 (Sealing records) as rule 1497.
4. Amended rules and forms to better specify children for whom the Indian Child Welfare Act may apply. Amendments proposed to rule 1439 (Indian Child Welfare Act (25 U.S.C. § 1901 et seq.)), and forms *Juvenile Dependency Petition (Version One)* (JV-100) and *Juvenile Dependency Petition (Version Two)* (JV-110)
5. Amended rule 1431 (Hearing on subsequent and supplemental petitions), rule 1460 (Six-month review hearing), rule 1461 (Twelve-month review hearing), rule 1462 (Eighteen-month review hearing), rule 1463 (Selection of permanent plan), rule 1466 (Hearings subsequent to a permanent plan); and forms *Orders Under Section 366.26*

of the Welfare and Institutions Code (JV-320), Order for Prisoner's Appearance at Hearing Affecting Prisoner's Parental Rights and Waiver of Appearance) (JV-450), Proof of Service — Juvenile (JV-510), and Petition for Disclosure of Juvenile Court Records (JV-570) to clarify existing provisions and to make minor changes to conform to statute.

Item 1E Attorney Fees on Appeal (Cal. Rules of Court, rule 26(a))

The Appellate Advisory Committee proposed amendments to rule 26(a) of the California Rules of Court to clarify whether a party prevailing on appeal is entitled to recover attorney's fees on appeal.

Council action:

The Judicial Council, effective January 1, 1999, amended rule 26(a) to provide, unless the reviewing court orders otherwise, that:

1. Entitlement to recover costs on appeal does not include entitlement to attorney fees on appeal.
2. The issue of entitlement to recover attorney fees on appeal shall be decided by motion made in the trial court after the appeal under rule 870.2.

Item 1F Trial by Written Declaration, New Rule 828 (Cal. Rules of Court), and Forms *Instructions to Defendant (TR-200), Request for Trial by Written Declaration (TR-205), Notice and Instructions to Arresting Officer (TR-210), Decision and Notice of Decision (TR-215), Request for New Trial (Trial de Novo) (TR-220), and Order and Notice to Defendant of New Trial (Trial de Novo) (TR-225)*

Vehicle Code section 40902 provides that courts must offer motorists cited for traffic infractions the option of a trial by written declaration. A motorist who is not satisfied with the decision of the court is legally entitled to a trial de novo, which requires a personal appearance. The Traffic Advisory Committee proposed a new rule and forms for trials by written declaration.

Council action:

The Judicial Council, effective January 1, 1999:

1. Adopted rule 828 of the California Rules of Court to establish a statewide procedure for trials by written declaration in traffic infraction proceedings.
2. Adopted the following forms for mandatory use in trials by written declaration in

traffic infraction proceedings:

- a. *Instructions to Defendant* (Form TR-200)
- b. *Request for Trial by Written Declaration* (Form TR-205)
- c. *Notice and Instructions to Arresting Officer* (Form TR-210)
- d. *Decision and Notice of Decision* (Form TR-215)
- e. *Request for New Trial (Trial de Novo)* (Form TR-220)
- f. *Order and Notice to Defendant of New Trial (Trial de Novo)* (Form TR-225)

Item 1G Rules on Record Preparation in Capital Cases (Cal. Rules of Court, rules 33, 35, 39.50, 39.52–39.56)

In response to legislation effective January 1, 1997 (Stats. 1996, ch. 1086, amending Pen. Code, §§ 190.6–190.9), the Judicial Council adopted new rules on certification of the record in death penalty appeals. (Cal. Rules of Court, rules 39.50–39.57.)

The Criminal Law Advisory Committee proposed amendments to the rules addressing record correction procedures in capital cases that were not covered by the new legislation, as well as clarifying amendments to the rules applicable to newer cases.

The proposed amendments would (1) change the time limit for filing a motion to correct the record in capital cases in which the trial commenced before January 1, 1997, (2) make clarifying changes in the rules on record preparation applicable to cases in which the trial commenced after January 1, 1997, (3) require that the Attorney General’s office receive a copy of the reporter’s transcript in computer-readable form only, and (4) require that copies of the record be provided for postconviction counsel and the Habeas Corpus Resource Center.

Council action:

The Judicial Council, effective January 1, 1999:

1. Amended rule 33(c) to correct a reference to renumbered and amended rule 39.5.
2. Amended rule 35 to clarify the date of delivery of the record and specify time limits for motions to correct the record.
3. Amended rule 39.50 to include a definition of the date of delivery.
4. Amended rule 39.52 to clarify the requirement that trial attorneys file a declaration stating that they have reviewed the record, to require the attorney who represented the defendant in municipal court to file such a declaration, and to direct the court to conduct a hearing if an attorney does not file the required declaration.
5. Amended rule 39.53 to delete time limits for certifying the record under rule 35.
6. Amended rule 39.54 to clarify the requirement that trial attorneys file a declaration stating that they have reviewed the record and to direct the court to conduct a hearing if an attorney does not file the required declaration.

7. Amended rule 39.52(i)(6), 39.54(f) and (j), 39.55, and 39.56 to eliminate the requirement of a paper copy of the reporter's transcript for the Attorney General and to add the requirement of a paper copy of the entire record for postconviction counsel and a computer-readable copy of the reporter's transcript for postconviction counsel and the Habeas Corpus Resource Center.

Item 1H Interstate Compact on the Placement of Children (Cal. Rules of Court, rule 1428) and Forms JV-565 and JV-567

The Interstate Compact on the Placement of Children (ICPC) governs the out-of-state placements of dependent and some delinquent children. Because the ICPC has been criticized as being unnecessarily slow, Regulation 7 of the compact was recently passed to address delays in placements.

The Family and Juvenile Law Advisory Committee proposed new rule 1428 of the California Rules of Court and revised Judicial Council forms JV-565 and JV-567 implement Regulation 7. Rule 1428 to provide guidance on directing the placement of children who are dependents or wards of the juvenile court to any other United States jurisdiction including the District of Columbia and the U.S. Virgin Islands.

Council action:

The Judicial Council, effective January 1, 1999:

1. Adopted rule 1428 of the California Rules of Court dealing with the Interstate Compact on the Placement of Children.
2. Technically revised *Findings and Request for Assistance Under Interstate Compact on the Placement of Children (ICPC)* (Form JV-565).
3. Technically revised *ICPC Priority — Findings and Orders* (Form JV-567).

Item 1I Miscellaneous Amendments to Family Law Rules (Cal. Rules of Court, rules 1201, 1205, 1210, 1211, 1212, 1215, 1216, 1225, 1227, 1236, 1242, 1243, 1247, and 1248), and Repeal of Appendix, Divisions V and VI

The Family and Juvenile Law Advisory Committee proposed amendments to the California Rules of Court that conform to statutory changes and clarify how or whether appropriate family law rules apply to actions to establish or enforce child support brought by the district attorney. The committee suggested repeal of two Appendix divisions because of statutory changes to the California child support guideline.

Council action:

The Judicial Council, effective January 1, 1999:

1. Amended rules 1201, 1205, 1210, 1211, 1212, 1215, 1216, 1225, 1227, 1236, 1242, 1243, 1247, and 1248 of the California Rules of Court to conform to statutory changes and clarify how or whether appropriate family law rules apply to actions to establish or enforce child support proceedings brought by the district attorney.
2. Repealed divisions V and VI of the Appendix to the California Rules of Court to conform to statutory changes to the California child support guideline.

Item 1J Criminal Abstracts of Judgment — Prison Commitment Forms (Forms DSL-290, DSL-290-A, DSL-290.1, and CR-292)

The Criminal Law Advisory Committee proposed changing the Abstracts of Judgment—Prison Commitment forms to: (1) provide specific areas to list restitution fines and orders, (2) delete obsolete information, (3) provide sufficient space for additional orders (by making the DSL-290 and CR-292 two-page forms), and (4) allow for computer-generated electronic forms available on the Serranus Web site. Other minor changes are proposed to conform to changes in sentencing law or the use of the forms.

Council action:

The Judicial Council, effective January 1, 1999:

1. Amended Forms DSL-290, DSL-290-A, DSL-290.1 and CR-292 to reflect changes in sentencing and restitution law and enable clerks to more easily fill out forms uniformly.
2. Directed staff to make the forms available electronically.
3. Changed the “DSL” designation to “CR.”

Item 1K Miscellaneous Family Law and Child Support Forms: New Family Law and Governmental Forms: *Information Sheet on Changing a Child Support Order (Family Law -- Domestic Violence Prevention -- Uniform Parentage) (Form 1285.79), Notice of Registration of Out-of-State Support Order (Family Law -- Governmental) (Form 1285.88), Request for Hearing Regarding Registration of Support Order (Family Law -- Governmental) (Form 1285.90), Notice of Withdrawal (Family Law) (Form 1290.5), Findings and Recommendation of Commissioner (Governmental) (Form 1299.70), Notice of Objection (Governmental) (Form 1299.72), Review of Commissioner’s Findings of Fact and Recommendation (Governmental)*

(Form 1299.74). Revision of Family Law and Governmental Forms: *Judgment (Family Law) (Form 1287), Declaration Regarding Service of Declaration of Disclosure (Family Law) (Form 1292.05), Spousal or Family Support Order Attachment (Family Law) (Form 1296.31C), Order After Hearing (Governmental) (Form 1298.07), Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental) (Form 1299.01), Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment (Governmental) (Form 1299.07), Judgment Regarding Parental Obligations (Governmental) (Form 1299.13), Stipulation and Order (Governmental) (Form 1299.22). Revocation of Family Law Forms: Notice of Review Hearing Regarding Child Support and Recommendation of Commissioner or Referee (CCP § 640.1) (Form 1297.80), Order After Review Hearing (Code of Civil Procedure, § 640.1) (Form 1297.82). Revocation of Enforcement of Judgment Form: Statement for Registration of Foreign Support Order and Clerk's Notice (Form EJ-120). Revocation of Miscellaneous Form: Age Increase Factor Table (Form MC-340)*

The Family and Juvenile Law Advisory Committee recommended new forms and amendments to existing forms. Assembly Bill 573 (Stats. 1997, ch. 599) and Senate Bill 568 (Stats. 1997, ch. 194) made several changes to the Family Code that required these changes. Several forms needed revision to comply with other statutory requirements concerning child support, spousal support, paternity, and other family law issues and to improve the processing of family law and child support cases. Statutory changes made necessary the revocation of certain other forms.

