

JUDICIAL COUNCIL MEETING
Minutes of November 1, 2002, Meeting

The Judicial Council of California business meeting began at 8:40 a.m. on Friday, November 1, 2002, at the Administrative Office of the Courts (AOC) in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Associate Justice Marvin R. Baxter; Associate Justices Norman L. Epstein, Richard D. Huffman, and Laurence Donald Kay; Judges Gail A. Andler, Aviva K. Bobb, Eric L. Du Temple, Robert A. Dukes, William C. Harrison, Brad R. Hill, Jack Komar, Heather D. Morse, Ronald M. Sabraw, and Barbara Ann Zúñiga; Mr. Rex Heeseman; Mr. David J. Pasternak, Ms. Ann Miller Ravel, and Mr. Thomas Joseph Warwick, Jr.; and **advisory members:** Judges Frederick Paul Horn and Gregory C. O'Brien, Jr.; Commissioner Patricia H. Wong; Ms. Tressa S. Kentner, Ms. Susan Null, and Mr. Alan Slater.

Absent: Assembly Member Ellen M. Corbett, Senator Martha M. Escutia, and Mr. William C. Vickrey.

Others present included: Associate Justices Eileen C. Moore and Joanne C. Parrilli; Judges Kathleen K. Akao, Elihu M. Berle, Robert S. Boyd, M. Kathleen Butz, Raymond A. Cota, Stephen D. Cunnison, Alden E. Danner, Betty L. Dawson, Jennifer R.S. Detjen, Terrance R. Duncan, Thomas P. Hansen, David W. Herrick, Suzanne N. Kingsbury, William A. MacLaughlin, Monica Marlow, David McEachen, John V. Meigs, Douglas P. Miller; Edward P. Moffat II, Peter H. Norell, Garrett Olney, Edward Sarkisian, Jr., B. Tam Schumann, Richard Strauss, Paul A. Vortmann, F. Dana Walton, Sharon J. Waters, James Michael Welch, some of the presiding judges and presiding judges-elect and executive officers of the trial courts; Ms. Wendy Erickson and Mr. John Thorson; **staff:** Mr. Ronald G. Overholt, Ms. Tamara Abrams, Ms. Shireen Advani, Mr. David Amos, Ms. Heather Anderson, Ms. Aleta Beaupied, Mr. Joel Bello, Mr. Peter Belton, Mr. Michael Bergeisen, Ms. Mara Bernstein, Mr. Dennis Blanchard, Ms. Tina Carroll, Mr. Rod Cathcart, Ms. Deborah Chase, Ms. Roma Cheadle, Ms. Donna Clay-Conti, Mr. Blaine Corren, Mr. Eduardo Duran, Ms. Barbara Edwards, Ms. Jane Evans, Ms. Audrey Evje, Ms. Claudia Fernandes, Ms. Charlene Hammitt, Ms. Sue Hansen, Ms. Tina Hansen, Ms. Brenda Harris, Ms. Fran Haselsteiner, Ms. Lynn Holton, Ms. Bonnie Hough, Ms. Susan Hough, Ms. Kathleen Howard, Ms. Melissa Johnson, Mr. Kenneth Kann, Ms. Lucia Kanter, Ms. Martha Kilbourn, Ms. Allison Knowles, Ms. Monica LeBlond, Ms. Cindy Lee-Young, Ms. Rita Mah, Ms. Carolyn McGovern, Mr. Douglas Miller, Mr. Frederick Miller, Ms. Karen Moen, Ms. Suzanne Murphy, Ms. Mary Nelson, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Sue Oliker, Ms. Christine Patton, Ms. Nancy Polis, Ms. Romunda Price, Ms. Virginia Robles, Ms. Robin Seeley, Ms. Kathleen Sikora, Ms. Sonya Smith, Mr. Corby Sturges, Ms. Theresa Sudo, Ms. Pat Sweeten, Ms. Marcia Taylor, Ms. Karen Thorson, Ms. Yvette Trevino, Ms. Eugenia Tripputi, Mr. Courtney Tucker, Mr. Jim Vesper, Mr. Grant Walker, Ms. Jennifer Walter, Mr. Joshua Weinstein, Ms. Bobbie Welling, Mr. Tony Wernert,

Ms. Barbara Jo Whiteoak, Mr. Michael Wright, and Ms. Pat Yerian; **media representatives:** Mr. Peter Blumberg and Ms. Donna Domino, *Daily Journal*, and Mr. Jeff Chorney, *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 November 1, 2002, that were sent to members in advance of the meeting.)

Special Comments

Chief Justice Ronald M. George called for a moment of silence in honor of Presiding Justice Mildred L. Lillie, of the Court of Appeal, Second Appellate District, Division Seven, who passed away on October 27, 2002.