Council action:

The Judicial Council, effective January 1, 1999:

1. Adopted the following new forms for mandatory use:
 - a. *Information Sheet on Changing a Child Support Order (Family Law — Domestic Violence Prevention — Uniform Parentage) (Form 1285.79)*
 - b. *Notice of Registration of Out-of-State Support Order (Family Law — Governmental) (Form 1285.88)*
 - c. *Request for Hearing Regarding Registration of Support Order (Family Law — Governmental) (Form 1285.90)*
 - d. *Notice of Withdrawal (Family Law) (Form 1290.5)*
 - e. *Findings and Recommendation of Commissioner (Governmental) (Form 1299.70)*
 - f. *Notice of Objection (Governmental) (Form 1299.72)*
 - g. *Review of Commissioner's Findings of Fact and Recommendation (Governmental) (Form 1299.74)*
2. Revised the following family law and governmental forms:
 - a. *Judgment (Family Law) (Form 1287)*

- b. *Declaration Regarding Service of Declaration of Disclosure (Family Law)* (Form 1292.05)
 - c. *Spousal or Family Support Order Attachment (Family Law)* (Form 1296.31C)
 - d. *Order After Hearing (Governmental)* (Form 1298.07)
 - e. *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (Form 1299.01)
 - f. *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment (Governmental)* (Form 1299.07)
 - g. *Judgment Regarding Parental Obligations (Governmental)* (Form 1299.13)
 - h. *Stipulation and Order (Governmental)* (Form 1299.22)
3. Revoked the following family law forms:
- a. *Notice of Review Hearing Regarding Child Support and Recommendation of Commissioner or Referee (CCP § 640.1)* (Form 1297.80)
 - b. *Order After Review Hearing (Code of Civil Procedure, § 640.1)* (Form 1297.82)
4. Revoked the following forms:
- a. Enforcement of judgment form *Statement for Registration of Foreign Support Order and Clerk's Notice* (Form EJ-120)
 - b. Miscellaneous form *Age Increase Factor Table* (Form MC-340)

Item 1L *Petition for Writ of Habeas Corpus* (Form MC-275) and Rule 201(h) of the California Rules of Court

The Criminal Law Advisory Committee proposed amendments to *Petition for Writ of Habeas Corpus* to make technical improvements and to inform the petitioner to file in the appropriate court given the specific challenge.

The committee also proposed amending rule 201(h) to require that a habeas corpus petition that is not filed on form MC-275 list all pertinent information, including information regarding other petitions filed, and to reference form MC-275 rather than the habeas corpus “form approved by the Judicial Council.”

Council action:

The Judicial Council, effective January 1, 1999:

1. Revised form MC-275, *Petition for Writ of Habeas Corpus*, to inform the petitioner of the correct court in which to file the petition and to make other technical improvements.
2. Amended rule 201(h) of the California Rules of Court to require a petition for writ of habeas corpus that is not on Form MC-275 to list all pertinent information, and to make other technical improvements.

Item 1M *Protective Order in Criminal Proceeding (CLETS) (Form MC-220)*

The Criminal Law Advisory Committee proposed amending *Protective Order in Criminal Proceeding (CLETS)*, form MC-220, to assist law enforcement officers by clearly stating that “this order takes precedence over any prior court order” and by implementing other changes to update the form, including warnings regarding restrictions affecting the defendant. The form would also be modified to include information necessary to enter the order in the statewide restraining order database, California Law Enforcement Telecommunications System (CLETS).

Council action:

The Judicial Council, effective January 1, 1999, amended form MC-220, *Protective Order in Criminal Proceeding (CLETS)*, to:

1. State that it takes precedence over any prior orders. (Pen. Code, § 136.2.)
2. Provide due process warnings to the defendant of restrictions and consequences of the order.
3. Implement modifications to assist law enforcement.

Item 1N **New Judicial Council Juvenile Law Forms — *Information for Parents (JV-50)* and *The Dependency Court: How It Works (JV-55)***

When a child is taken into temporary custody due to allegations of abuse or neglect, section 307.4 of the Welfare and Institutions Code requires notice to the parents or guardians and a written statement explaining their procedural rights and the preliminary stages of the dependency investigation and hearing.

To make the information easier to understand, the Family and Juvenile Law Advisory Committee recommended adopting two new optional forms, one explaining why the child has been removed (*Information for Parents*) and the other describing how the dependency court works (*The Dependency Court: How It Works*) to provide information to parents whose children are subject to judicial proceedings in dependency court.

Council action:

The Judicial Council, effective January 1, 1999, approved two new optional forms:

1. *Information for Parents (JV-50)*
2. *The Dependency Court: How It Works (JV-55)*

Item 10 Universal Adoption Forms for All Minor Children Subject to Adoption Proceedings: Adopt Forms: *Petition for Adoption (ADOPT-200)*, *Petitioner Consent and Agreement to Adoption (ADOPT-210)*, *Order of Adoption (ADOPT-215)*, *Attachment to Petition for Adoption — Adoption of an Indian Child (ADOPT-220)*, *Consent to Termination of Parental Rights and Certification — Adoption of an Indian Child (ADOPT-225)*, and *Accounting Report — Adoptions (ADOPT-230)*; Repeal Forms: *Petition for Adoption (AD-100)*, *Petitioner Consent and Agreement to Adoption (AD-110)*, *Order of Adoption (AD-115)*, *Attachment to Petition for Adoption — Adoption of an Indian Child (AD-120)*, *Petition for Adoption of Dependent Child (Juvenile) (JV-360)*, *Consent and Agreement to Adoption (Juvenile) (JV-361)*, *Order of Adoption (Juvenile) (JV-362)*, and *Attachment to Petition for Adoption of Dependent Child — Adoption of an Indian Child (Juvenile) (JV-363)*; Renumber Forms: *Kinship Adoption Agreement (AD-310)*, *Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement (AD-315)*, *Response to Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement (AD-320)*, and *Order on Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement (AD-325)*; Amend Rule 1464 of the California Rules of Court

The Juvenile Law Subcommittee of the Family and Juvenile Law Advisory Committee proposed adopting a new set of adoption forms for all minor children subject to adoption proceedings, repealing the existing juvenile law dependency and nondependency adoption forms, renumbering the kinship adoption forms in order to avoid confusion with adoption forms of the California Department of Social Services, and amending rule 1464 of the California Rules of Court to reflect the adoption of the new set of mandatory adoption forms. These changes will ensure that adoption forms are comprehensive and apply to all types of minor children adoptions.

Council action:

The Judicial Council, effective January 1, 1999:

1. Adopted for mandatory use the following forms applicable for all minor children subject to adoption proceedings:
 - a. *Petition for Adoption (ADOPT-200)*
 - b. *Petitioner Consent and Agreement to Adoption (ADOPT-210)*
 - c. *Order of Adoption (ADOPT-215)*
 - d. *Attachment to Petition for Adoption — Adoption of an Indian Child (ADOPT-220)*
 - e. *Consent to Termination of Parental Rights and Certification — Adoption of an Indian Child (ADOPT-225)*
 - f. *Accounting Report — Adoptions (ADOPT-230)*
2. Repealed the following forms:

- a. *Petition for Adoption* (AD-100)
 - b. *Petitioner Consent and Agreement to Adoption* (AD-110)
 - c. *Order of Adoption* (AD-115)
 - d. *Attachment to Petition for Adoption — Adoption of an Indian Child* (AD-120)
 - e. *Petition for Adoption of Dependent Child (Juvenile)* (JV-360)
 - f. *Consent and Agreement to Adoption (Juvenile)* (JV-361)
 - g. *Order of Adoption (Juvenile)* (JV-362)
 - h. *Attachment to Petition for Adoption of Dependent Child — Adoption of an Indian Child (Juvenile)* (JV-363)
3. Renumbered kinship adoption forms:
 - a. *Kinship Adoption Agreement* (AD-310) to be renumbered (ADOPT-310)
 - b. *Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-315) to be renumbered (ADOPT-315)
 - c. *Response to Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-320) to be renumbered (ADOPT-320)
 - d. *Order on Petition for Enforcement, Modification, or Termination of Kinship Adoption Agreement* (AD-325) to be renumbered (ADOPT-325)
 4. Adopted the technical conforming amendments to rule 1464 of the California Rules of Court to refer to the new mandatory forms.

Item 1P **Establishment of Parental Relationship (Uniform Parentage Act), Petition for Custody. New Forms: *Summons (Uniform Parentage — Petition for Custody)* (Form 1296.605), *Declaration for Default or Uncontested Judgment (Uniform Parentage)* (Form 1296.70), *Advisement and Waiver of Rights Regarding Establishment of Parental Relationship (Uniform Parentage)* (Form 1296.72), *Stipulation for Entry of Judgment Establishing Parental Relationship (Uniform Parentage)* (Form 1296.74), *Judgment (Uniform Parentage)* (Form 1296.75), and *Petition for Custody of Minor Children* (Form 1296.80); Revised Forms: *Appearance, Stipulation, and Waivers (Family Law)* (Form 1282.50), *Request to Enter Default (Family Law — Uniform Parentage Act)* (Form 1286), *Notice of Entry of Judgment (Family Law — Uniform Parentage)* (Form 1290), *Child Support Information and Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage — Governmental)* (Form 1296.31B), *Child Support Extended Information Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage — Governmental)* (Form 1296.31B(1)), *Child Support Extended Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage)* (Form 1296.31B(2)), *Petition to Establish Parental Relationship (Uniform Parentage)* (Form 1296.60), *Response to Petition to Establish Parental Relationship (Uniform Parentage)* (Form 1296.65); Repealed Form: *Standard Restraining Order (Uniform Parentage Act)* (Form 1296.61)**

The majority of actions to establish a parental relationship that are filed without the assistance of the district attorney's office never result in a judgment. Serious problems result when cases are dismissed and child support orders are terminated for lack of compliance with the five-year statute for concluding cases; there may also be significant problems regarding issues of inheritance and social security benefits when a child's parentage has not been established. One key factor in the dearth of final judgments is that there are currently no Judicial Council forms for paternity judgments and concurrent forms to establish a default judgment. The new forms proposed by the Family and Juvenile Law Advisory Committee would provide a uniform method to obtain a judgment to establish a parental relationship and effectuate Family Code section 3120 by providing a form to establish custody and visitation of children independent of other legal action.

Council action:

The Judicial Council, effective January 1, 1999:

1. Adopted the following new forms for mandatory use:
 - a. *Summons (Uniform Parentage—Petition for Custody)* (Form 1296.605)
 - b. *Declaration for Default or Uncontested Judgment (Uniform Parentage)* (Form 1296.70)
 - c. *Advisement and Waiver of Rights Regarding Establishment of Parental Relationship (Uniform Parentage)* (Form 1296.72)
 - d. *Stipulation for Entry of Judgment Establishing Parental Relationship (Uniform Parentage)* (Form 1296.74)
 - e. *Judgment (Uniform Parentage)* (Form 1296.75)
 - f. *Petition for Custody of Minor Children* (Form 1296.80)
2. Revised the following family law and governmental forms:
 - a. *Appearance, Stipulation, and Waivers (Family Law)* (Form 1282.50)
 - b. *Request to Enter Default (Family Law — Uniform Parentage Act)* (Form 1286)
 - c. *Notice of Entry of Judgment (Family Law — Uniform Parentage)* (Form 1290)
 - d. *Child Support Information and Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage—Governmental)* (Form 1296.31B)
 - e. *Child Support Extended Information Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage — Governmental)* (Form 1296.31B(1))
 - f. *Child Support Extended Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage)* (Form 1296.31B(2))
 - g. *Petition to Establish Parental Relationship (Uniform Parentage)* (Form 1296.60)
 - h. *Response to Petition to Establish Parental Relationship (Uniform Parentage)* (Form 1296.65)
3. Revoked the family law form *Standard Restraining Order (Uniform Parentage Act)* (Form 1296.61)

Item 1Q Fee Waiver Forms: Amend *Information Sheet on Waiver of Court Fees and Costs* (Form 982(a)(17)(A)), *Application for Waiver of Court Fees and Costs* (Form 982(a)(17)), *Order on Application for Waiver of Court Fees and Costs* (Form 982(a)(18)), and *Order on Application for Waiver of Additional Court Fees and Costs* (Form 982(a)(18.1))

The Civil and Small Claims Advisory Committee proposed amending the fee waiver forms to (1) replace references to the old Aid to Families With Dependent Children (AFDC) program with the new California CalWORKs program that was adopted by the State of California to implement the federal Temporary Assistance for Needy Families (TANF) block grant program, (2) add information to be completed on the financial information side of the *Application* form to arrive at the applicant's total gross monthly household income, and (3) add notices on the *Order* form advising that if the applicant does not attend a noticed hearing, the court may revoke or change the order or deny the application.

Council action:

The Judicial Council, effective January 1, 1999, amended the following fee waiver forms in order to:

1. Replace "AFDC" with "CalWORKs" on the *Information Sheet on Waiver of Court Fees and Costs* (Form 982(a)(17)(A)) and to clarify that the federal poverty guidelines used to establish eligibility for a waiver are based on "total gross monthly household income."
2. Move from the back to the front of the *Application for Waiver of Court Fees and Costs* (Form 982(a)(17)) a statement that the applicant is unable to pay any or only some of the filing fees, to add the name of the spouse's employer, to replace "AFDC" with "CalWORKs," and to specify which boxes on the back of the form should be completed by the applicant.
3. Rearrange the categories of "Financial Information" on the reverse side of *Application for Waiver of Court Fees and Costs* (Form 982(a)(17)) for ease of use, to ask for additional information to qualify an applicant under the second statutory category for a fee waiver, including a list of individuals living in the home "who depend in whole or in part on you for support" to arrive at the "total gross monthly household income."
4. Clarify on the *Order on Application for Waiver of Court Fees and Costs* (Form 982(a)(18)) that reimbursement of reporter's fees are per diem and not transcript fees, to add an "Other" box for statutory fees not listed, to delete mailing of the *Order* to the "judgment debtor," to add notice about possible results when the applicant does not attend a scheduled hearing, and to clarify the duty to notify the court when there is an ability to pay the waived court fees and costs.
5. Delete the reference on the *Order on Application for Waiver of Additional Court Fees and Costs* (Form 982(a)(18.1)) to mailing a copy of the *Order* to the "judgment debtor" to conform this form with Form 982(a)(18).

Item 1R Instructions on Appeal Procedures for Traffic Infractions and Related Forms: New *Instructions on Appeal Procedures for Infractions (TR-150)*, *Notice of Appeal (TR-155)*, *Proposed Statement on Appeal (TR-160)*, and *Abandonment of Appeal (TR-165)*

Most courts do not have forms or a description of the appeals procedure for use by defendants who wish to appeal convictions of traffic or other infractions. Defendants frequently misunderstand the nature of an appeal, believing it is a retrial or an opportunity to introduce new evidence.

The Traffic Advisory Committee proposed adopting a packet of forms (including procedures and a timetable) that courts can either distribute or use as a basis for designing their own instructions and forms.

Council action:

The Judicial Council, effective January 1, 1999, approved forms *Instructions on Appeal Procedures for Infractions (TR-150)*, *Notice of Appeal (TR-155)*, *Proposed Statement on Appeal (TR-160)*, and *Abandonment of Appeal (TR-165)*.

Item 1S Electronic Filing (Cal. Standards Jud. Admin., § 37 and Cal. Rules of Court, rule 981.5(c))

New technologies have given the courts the tools required to move from a paper-based to an electronic environment that allows case information to be filed, maintained, and retrieved in a digitized form.

The Court Technology Advisory Committee proposed a new standard of judicial administration to offer guidance to courts implementing electronic filing. The standard will promote statewide functional uniformity by ensuring proper maintenance and integrity of the record and by providing appropriate access and retrieval mechanisms. The committee also proposed amending rule 981.5(c) of the California Rules of Court to delete the requirement for approval of electronic filing and forms generation pilot projects, which requirement will be unnecessary once the proposed new standard is adopted.

Council action:

The Judicial Council, effective January 1, 1999:

1. Adopted section 37 of the California Standards of Judicial Administration to offer guidance to courts implementing electronic filing.

2. Amended rule 981.5(c) of the California Rules of Court to delete the requirement for approval of electronic filing and forms generation pilot projects since this requirement will be rendered unnecessary once section 37 is adopted.

Item 1T Information About Alternative Dispute Resolution Programs (Cal. Standards Jud. Admin., § 32.5)

The Civil and Small Claims Advisory Committee proposed adopting a new section of the California Standards of Judicial Administration encouraging courts to provide parties with information about alternative dispute resolution (ADR) processes at case management conferences or through other appropriate methods.

Council action:

The Judicial Council, effective January 1, 1999, adopted new section 32.5 of the California Standards of Judicial Administration to encourage:

1. All courts to take appropriate measures to ensure that parties are aware of and consider ADR early in the case, including providing them with information about the ADR methods available and the procedures for initiating ADR.
2. Courts that provide by local rule for case management conferences or similar events to confer with all parties about ADR processes at or before the initial case management conference or similar event.

ITEM 2 Juvenile Court Improvement Grant Program

Federal legislation provides funding to the Judicial Council for statewide and local juvenile court improvement projects. The primary objective of the federal legislation is to enable states and local courts to implement court improvement projects relating to children and youth in the child welfare and juvenile justice system, with a special focus on abused and neglected children placed out of home.

In June 1998, a request for proposals (RFP) for the Judicial Council Court Improvement Project Grant Program was circulated statewide. The grant program offers funding to assist with the implementation of local court improvement projects.

Twenty proposals were received from nineteen counties. For the period from October 1998 through December 31, 1999, a total of \$750,000 is available as grants to selected courts to establish or expand local juvenile court improvement projects. The Juvenile Law Subcommittee of the Family and Juvenile Law Advisory Committee recommends allocation of the grant funds.

Council action:

The Judicial Council approved the allocation of California Court Improvement Project grant funds to the following courts:

- Superior Court of California, County of Riverside — \$68,748
- Superior Court of California, County of Fresno — \$85,000
- Superior Court of California, County of Sonoma — \$73,267
- Los Angeles Superior Court — \$85,000
- San Diego County Superior Court — \$85,000
- Superior Court of California, County of San Mateo — \$75,287
- Superior Court of California, County of Alameda — \$75,000
- Superior Court of California, County of Placer — \$75,000
- Superior Court of California, County of Siskiyou — \$75,000
- Kern County Superior Court — \$52,698

ITEM 3 Long-Range Plan for Judicial Branch Education

The Center for Judicial Education and Research (CJER) Governing Committee presented a judicial branch education long-range plan for Judicial Council approval as required by rule 1029 of the California Rules of Court. The plan sets forth the development of educational programs, publications, and other services, based on the governing committee's assessment of the needs of judicial officers and court staff.

Council action:

The Judicial Council adopted the long-range plan for judicial branch education as presented in the binders of Reports and Recommendations dated October 15–16, 1998.

Discussion Agenda (Tab Nos. 4–14, 1A)

ITEM 4 RULES, FORMS, AND STANDARDS

Items 4A–C were discussed out of order. See pages 22 to 26.

Item 4D Court Interpreter Proceedings and Professional Code of Conduct for Interpreters (Cal. Standards Jud. Admin., §§ 18, 18.1, 18.2, and 18.3 and Cal. Rules of Court, rules 984.4, 984.5, and 984.6)

Judge Lance A. Ito presented the item assisted by Mr. Joseph Wong, Project Coordinator for the Court Interpreters Program and staff to the Court Interpreters Advisory Panel. Judge Ito stated that the Court Interpreters Advisory Panel recommended adoption of three new rules

of court related to interpreted proceedings and a professional code of conduct for court interpreters. He commented that the use of court interpreters continues to rise in California, and yet in a recent poll 74 percent of judges identified themselves as not knowledgeable about laws governing court interpreters.