The Chief Justice welcomed special guests, among whom were presiding judges and presiding judges–elect, chairs of the Judicial Council advisory committees and task forces, and executive officers who were visiting as part of the leadership program of the Judicial Council and the Administrative Office of the Courts.

Approval of Minutes of August 30, 2002

There were no minutes to be approved.

Announcement of the Warren E. Burger Award Recipient

Judicial Council members and staff, along with husband Mr. John Thorson and daughter Wendy Erickson applauded Ms. Karen Thorson, Director of the Education Division of the Administrative Office of the Courts, for receiving the 2002 Warren E. Burger Award for her outstanding contributions in the field of court administration through management, education, training, and research and consulting. She was honored on August 18, 2002, at the annual conference of the National Association of State Judicial Educators.

Special Comment

On behalf of the Judicial Council, Mr. Ronald G. Overholt, Chief Deputy Director of the AOC applauded Chief Justice Ronald M. George, who had been bestowed the distinguished William H. Rehnquist Award for Excellence in October at the United States Supreme Court. At that ceremony, Chief Justice Rehnquist and Justice Sandra Day O'Connor praised Chief Justice George for his many accomplishments, including unification of the trial courts, the move to state funding of trial courts, and the recent legislation giving the state responsibility for court facilities, in addition to his 30 years of service as a judge in the State of California.

Judicial Council Committee Presentations

Executive and Planning Committee

Associate Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee (E&P) had met once since the council's last meeting. E&P began reviewing the structure of the advisory committees from the standpoint that the committee makes nominations to the Chief Justice for appointments. They will begin assessing the number of positions on those committees. The committee will work in collaboration with the Rules and Projects Committee (RUPRO) as they review the work plans.

Policy Coordination and Liaison Committee

Associate Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee (PCLC) had met once since the last Judicial Council meeting for an orientation session with the new committee members, Justice Epstein, vice-chair, and Judges Morse, Zúñiga, and O'Brien. Justice Baxter reported that last year was an extremely positive legislative year for the council, with the following eight Judicial Council-sponsored bills signed by the Governor:

1. Senate Bill 1732 on trial court facilities. Transfers the financial responsibilities of California's 451 courthouses from the counties to the state;
2. Senate Bill 1396 on trial court security. Requires each of the courts to prepare and implement a court security plan;
3. Assembly Bill 2879. Changes in judges' retirement provisions consistent with the council's commitment to improve the quality of judicial service;
4. Senate Bill 2011 on workers' compensation. Establishes the judicial branch workers' compensation fund and allows courts to self-insure for such claims;
5. Assembly Bill 2321. Establishes the Judicial Council as the governing body of the courts for the purposes of the Tort Claims Act;
6. Assembly Bill 3028 on court operations;
7. Assembly Bill 3027 on civil practice and jury waiver. Includes among others, provisions requiring parties seeking a jury trial to post advance deposit of jury fees at the same time;
8. Assembly Bill 1698 on legal document assistants. Lifts the sunset on the legal document assistant registration program and increases consumer protection for users of these services.

A meeting held in the Chief Justice's chambers on October 21 with Attorney General Bill Lockyer and his leadership team resulted in a productive discussion on legislative issues of mutual interest. This was one of a series of liaison meetings that will take place throughout the year with other justice system groups. The Judicial Council will be hosting the 9th Annual Judicial-Legislative-Executive Forum, an informational event for legislators, the Governor, and other executive branch officials. The forum will take place in conjunction with the Chief Justice's State of the Judiciary address to the Legislature in February or March 2003.

The Chief Justice commented that the large measure of the success of our council-sponsored legislation is due to our having built many helpful coalitions with the sheriffs regarding security costs, consumer attorneys on the filing fee increases that will enable the funding in part of the court facilities bill, and colleagues at the California Judges' Association. He emphasized that we are speaking with one voice but also with the assistance and support from outside the judicial branch to further our legislative agenda.

Rules and Projects Committee

Judge Gail A. Andler, chair, reported that the committee met on September 12, 2002, under the leadership of former RUPRO chair, Justice Ronald B. Robie, to review 53 proposals for changes to the rules and forms. The proposals include:

1. The second installment of the appellate rules revision;
2. Revision of the rules on the form of papers presented for filing;
3. New uniform rules for electronic filing and service of papers in the trial courts;
4. New rules setting minimum standards for appointed trial counsel in capital cases;
5. New plain language adoption forms and domestic violence forms;
6. New rule on judicial sabbatical leave; and
7. New probate rules.