Judge Ito said that the items presented were recommended for adoption as rules, not standards, to send a message that the council is serious about equal access and fairness issues. He noted that there is currently no mechanism for disciplining court interpreters and that legislative mandate requires the council to create a code of conduct for interpreters.

Justice Baxter asked why the phrase “it appears to the court that the party’s or witness’s primary language is not English or that” is necessary in rule 984.4(b)(2). He noted that section (b)(2) without that phrase made the same point.

Council action:

Judge J. Richard Couzens moved that the Judicial Council, effective January 1, 1999:

1. Repeal sections 18 and 18.1 of the Standards of Judicial Administration on standards for determining the need for a court interpreter and adopt rule 984.4 of the California Rules of Court on determining the need for a court interpreter and a preappearance interview, amended so that section (b)(2) reads as follows: “the party or witness may not understand and speak English well enough to participate fully in the proceedings.”
2. Repeal section 18.2 of the Standards of Judicial Administration on interpreter understanding of court terminology and adopt rule 984.5 of the California Rules of Court on instructions to participants.
3. Repeal section 18.3 of the Standards of Judicial Administration on standards of professional conduct for court interpreters and adopt rule 984.6 of the California Rules of Court on professional conduct for court interpreters.

Judge Albert Dover stated that the Legislature did not mandate the adoption of *a rule* for a procedure to discipline and evaluate court interpreters and that a standard of judicial administration would comply with legislative mandate. He also expressed concern about the resources necessary to meet the requirements in the proposed rules. He said that rural courts, in particular, would not have the resources necessary to comply.

Justice Huffman noted that standards are goals and rules are mandatory. He stated that the council should not adopt rules with the knowledge that courts are not able to comply.

Council action:

Justice Carol A. Corrigan made a substitute motion that the Judicial Council adopt rule 984.6 on professional conduct for court interpreters.

The motion passed.

Council action:

Justice Corrigan moved that the Judicial Council enact rule 984.4 as a standard of judicial administration and modify current standards to conform to the recommendation presented in the binders of Reports and Recommendations dated October 15–16, 1998.

The motion passed.

Council action:

Justice Corrigan moved that the Judicial Council enact rule 984.5 as a standard of judicial administration and modify current standards to conform to the recommendation presented in the binders of Reports and Recommendations dated October 15–16, 1998.

The motion passed.

Items 4E and F were discussed out of order. See pages 26 to 29.

Item 4G Court Interpreters Rate Increase

Mr. William C. Vickrey reported that court interpreters are currently paid at three different levels: \$210 per day in Los Angeles, \$180 per day in other urban areas, and below \$180-per-day elsewhere. He said that last year the Judicial Council established the goal of improving the rates paid to court interpreters and asked the AOC to seek deficiency funding for this purpose. He reported that the increase was not approved by the Governor. He stated that the Legislature included money in the budget to increase rates beyond the \$180-per-day amount, and the Governor “blue penciled” the additional funding for increases beyond the \$180-per-day rate.

Mr. Vickrey recommended requesting a budget augmentation this year to increase rates to \$230 per day in Los Angeles and to \$200 per day for all other courts and also requesting authorization to delay increasing rates to courts to the minimum service level (MSL) of \$180 in counties currently below the MSL.

Council action:

Justice Huffman moved that the Judicial Council:

1. Delay authorizing rate increases to the minimum service level (MSL) rate of \$180-per-day in those counties presently below the MSL.
2. File a formal deficiency request to adjust rates not later than January 1, 1999, as follows:
 - a. Los Angeles to \$230 per day
 - b. All other counties to \$200 per day
3. Authorize the Administrative Director of the Courts to adjust rates upon verification that the deficiency request has been approved.

The motion passed.

Item 4A Revision of Rules on the Judicial Council, Its Internal and Advisory Committees, and the Administrative Office of the Courts: Repeal of Rules 1001–1026 and 1028–1072 (Cal. Rules of Court); New Rules 6.1–6.6, 6.10–6.13, 6.20, 6.30–6.34, 6.40–6.45, 6.48–6.55, 6.70, 6.80, 6.81, and 6.90; Renumbering of Rules 2301, 2501, 2520, 2530, and 2531 as 6.101, 6.601, 6.650, 6.700, and 6.701

Ms. Melissa Johnson, Supervising Attorney and staff to the Rules and Projects Committee, presented the item. She stated that a nearly complete revision of the rules applicable to the Judicial Council, its internal and advisory committees, and the AOC was recommended. She noted that the revisions should make the rules (1) easier to read and better organized, (2) less complicated and detailed, (3) consistent with the council's recently adopted governance principles, (4) appropriate in light of trial court unification, and (5) responsive to suggestions made by council members and others for new items to be included in such rules.

Ms. Johnson highlighted one change in particular: instead of prescribing a certain number of appointments in each category of membership (such as trial court judge, court administrator, or attorney) on the council's advisory committees, the rules prescribe the appointment of at least one person in each category. She stated that this change would allow the Chief Justice and the Executive and Planning Committee the necessary flexibility and discretion to form committees that are larger or smaller depending on their assigned projects in a given year.

Judge Dover noted that proposed rule 6.5(f) states that meeting materials shall be distributed at least three days before the date of the meeting, except in extraordinary circumstances and that consent items shall be moved to the discussion agenda on request of a council member 48 hours in advance of a meeting. He expressed his preference for a rule prescribing receipt

of materials five days before the meeting and moving items from the consent to the discussion agenda three days before the meeting.

Justice Huffman commented that in reality the council has to be flexible on these time frames because the agency is often responding to deadlines and information from the Governor, Department of Finance, and Legislature on budget-related items. He stated his hesitancy to make a rule of court prescribing an unrealistic expectation.

Judge Michael B. Orfield asked whether “distributed” in rule 6.5(f) meant “mailed” at least three days before the date of the meeting. Staff was requested to clarify this issue.

Judge Harbin-Forte suggested revising rule 6.2(c) to conform to the language in rule 6.31(a). She stated that rule 6.2(c) would read: “Council members do not represent a specific constituency but shall act in the best interests of the public and the entire court system.”

Council action:

Judge Paul Boland moved that the Judicial Council, effective January 1, 1999:

1. Repeal rules 1001–1026 and 1028–1072 of the California Rules of Court,
2. Adopt rules 6.1, 6.3–6.6, 6.10–6.13, 6.20, 6.30–6.34, 6.40–6.45, 6.48–6.55, 6.70, 6.80, 6.81, 6.90, concerning the Judicial Council, its internal and advisory committees, and the Administrative Office of the Courts.
3. Adopt rule 6.2 with the following change: section (c) should read “Council members do not represent a specific constituency but shall act in the best interests of the public and the entire court system.”
4. Renumber rules 2301, 2501, 2520, 2530, and 2531 as 6.101, 6.601, 6.650, 6.700, and 6.701, respectively.

The motion passed.

Item 4B Nondiscrimination in Court Appointments (Cal. Rules of Court, rule 989.2 and Cal. Standards Jud. Admin., §§ 1.5, 1.6, and § 24)

Judge Frederick P. Horn, Chair of the Access and Fairness Advisory Committee, and Judge Barbara Zúñiga, Chair of the Gender Fairness Subcommittee of the Access and Fairness Advisory Committee, presented the report. Judge Zúñiga stated that the proposed new rule, new standards, and amended standard are intended to promote nondiscrimination in (1) the appointment of attorneys, arbitrators, mediators, referees, masters, receivers, and others appointed by the court in family law, probate, and other civil cases; (2) the appointment of attorneys and others in criminal and juvenile law matters; and (3) the selection of members for court-related committees. She stated that there is disparity of treatment of women and other minorities in appointments primarily in criminal law assignments (especially death penalty and felony cases) and in complex civil litigation and settlement panels as well.

Judge Ana Maria Luna commented that the rules and standards proposed are long overdue. She expressed concern that judges have little say in appointments made by counties contracting with attorneys.

Ms. Sheila Gonzalez stated that women in Ventura County are not applying to be arbitrators. She suggested that more education was necessary to encourage applications from minorities.

Judge Steven E. Jahr clarified that rule 989.2 applies to appointments made by courts and not to appointments resulting from county contracts with attorneys.

Council action:

Judge J. Richard Couzens moved that the Judicial Council, effective January 1, 1999, adopt proposed rule 989.2 of the California Rules of Court, proposed sections 1.5 and 1.6, and amended section 24 of the California Standards of Judicial Administration to promote nondiscrimination in:

1. The appointment of attorneys, arbitrators, mediators, referees, masters, receivers, and others appointed by the court in family law, probate, and other civil cases;
2. The appointment of attorneys and others in criminal and juvenile law matters; and
3. The selection of members for court-related committees.

The motion passed.

Item 4C Security Measures (Cal. Standards Jud. Admin., § 7)

Judge Horn, Chair of the Access and Fairness Advisory Committee, and Judge Zúñiga, Chair of the Gender Fairness Subcommittee of the Access and Fairness Advisory Committee, presented the report, assisted by Ms. Arline Tyler, Access and Fairness Advisory Committee staff counsel. Judge Zúñiga stated that the Access and Fairness Advisory Committee proposed an amendment to section 7 of the Standards of Judicial Administration to encourage courts to provide law enforcement personnel as needed and metal detectors in all trial courts, with priority given to family law, domestic violence, and juvenile dependency departments (where applicable), family court services offices, and criminal courts. The standard also encourages courts to supply law enforcement escorts, upon request, from the courthouse to a person's vehicle or a transportation point at a reasonable distance.

Judge Zúñiga noted that the council directed the committee to develop procedures to enhance safety in courts and departments where violence was likely to occur. She said that the Rules and Projects Committee requested that the subcommittee consider the costs

(which the committee was unable to do) and to look at legal issues involved in the proposal. She also noted that the proposal was circulated for comment.

Judge Ronald L. Taylor expressed concern about the unintended consequences of the proposal. He stated that the standard might undermine the ability of the sheriff or marshal to disburse resources where they are needed most.

Judge Zúñiga replied that the proposal is a standard, not a rule, and does not take discretion away from anyone.

Judge Jahr expressed concern that section (d)(3) providing for escort assistance could be read to give rise to a legal duty to escort people who request such help. Ms. Tyler stated that the standard was based on reasonable apprehension of threat.

Ms. Gonzalez said that fellow Judicial Council advisory member and court administrator Mr. Stephen V. Love was concerned about the proposal and suggested referring the matter to the Court Administrators and Trial Court Presiding Judges Advisory Committees for further discussion.

Justice Richard D. Aldrich asked if it was economically feasible to enact this standard. He noted that if fear of violence were reasonable, court staff would escort people currently, even without the standard.

Judge Paul Boland asked if court administrators and presiding judges believed that a standard such as the one proposed would strengthen their role in getting resources for security. Judge Horn responded that he did not recall discussing this point with members of the Court Administrators or Trial Court Presiding Judges Advisory Committees.

Mr. Vickrey stated that the Legislature wants to know why more money is necessary for security. He suggested that the committee develop criteria for what needs to be included in a security plan.

Judge James A. Bascue stated that a security rule should include budgetary standards for future use; it should also mention courts dealing with family law and juvenile delinquency.

Justice Huffman noted that security is not just an access and fairness issue. Any rule should look at security issues from a broader perspective.

Mr. Joseph A. Lane stated that council members have lost sight of what the Access and Fairness Advisory Committee discovered in surveys, studies, and public hearings, which revealed that members of the public felt their security needs were not being met.

Council action:

Ms. Gonzalez moved that the Judicial Council refer the issue of security measures to the Court Administrators and Trial Court Presiding Judges Advisory Committees to develop a standard or a rule in consultation with other appropriate advisory committees such as the Access and Fairness and Family and Juvenile Law Advisory Committees:

1. Identifying criteria to be considered in creating a local security plan, and
2. Asking courts to submit funding requests based on this plan adopted in compliance with the rule and based on available funding.

The motion passed.

Item 4E Domestic Violence Prevention/Civil Harassment — New Family Law Forms: Form 1296.31A(1), *Supervised Visitation Order (Family Law — Domestic Violence Prevention — Uniform Parentage)*; Form 1296.45, *Registration of Foreign Domestic Violence Restraining Order and Order (Domestic Violence Prevention)*. Modifications to Family Law and Civil Harassment Forms: Form 1285, *Order to Show Cause (Family Law — Uniform Parentage)*; Form 1285.10, *Notice of Motion (Family Law — Uniform Parentage)*; Form 1285.05, *Temporary Orders (Family Law — Uniform Parentage)*; Form 1285.20, *Application for Order and Supporting Declaration (Family Law — Uniform Parentage)*; Form 1285.40, *Responsive Declaration to Order to Show Cause or Notice of Motion (Family Law — Uniform Parentage)*; DV-100 (Amended and Renumbered Form 1296), *Application and Declaration for Order (Domestic Violence Prevention)*; DV-110 (Amended and Renumbered Form 1296.10), *Order to Show Cause and Temporary Restraining Order (CLETS) (Domestic Violence Prevention)*; DV-120 (Amended and Renumbered Form 1296.20), *Responsive Declaration to Order to Show Cause (Domestic Violence Prevention)*; DV-130 (Amended and Renumbered Form 1296.29), *Restraining Order After Hearing (CLETS) (Domestic Violence Prevention)*; Form 1296.31A, *Child Custody and Visitation Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage)*; DV-140 (Amended and Renumbered Form 1296.40), *Proof of Service (Family Law — Domestic Violence Prevention — Uniform Parentage)*; Form CH-120, *Order to Show Cause and Temporary Restraining Order (CLETS) (Harassment)*; Form CH-140, *Order After Hearing on Petition for Injunction Prohibiting Harassment (CLETS)*; Form 1295.90, *Emergency Protective Order (CLETS) (Domestic Violence, Child Abuse Prevention, Workplace Violence, and Civil Harassment)*. Technical Changes Made to Form WH-110, *Response to Petition for Injunction Prohibiting Harassment of Employee (Workplace Harassment)*

Ms. Diane Nunn, Managing Attorney; Mr. Joshua Weinstein, Criminal Law and Advisory Committee staff counsel; and Ms. Bonnie Hough, Family and Juvenile Law Advisory

Committee staff counsel, presented the item. Ms. Nunn noted that the Family and Juvenile Law Advisory Committee circulated a series of proposed domestic violence and civil harassment forms to comply with statutory requirements that the council establish standardized “temporary restraining orders and restraining or protective orders.” Ms. Nunn commented that legislative history showed that the Legislature’s concern with such orders focused mostly on domestic violence and family law matters.

Ms. Nunn reported that the committee researched whether federal or state laws prohibited a judicial officer from ordering the relinquishment of firearms in an ex parte hearing. No prohibition was found, so the forms developed by the committee indicate that on a showing of cause the court can order the relinquishment of firearms on a temporary basis pending a hearing.

Judge Luna asked whether a protective order in a criminal case allows the court to order relinquishment of firearms. Mr. Weinstein stated that that form has been modified to conform to the changes suggested for these family law forms.

Council action:

Judge Couzens moved that the Judicial Council:

1. Adopt the following new forms:
 - a. Form 1296.31A(1), *Supervised Visitation Order (Family Law — Domestic Violence Prevention — Uniform Parentage)*, for the courts to use in situations requiring supervised visitation.
 - b. Form 1296.45, *Registration of Foreign Domestic Violence Restraining Order and Order (Domestic Violence Prevention)*, to provide a procedure for registration of foreign domestic violence orders to give them full faith and credit in California and enable their entry into the Domestic Violence Order Registry.
2. Change the following family law, civil harassment, and workplace harassment forms:
 - a. Revise and modify Forms 1285, *Order to Show Cause (Family Law — Uniform Parentage)*; 1285.05, *Temporary Orders (Family Law — Uniform Parentage)*; 1285.10, *Notice of Motion (Family Law — Uniform Parentage)*; 1285.20, *Application for Order and Supporting Declaration (Family Law — Uniform Parentage)*; and 1285.40, *Responsive Declaration to Order to Show Cause or Notice of Motion (Family Law — Uniform Parentage)*, to allow all restraining orders to be prepared on a single form.
 - b. Revise and modify Form 1295.90, *Emergency Protective Order (CLETS) (Domestic Violence, Child Abuse Prevention, Workplace Violence, and Civil Harassment)*, to include workplace violence and civil harassment.
 - c. Rename Forms 1296, 1296.10, 1296.20, 1296.29, and 1296.40, as DV-100, *Application and Declaration for Order (Domestic Violence Prevention)*; DV-110, *Order to Show Cause and Temporary Restraining Order (CLETS) (Domestic Violence Prevention)*; DV-120, *Responsive Declaration to Order to Show Cause*

(Domestic Violence Prevention); DV-130, *Restraining Order After Hearing (CLETS) (Domestic Violence Prevention)*; DV-140, *Proof of Service (Family Law — Domestic Violence Prevention — Uniform Parentage)*, and modify for ease of use by litigants.

- d. Revise and modify Form 1296.31A, *Child Custody and Visitation Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage)*, to provide a standardized attachment for custody and visitation orders and reflect statutory changes set forth in the discussion.
- e. Revise and modify Forms CH-120, *Order to Show Cause and Temporary Restraining Order (CLETS) (Harassment)*, and CH-140, *Order After Hearing on Petition for Injunction Prohibiting Harassment (CLETS)*, to reflect changes in the law regarding possession of firearms and to conform to other statutory changes, such as notice of the effectiveness of the order when served.
- f. Revise and modify Form WH-110, *Response to Petition for Injunction Prohibiting Harassment of Employee (Workplace Harassment)*, to correspond to the numbering in the petition.

The motion passed.

Item 4F Access to Electronic Records (Cal. Standards Jud. Admin., §38)

Mr. Victor Rowley of the AOC staff presented the item. He stated that the Court Technology Advisory Committee proposed a standard of judicial administration to encourage trial courts to provide access to electronic records if their resources permit, and to provide the courts with general policy guidelines for such access. The standard applies to certain civil case records that are not sealed or otherwise confidential and states that access is on a case-by-case basis.

Mr. Rowley commented that the proposal was circulated twice as a proposed rule and that commentators felt either that access to court records should be unfettered or that privacy concerns outweigh the public's need for access. Mr. Rowley stated that the committee recognized the impossibility of reconciling the two positions and therefore proposed a standard, which is advisory and not mandatory. He said that the standard offers a consistent and coherent rationale to courts lacking resources to develop policies on these complex issues. The standard also includes a provision requiring courts to submit an evaluation and copies of their access policies to give the council the benefit of the courts' experience and enable the committee to monitor the issue.

Council action:

Ms. Gonzalez moved that the Judicial Council:

1. Adopt, effective January 1, 1999, section 38 of California Standards of Judicial Administration on access to electronic records.
2. Authorize the Court Technology Advisory Committee to achieve the objective of the standard at section (e) by defining evaluation requirements and instituting evaluation procedures. Section (e) reads, "Any trial court that provides public access to its electronic records should submit to the Judicial Council a copy and an evaluation of its access policies as directed by the council."

The motion passed.

Item 5 was discussed out of order. See pages 30 to 32.

ITEM 6 Allocation of Trial Court Budget for Fiscal Years 1997–1998 (Two Percent Automation Fund) and Fiscal Year 1998–1999 Non-Earmarked Appropriations

Judge Ray L. Hart, Chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Ms. Nancy Piano and Mr. Jonathan Wolin of the Trial Court Funding Unit. Judge Hart reported that the bulk of funds were allocated in August. This second set of allocations is being submitted to support broad policy themes. He stated that the goal of state funding as established in trial court funding legislation is a uniform, equitable court system with increased access to justice. It should ensure a minimum operating level in trial courts before other needs are met.

Judge Hart reviewed the funds available for allocation and noted which funds were formula driven. He stated that the TCBC recommends allocating \$2.5 million to fulfill the fiscal year 1997–1998 two percent automation obligation. He also stated that the TCBC identified several options for allocating the \$9.5 million remaining in fiscal year 1998–1999 non-earmarked appropriations. At the council's August directive, the TCBC developed allocation alternatives to address the funding needs of small courts and to consider other structural inequities that exist either because of significant underreporting errors in the fiscal year 1996–1997 base year or other systemic issues that may have adversely affected the court stemming from fiscal year 1996–1997 or 1997–1998. The council also directed the TCBC to consider pay equity and reclassification costs of court employees for fiscal year 1997–1998. The council directed the commission not to consider cost increases associated with court security at this time because of funding limitations.

Judge Hart said that underreporting occurred when courts wrongly listed non-rule-810 costs as rule 810 costs or when security costs were listed at budgeted, not actual, costs, and actual costs were higher.

Council action:

Judge Couzens moved that the council:

1. Approve the allocation of \$2.5 million from the Trial Court Improvement Fund to the trial courts for automation projects to fulfill the fiscal year 1997–1998 two percent automation obligation.
2. Approve the delegation of authority to the AOC to distribute two percent funds up to the fiscal year 1994–1995 level in the following fiscal years and to make technical corrections to individual trial court allocations.
3. Approve the allocation of \$3 million to address the needs of small countywide trial court systems identified as having few resources with which to manage their court operations.
4. Approve the allocation of \$1,133,255 to address fiscal year 1996–1997 reporting errors by the countywide trial court systems of Napa, Riverside, Sonoma, and Trinity Counties.
5. Approve the allocation of \$2,863,359 to address remaining fiscal year 1997–1998 personnel-related cost increases for court employees.
6. Defer the allocation of the balance of \$2,503,386 pending identification of further critical needs.

The motion passed.

ITEM 5 1999 Statewide Judicial Needs Determination

Judge Thomas F. Nuss, Chair of the Court Profiles Advisory Committee, presented the item, assisted by Ms. Denise Friday of AOC staff. Judge Nuss stated that 30 court systems submitted requests for a total of 158.25 judicial positions. He said that in compiling its recommendation on judicial positions the committee considered (1) whether the court is unified or assessed as meeting rule 991 of the California Rules of Court on trial court coordination, (2) the ranking of eligible nonunified courts that had judgeships recommended for more than one court jurisdiction (municipal, superior, or regional) within a county, and (3) whether a court was recommended for new judges in the previous year but was not awarded any by the Legislature, to ensure that those courts also recommended for new judgeships in the current year receive priority.

Judge Nuss stated that at the council's directive the committee gave priority to courts with demonstrated need in juvenile and family law areas and also reviewed requests in light of trial court unification. He noted that staff determined that a budget change proposal (BCP)

on judgeships should include funding for mediation support staff for trial courts that assign new judgeships to juvenile and family law divisions.

Chief Justice George asked why the committee was for the first time including recommendations for commissioner positions with its proposal for new judgeships. He stated that commissioner positions have previously been viewed as a local matter. Judge Nuss responded that in light of trial court funding and unification, the TCBC asked the committee to consider requests for commissioners. Mr. Vickrey added that there are cost factors involved in adding commissioner positions similar to those involved in adding new judgeships. He noted that the Legislature has expressed concern about courts' adding positions without the council's oversight and knowledge.

Chief Justice George asked whether, by submitting a request for commissioner positions, the council would undercut the demand for new judgeships.

Judge Jahr commented that in past years the TCBC funded requests from courts for new commissioner positions the court wished to create. He said the TCBC felt unqualified to evaluate the requests and deferred the matter to the Court Profiles Advisory Committee.

Justice Huffman commented that the Executive and Planning Committee discussed putting the issue of commissioner positions on the agenda of the council's planning workshop.

Ms. Gonzalez said that, prior to the passage of trial court funding, local courts tried to get commissioner positions from counties because they could not fund judgeships. Courts prefer to have new judgeships, which provide more flexibility. She said she would rather that the council seek new judgeships. She noted that a lot of positions are funded by the federal government and are available only for commissioner slots.

Ms. Friday noted that some courts request partial AB 1058 child support commissioner positions to supplement district attorney child support positions.

Justice Baxter suggested that the Court Profiles Advisory Committee study the appropriateness of requesting commissioner positions as opposed to judgeship positions and the advantages and disadvantages and rationale for each.

Mr. Vickrey said that the issue would be on the council's planning workshop agenda in December, at which time the council could refine the scope of such a study.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve the Court Profiles Advisory Committee's policy that in nonunified courts, if both the municipal and superior court are recommended for a judgeship based on

countywide need, in accordance with the legislative intent of trial court unification, the superior court should receive priority for the first judgeship.

2. Defer action on the recommendation for new judgeships and commissioner positions until after the council votes on the Trial Court Budget Commission presentation on the fiscal year 1999–2000 budget.

The motion passed.

ITEM 7 Fiscal Year 1999–2000 Trial Court Operations Budget

Judge Patricia K. Sepulveda, Chair of the Budget Evaluation and Appeals Committee (BEAC) of the Trial Court Budget Commission (TCBC), presented the report, assisted by Judge Hart and Mr. Wolin, manager of the Trial Court Funding Unit. Judge Sepulveda said that the enactment of single-source funding was the impetus for the Judicial Council and the TCBC to change the baseline budget development process, establish new parameters for incremental budget requests, and adopt programmatic directions.

Judge Sepulveda noted that the council limited the increase in incremental budget requests to no more than 10 percent above the 1998–1999 baseline and no more than seven requests per court system. It limited the submissions by the TCBC to the council to 20 budget change proposals (BCPs). She said that the council required all trial court systems to include one technology and one jury reform incremental request in their submission. She reported that the council directed the AOC to develop requests for negotiated salary increases for court employees and additional court interpreter funding on a statewide basis.

Judge Sepulveda said that 295 incremental requests were submitted, representing 57 counties. These requests were separated into 11 program areas, two of which were mandated by the council, and prioritized. The commission used the following assumptions in prioritizing the requests: (1) the total package cannot exceed \$160 million (10 percent over the fiscal year 1998–1999 baseline); (2) jury reform and technology should be included in whole or part, since they are the council’s top priorities; (3) imposed costs for negotiated salary increases should be fully budgeted, since they are not controlled by the courts but are required costs; and (4) the highest priority programs should be addressed to the fullest extent possible within the cap.

Judge Sepulveda reported that the BEAC preliminarily approved 63 items in their entirety and 32 items partially, totaling \$41 million, and denied 39 requests. She noted that, in addition to the existing process for written appeals, for the first time oral appeals were permitted and 23 countywide trial court systems made oral presentations. Of the items appealed, the BEAC approved 24 items in their entirety, approved 12 partially, and denied 7. Judge Sepulveda reviewed some of the frustrations the committee faced during the development of the first budget as part of the transition to state court funding.

Judge Sepulveda stated that the TCBC developed alternative rankings of the requests based on the council's priorities, determinations of trial courts' greatest self-identified need for funding, and evaluations of the programs that would make the most compelling argument for budget approval in the executive and legislative branches. The TCBC recommended approval of an option that funds jury reform programs, excluding mileage for jurors traveling 50 miles or more each way; programs involving technology, security, family and children, increased public access, case processing, and county/state transition responsibilities; and negotiated salary increases. The total recommended amount is \$157,904,356, representing a 9.9 percent increase over the base. In addition, the TCBC recommended an additional \$15.3 million to fund all contract and staff interpreters at a rate of \$250 a day and to provide funding for a 4.18 percent projected increase in interpreter workload.

Judge Hart reported that the TCBC and Court Profiles Advisory Committee met to develop a recommendation on the relative priority of the three primary components of the fiscal year 1999–2000 statewide trial court budget request: court operations, court interpreters program, and new judgeships. Their proposal included a multiyear approach to new judgeship and commissioner positions, with recommended funding for 50 new judgeships (\$6.2 million for quarter-year funding) for fiscal year 1999–2000.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve Option 5 (Attachment IX) presented at Tab 7, page 18 of the binders of Reports and Recommendations dated October 15–16, 1998, for a total recommended budget of \$158.1 million to:
 - a. Fully address the Imposed Costs program (negotiated salary increases) for court employees and security personnel (\$33.6 million);
 - b. Address Jury Reform, with the exception of most of the mileage component (Attachment III) (\$30.6 million);
 - c. Address court management systems, additional information technology staffing, and network/telecommunications subprograms of the Technology program (Attachment III) (\$39 million); and
 - d. Fully address Security (\$11 million), Increased Public Access (\$11.3 million), Family and Children (\$7.4 million), Case Processing (civil and criminal) (\$2.8 million), and County/State Transition Responsibilities (\$22.4 million) programs.
2. Approve a \$15.3 million recommended budget to address projected cost increases in the Court Interpreters Program (Attachment III).

The motion passed.

Returning to the discussion on new judgeships, Justice Huffman said that for the council to ask for new judgeships in light of unification would contradict public statements it has made about cost savings and efficiencies that would result from unification.

Council action:

Justice Huffman moved that the Judicial Council:

1. Include funding for 50 trial court positions for the last quarter of the year in the fiscal year 1999–2000 budget request.
2. Sponsor legislation to establish 50 new positions consistent with Trial Court Budget Commission priorities.
3. Defer consideration of the remaining 29 judgeship positions and 6 new commissioner positions until next fall when:
 - a. The Judicial Council will have updated its Long-Range Strategic Plan,
 - b. Legislative action on the request for 50 new positions will be known, and
 - c. The Judicial Council will have the recommended Trial Court Budget Commission priorities for the trial courts for fiscal year 2000–2001 available for consideration.

Judge Hart commented that funding is being requested for only the last quarter since by the time the request is submitted only one quarter will remain. Judge Nuss stated that it was important for the council to approve the remaining 29 positions, or courts will be required to reapply next year, which will be frustrating for them.

Justice Baxter commented that getting even 50 judges is an optimistic goal, particularly in light of the upcoming change in Governors.

Judge Dover expressed concern about courts' being disadvantaged by some of the problems faced in the funding process during the transition to trial court funding. Judge Hart noted that the problems did not surface until the process was nearly complete.

Judge Orfield asked how close these proposals were to executive branch and legislative expectations. Mr. Vickrey reported that the other branches of government are being kept apprised and are pleased with the speed at which the TCBC changed its processes to meet its new role and responsibilities. He noted that the other branches will pay very close attention to the depth and quality of documentation presented on the budget submissions.

Justice Huffman noted that after the council sets priorities the trial courts will be experiencing some dislocation. If the courts were to receive even a 5 percent increase in funding, it would be a significant event. He said that the additional 29 judgeships of the 50 in the pending motion were probably needed, but it was not the time to make that request.

Returning to discussions of problems encountered in the transition to trial court funding, Mr. Vickrey made reference to a budget appeals letter from the Los Angeles courts. The letter noted confusion regarding directions on submissions and asked the TCBC to reconsider the courts' incremental budget requests in light of this confusion. Mr. Vickrey asked if local courts would be able to spend money as their needs directed. Judge Hart replied that once the appropriation was known, the TCBC will have a better sense of courts' needs in relation to available resources and can allocate money appropriately. He noted the TCBC suggested a solution to the issue referred to in the letter from the Los Angeles courts. He said many counties responded and remedied the problem. The TCBC elected not to consider appeals of the process.

Judge Taylor expressed concern about the message the council would send to the courts if the motion passed. He noted that the Court Profiles Advisory Committee had carefully developed a prioritized list of necessary judgeships, applying the criteria established by the Judicial Council. He said that before 1996 no new judgeships had been created for 10 years and some courts still have not received one.

Council action:

The motion made by Justice Huffman passed.

Special Comment

The Chief Justice acknowledged the resignation of Judge Nuss from the Court Profiles Advisory Committee and commended him for his leadership and service to the council and the committee.

ITEM 8 Summary of Proposed Budget Change Proposals for Fiscal Year 1999–2000

Mr. Dennis Jones, AOC Deputy Director, and Mr. Frank Schultz of the Finance Bureau presented the item. Mr. Jones stated that the budgets of the Supreme Court and Courts of Appeal show small increases. The increases are primarily in response to legislative mandates, are formula driven, and reflect minimal changes in operations.

Council action:

Judge Couzens moved that the Judicial Council:

1. Approve the proposed Supreme Court fiscal year 1999–2000 budget of \$32,551,000 for submission to the Governor.
2. Approve the proposed Courts of Appeal fiscal year 1999–2000 budget of \$147,659,000 for submission to the Governor.

3. Authorize the Administrative Director of the Courts to modify the requests in the best interest of the branch, based on decisions made by the Governor and the Legislature on pending issues impacting the fiscal year 1999–2000 budgets, such as fiscal year 1998–1999 deficiencies and the funding of the Judicial Administration Efficiency and Modernization Fund.

The motion passed.

Mr. Jones reported that the Judicial Council budget includes a large increase, reflecting significant changes in the operations of the AOC. He noted that the recommendation presented includes changes suggested by the Executive and Planning Committee to ensure that the AOC is adequately staffed to implement the requirements of state trial court funding and unification. The committee requested that staff delete support for discretionary activities from the proposal.

Mr. Jones stated that the increased funding and positions will allow the agency to provide very limited direct services, indirect and consultative services, and information, and to establish best practices in the areas of procurement and contracting, budgeting and accounting, legal services, human resources, and technology. He noted that the agency hopes to help courts reconcile budgets monthly, prepare year-end financial reports, and draft fiscal and audit procedures; these functions are not possible now, given the limited budget staff and the lack of any audit staff. Mr. Jones stated that increased staffing will enable the agency to consult with trial courts on personnel plans, risk management, discrimination complaints, and disciplinary actions. Even with the increased staffing requested, the agency will be able to provide only limited human resources assistance.

Mr. Jones commented that the request for 69 positions is significantly larger than past requests, which have generally been for 30 to 40 positions. If the request is funded, the agency's staff will increase from 340 to 410. The request is based on providing services that the courts are anticipated to need, based on requests the agency is beginning to receive and notices of cessation of services that courts will receive from counties on April 1, 1999.

Mr. Jones stated that the request includes only partial-year position funding, thereby decreasing the request by \$700,000.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve a proposed Judicial Council fiscal year 1999–2000 budget of not more than \$105.7 million for submission to the Governor.
2. Authorize the Administrative Director of the Courts to modify the request in the best interest of the branch, based on decisions made by the Governor and the Legislature on pending issues impacting the fiscal year 1999–2000 budget, such as fiscal year

1998–1999 deficiencies and the funding of the Judicial Administration Efficiency and Modernization Fund.

Ms. Gonzalez suggested prioritizing the request further.

Justice Baxter recommended that a majority of courts request services before the services are offered. He expressed concern that there was inadequate justification for the additional positions and that the council might be seen as micromanaging.

Judge Melinda A. Johnson suggested redirecting money from other areas of the agency to boost the infrastructure implementing trial court funding and unification, should the agency not receive all positions requested.

Council action:

The motion by Justice Huffman passed.

**ITEM 9 Notice When Statute or Regulation Declared Unconstitutional
(Cal. Rules of Court, rule 826)**

Ms. Cara Vonk, Civil and Small Claims Advisory Committee staff counsel, presented the item. She stated that the committee proposed adding rule 826 to the California Rules of Court to require that the clerk of the court notify the Attorney General 10 days after the court has declared a statute or regulation unconstitutional. She noted that legislation mandated notifying the Attorney General, and the committee felt it was the court's rather than the prevailing party's obligation to do so.

Council action:

Judge Couzens moved that the Judicial Council, effective January 1, 1999, adopt new rule 826 of the California Rules of Court to require notice to the Attorney General within 10 days after the court has declared a statute or regulation unconstitutional with the following amendment: delete subdivision (b), and amend subdivision (a) to read "... in which the court has declared unconstitutional a state statute or regulation, the prevailing party, or as otherwise ordered by the court, shall mail to the Attorney General a copy of the judgment and a notice of entry of judgment, and file a proof of service with the court."

The motion passed.

ITEM 10 Small Claims—Fourteen-Day Goal to Decide Case After It Has Been Submitted (Cal. Standards Jud. Admin., § 16.7)

Ms. Vonk, Civil and Small Claims Advisory Committee staff counsel, presented the item. She reported that the committee proposed adding section 16.7 to the California Standards of Judicial Administration to recommend that all judicial officers hearing a small claims case in the trial court should decide the small claims case within 14 calendar days after the case is submitted, as defined in rule 825(a) and earlier if possible. Rule 825(a) provides that a case is deemed submitted when the court orders the matter submitted or the date the final paper is required to be filed, whichever is later.

She stated that the committee felt it was important to set a goal by which expectations can be measured. She noted that the recommendation presented passed by a very close vote and that many committee members thought a 30-calendar-day goal was preferable.

Ms. Vonk said the proposal was circulated several times. Originally the proposal covered only temporary judges and specified a goal of 7 days. Later it was circulated with the 14-day goal and covered all judges. It also included a provision to extend the 14-day period for good cause. The committee felt the extension was inappropriate in a standard and that on a very close vote the standard should apply only at the trial court and not at the trial de novo level.

Council action:

Judge Couzens moved that the Judicial Council, effective January 1, 1999, adopt new section 16.7 of the California Standards of Judicial Administration to establish a 30-day goal, and earlier if possible, for deciding a small claims case taken under submission in the trial court and at the trial de novo level.

Judge Luna commented that frequently small claims matters become increasingly complicated because the litigants are unsophisticated. She said that 30 days was a more reasonable goal than 7 days.

Judge Dover said there was no reason to distinguish between the goal set for the trial court level and that set for the trial de novo level.

Judge Johnson expressed concern that there is no time standard for resolving cases in the family law area, even though those cases involve life, death, and critical situations.

Justice Aldrich, former chair of the Civil and Small Claims Advisory Committee, stated that the committee's original charge was to develop a standard in response to complaints from attorneys that temporary judges were not resolving issues in 30 days or even 6 months. He

noted that most people commenting on the proposal when it was originally circulated agreed with the 7-day time period. He remarked that if the standard applied to trials de novo it would conflict with the 90-day rule.

Judge Couzens noted that there are shorter authorized time periods in other statutes, such as those for habeas corpus petitions requiring a reply in 48 hours.

Justice Baxter expressed concern that a volunteer would be held to a stricter standard than would a judge receiving pay for the same work.

Justice Corrigan commented that the standard proposed has grown beyond the problem it is trying to solve. If the problem is that volunteers are not resolving cases in a timely manner, a standard should be drafted to address that issue.

Justice Huffman said that judge pro tems are not bound by standards and that concerns with a pro tem's performance should be dealt with as a management issue. He stated that there is no demonstrated evidence of the need to apply such a standard to judges and commissioners.

Judge Taylor remarked that as a presiding judge he receives complaints regarding small claims matters. He supports adopting a standard and feels it is a public perception issue.

Judge Bascue stated that the problem that the standard is meant to solve is a local management issue that the supervising administrative judge can address. He said that there is no need for a statewide standard.

Council action:

The motion made by Judge Couzens failed.

Council action:

Justice Aldrich moved that the Judicial Council refer back to the Civil and Small Claims Advisory Committee the issue of drafting a standard suggesting a 14-day goal to decide a case after it has been submitted so the committee can consider applying it only to temporary judges.

The motion failed.

Judge Dover suggested that courts establish local standards for ensuring that civil and small claims cases are resolved in a timely manner.

ITEM 11 Form of Papers Presented for Filing (Cal. Rules of Court, rules 201 and 501)

Ms. Vonk, Civil and Small Claims Advisory Committee staff counsel, presented the item. She noted that the recommendation presented is an antidote to the “blue-back rule” in the Los Angeles Superior Court. She reported that it is the committee’s understanding that Los Angeles has accepted the proposal. No comments in opposition were received.

Ms. Vonk stated that the committee recommends amending rules 201 and 501 to require attorneys in superior and municipal courts to add a footer stating the title of the paper in the bottom margin of each page of every paper filed with the court (except exhibits). Additionally, the amendments would require litigants to state, on the first page of the complaint or petition, whether the amount demanded exceeds or does not exceed \$10,000. The amendments would also require litigants in unified courts to state in the caption of every pleading whether the case is a “limited civil case” as that term is defined by recent legislation implementing trial court unification.

Judge Johnson asked whether “blue-backs” were required of all litigants in Los Angeles. Ms. Vonk said that they were.

Justice William M. Wunderlich suggested that the footer include the month and year when the paper was prepared. Ms. Vonk stated that the committee was concerned that confusion would result when the preparation date might be different from the filing date.

Council action:

Judge Couzens moved that the Judicial Council, effective January 1, 1999, amend rules 201 and 501 of the California Rules of Court to:

1. Require that all filings in superior and municipal courts prepared by attorneys and nonattorneys include a footer stating the title of the paper in the bottom margin of each page of every paper filed with the court (except exhibits).
2. Require litigants to state, on the first page of the complaint or petition, whether the amount demanded exceeds or does not exceed \$10,000.
3. If Senate Bill 2139 becomes law, require litigants in unified courts to state in the caption of every pleading whether the case is a “limited civil case.”

The motion passed.

Justice Huffman prefaced the discussion of the next three items by stating that the Executive and Planning Committee moved Items 12, 13, and 14 from the consent to the discussion agenda because of concern about costs associated with the proposals, rather than concern about the substance and nature of the proposals. The question is whether the council should

adopt standards with cost implications requiring activities by the courts without providing funding for these through the budget process. He noted that it was a question of priorities among the many items required of courts.

ITEM 12 Domestic Violence Training Standards for Court-Appointed Child Custody Investigators and Evaluators (Cal. Rules of Court, rule 1257.7)

Ms. Susan Hanks, Coordinator for Special Services in the Statewide Office of Family Court Services, presented the item. She stated that legislation mandates that the Judicial Council prescribe standards for training court-appointed investigators in domestic violence and draft a rule of court requiring domestic violence training for all court-appointed persons who evaluate or investigate child custody matters. The proposed rule defines the minimum number of hours of in-person classroom instruction required, specifies the curriculum content, and outlines the processes for certification and notification to the courts that the mandated requirements have been completed. The rule establishes a minimum and uniform standard of training for all persons utilized by the court to investigate and evaluate child custody issues, and where applicable, to make recommendations regarding custody and visitation.

Ms. Hanks noted that the agency already offers annual continuing education to family court mediators, evaluators, and investigators and covers many of the associated costs. Local courts may absorb costs associated with travel expenses and time off to attend the training. She stated that private-sector evaluators and investigators subsidize their own individual participation in such training. Therefore, the fiscal impact would be minimal.

Judge Couzens said that although he was sensitive to the dilemma of requiring courts to provide training and not funding this in the budget process, the problem results from the Legislature's not yet appropriating funds prescribing the new activity.

Ms. Gonzalez said that she and Mr. Stephen V. Love, fellow court administrator and Judicial Council advisory member absent from the meeting, were concerned that the council and Legislature have not attached money to this new required activity. She suggested that the council direct the Trial Court Budget Commission to give mandated training and education a higher priority in the trial court budget process.

Council action:

Judge Couzens moved that the Judicial Council adopt, effective January 1, 1999, rule 1257.7 of the California Rules of Court prescribing domestic violence training standards for court-appointed child custody investigators and evaluators.

The motion passed.

ITEM 13 Standards for Judicial Branch Education (Cal. Standards Jud. Admin., §§ 25–25.6)

Ms. Catherine Lowe, Director of the Education Division, presented the item. She reported that the Judicial Council in 1997 directed the Center for Education and Research (CJER) Governing Committee to draft standards that implement the council’s long-range plans for judicial branch education. The proposal seeks to consolidate and codify judicial branch education standards and establish education as an integral part of the official duties of court employees as it is for judicial officers.

Justice Huffman asked whether the standards impose different time, cost, or educational requirements than do current programs sponsored by CJER. Ms. Lowe responded that the standards require education for more people than is presently offered. Justice Huffman expressed concern that courts would need to find resources to fund this additional programming. Ms. Lowe stated that CJER was working to make education more readily available to court staff through regionalization of programs and alternative delivery options.

Ms. Gonzalez noted that the Judicial Administration Efficiency and Modernization Fund was supposed to cover these costs. She said that if that fund were reinstated, it could cover training costs.

Council action:

Ms. Glenda Veasey moved that the Judicial Council, effective January 1, 1999, adopt sections 25–25.6 of the California Standards of Judicial Administration as standards for judicial branch education to implement the long-range plan for judicial branch education.

The motion passed.

ITEM 14 Uniform Standards of Practice for Court-Connected Child Custody Mediation: Adoption of Rule 1257.1 of the California Rules of Court, Repeal of Section 26 of the California Standards of Judicial Administration, and retitling of Chapter 2.6 Under Title Five, Division I of the California Rules of Court

Ms. Mimi Lyster, Standards and Programs Coordinator of the Statewide Office of Family Court Services, presented the item. She stated that statute requires the Judicial Council to develop uniform standards of practice for court-connected mediation of child custody and visitation disputes. Standards were adopted in 1991. The Family and Juvenile Law Advisory Committee has proposed to repeal those standards and adopt a rule of court based on the requirements stated in Family Code section 3162.

Ms. Lyster reported that since 1991 the courts have seen increases in mediation caseloads and in the number of unrepresented litigants and families with complex and multiple problems. The proposal addresses these new circumstances.

Ms. Lyster indicated that some jurisdictions will need to consider administrative and fiscal issues in order to fully implement the new rule. Therefore, the committee recommends an effective date of January 1, 2001.

Judge Johnson stated that the written report to the council argues that elevating the standard to a rule of court minimizes the risks that individual courts will be out of compliance with legislative mandate. She asked whether counties were not complying with the statute. Ms. Lyster stated that she did not know how many courts were not in compliance. She commented that the rule of court adds several requirements not in the current standards and that courts will need time to implement and secure funding for these new provisions in order to comply.

Judge Johnson suggested including resources for child custody mediation and other family law issues in the list of budget priorities recognized by the Trial Court Budget Commission.

Council action:

Ms. Gonzalez moved that the Judicial Council:

1. Effective January 1, 1999, retitle Chapter 2.6 under Title Five, Division I of the California Rules of Court, "Evaluations," as "Child Custody."
2. Effective July 1, 2001, repeal section 26 of the California Standards of Judicial Administration and adopt proposed rule 1257.1 of the California Rules of Court relating to uniform standards of practice for court-connected child custody mediation.

The motion passed.

Item 1A Telephone Appearance in Municipal and Superior Court: Adoption of Rules 298 and 598 of the California Rules of Court and Repeal of Rule 827

Ms. Vonk, Civil and Small Claims Advisory Committee staff counsel, presented the item. She reported that the item was moved from the consent to the discussion agenda at the request of Judge Harbin-Forte, incoming Rules and Projects Committee chair, who suggested clarifying rule 598. Her proposal was accepted by the Civil and Small Claims Advisory Committee.

Ms. Vonk reported that the council in February 1998 adopted rule 298 pertaining to telephone appearances in superior courts. The council at that time directed the committee to develop a similar rule for municipal courts. Proposed rule 598 is the committee's response

to that directive. While drafting the rule, the committee noted some technical defects in rule 298 and recommended amending those at the same time.

Ms. Vonk reviewed the differences between rules 298 and 598. Under rule 298 pertaining to superior courts, telephone appearances are required in certain kinds of proceedings. Under rule 598 pertaining to municipal courts, telephone appearances are not required but are permitted if the court allows them. The reason for the difference is that Government Code section 68070.1 requires telephone appearances only in superior court. Ms. Vonk noted that trial court unification makes it unclear whether unified courts must provide for telephone appearances in all cases because they are now superior courts. The Civil and Small Claims Advisory Committee will study the issue further. In the meantime, the committee recommends adopting rule 598 to ensure that procedures for requesting a telephone appearance will be uniform in both limited and unlimited civil cases.

Judge Orfield asked if there was a rule requiring telephonic tentative rulings the day before the scheduled law and motion calendar and expressed concern that if the telephonic system is updated the evening before the scheduled law and motion calendar, there would be less than one day's notice requiring the parties to appear in court. Ms. Vonk stated that rule 324 relating to tentative ruling procedure requires a tentative ruling be made available by telephone by 3:30 p.m. the day before the scheduled hearing. She noted that the committee intended the "day before" to mean until closing time the day prior, not 24 hours prior to the hearing.

Judge Harbin-Forte commented that many courts give tentative rulings before 3:30 p.m. on the day before the hearing. She suggested inserting language into the proposal allowing courts to give notice of a required appearance at the same time as a tentative ruling if the tentative ruling is given at least one court day before the hearing. Judge Orfield agreed with the suggestion and recommended that the new language conform to that already in the rule relating to notice.

Council action:

Judge Harbin-Forte moved that the Judicial Council, effective January 1, 1999:

1. Amend rule 298 to:
 - a. Eliminate reference to rule 827
 - b. Specify that the rule applies to civil actions, special civil proceedings, and probate proceedings
 - c. Eliminate reference to the "first filed" moving or opposing papers in subdivision (d)
 - d. Clarify that notice by the court is only needed if the court requires a personal appearance after counsel has requested appearance by telephone
 - e. Permit the court to require an appearance on the court's telephonic law and motion tentative ruling system if notification is given one court day before the hearing.

2. Adopt rule 598 to:
 - a. Provide procedures for telephone appearances in conferences and nonevidentiary hearings in limited civil cases, including special proceedings of a civil nature such as unlawful detainer, in courts that permit such appearance
 - b. Require that courts using a telephonic tentative ruling system for law and motion matters notify counsel to appear one court day before the hearing.
3. Repeal rule 827, which sets out the procedure for requesting a telephone appearance, because it is superseded by rules 298 and 598.

The motion passed.

CIRCULATING ORDERS APPROVED SINCE LAST BUSINESS MEETING

Circulating Order CO-98-14: SCA 4 Certifications

For information only; no action required.

Circulating Order CO-98-15: Judicial Council Decision to Require That Action by Local Oversight Committee Be Taken by Majority Votes

For information only; no action required.

Circulating Order CO-98-16: SCA 4 Certifications

For information only; no action required.

Circulating Order CO-98-17: Additional Advisory Members of the Judicial Council

For information only; no action required.

JUDICIAL COUNCIL APPOINTMENT ORDERS SINCE LAST BUSINESS MEETING

For information only; no action required.

The meeting was adjourned at 12:30 p.m.

Respectfully submitted,

William C. Vickrey
Secretary