On October 23, 2002, under the leadership of Judge Ronald M. Sabraw, the former RUPRO members continuing on the Judicial Council met by telephone to review issues remaining from the September 12 meeting. They recommended approval of all the rules and forms on the agenda today except Item E4, which is on the discussion agenda subject to one revision to be presented to the council. The newly appointed RUPRO members met on October 31 for an orientation on RUPRO procedures, policies, and projects and for the review of the new rule regarding circulation.

CONSENT AGENDA

The Chief Justice reported that no items were moved from the consent agenda to the discussion agenda. Therefore all the items on the consent agenda are deemed approved.

Item A1 Appellate Rules: Form Requirement for Habeas Corpus Petitions Filed by Attorneys in the Reviewing Courts (amend Cal. Rules of Court, rule 56.5)

The Appellate Advisory Committee recommends amending a rule to provide that a petition for habeas corpus filed by an attorney need not be on the Judicial Council habeas form.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendation amending rule 56.5 to provide that a petition for habeas corpus filed by an attorney need not be on the Judicial Council habeas form, MC-275.

Item A2 Appellate Rules: Facsimile Signatures on Stipulations for Extension of Time to File Appellate Briefs and Simplified Certification of Delivery to Client (amend Cal. Rules of Court, rules 15(b) and 45(f))

The Appellate Advisory Committee recommends amending rules to allow facsimile signatures of all but one party to a stipulation for extension of time in a civil appeal and permit counsel in civil cases to certify in the application or stipulation for extension of time, instead of in the attached proofs of service, that they have delivered a copy of the application or stipulation to their clients.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations amending rules 15(b) and 45(f) to allow facsimile signatures of all but one party to a stipulation for extension of time in a civil appeal and permit counsel in civil cases to certify in the application or stipulation for extension of time that they have delivered a copy of the application or stipulation to their clients.

Item A3 Appellate Procedure: Filing of Case Information Statement in Civil Cases (amend Cal. Rules of Court, rule 1, and adopt form APP-001; *Civil Case Information Statement*)

The Appellate Advisory Committee recommends adopting a new statewide civil case information statement form and amending rule 1 to require that this form be filed in the Court of Appeal shortly after the notice of appeal in order to facilitate an early determination of appealability.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendation to amend rule 1 of the California Rules of Court to require filing of a case information statement and adopt new form APP-001, *Civil Case Information Statement*, for mandatory use.

Item A4 Alternative Dispute Resolution: Petition to Request Trial de Novo After Judicial Arbitration (approve form ADR-102)

The Civil and Small Claims Advisory Committee recommends approving a new form for requesting a trial de novo after judicial arbitration in order to simplify the request process and save litigants the time and expense of having to draft individualized requests.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendation approving form ADR-102, *Request for Trial de Novo After Judicial Arbitration*, for optional use.

Item A5 Alternative Dispute Resolution: Petition After Attorney-Client Fee Dispute Arbitration Award and Information Regarding Rights After Attorney-Client Fee Arbitration) (approve forms ADR-103 and ADR-103A)

The Civil and Small Claims Advisory Committee recommends approval of two forms for optional use in non–small claims court proceedings to assist pro per litigants in pursuing post–fee arbitration actions.

Council action:

The Judicial Council, effective January 1, 2003, approved form ADR-103, *Petition After Attorney-Client Fee Dispute Arbitration Award* and the accompanying form ADR-103A, *Information Regarding Rights After Attorney-Client Fee Arbitration*, for optional use in non–small claims court proceedings.

Item A6 Alternative Dispute Resolution: Mediators’ Statement to Court Concerning Mediation Agreement or Nonagreement (revise form ADR-100)

The Civil and Small Claims Advisory Committee recommends revising a form to provide mediators with ways of informing the court whether or not agreement was reached when mediation ended and to provide mediators with a clear way to let the court know that a scheduled mediation did not take place.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendation to revise form ADR-100, *Statement of Agreement or Nonagreement*, for mediators to inform the courts:

1. That a mediation did not take place and, without violating confidentiality, why it did not take place;
2. That a mediation is not completed;
3. Whether the form is the first or a supplemental ADR-100 filed in the case; and
4. That a partial resolution was reached in mediation.

Item A7 Conducting Depositions by Telephone, Videoconference, or Other Remote Electronic Means (adopt Cal. Rules of Court, rule 333)

The Civil and Small Claims Advisory Committee recommends adopting a rule to implement legislation by prescribing specific procedures for conducting oral depositions by telephone, videoconference, and other remote electronic means.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendation adopting rule 333, to implement Code of Civil Procedure section 2025(h)(3) by prescribing specific procedures for conducting oral deposition by telephone, videoconference, and other remote electronic means.

Item A8 Telephone Appearance at Hearings (amend Cal. Rules of Court, rule 298)

The Civil and Small Claims Advisory Committee recommends amending rule 298 on telephone appearances at hearings to clarify it and to expand the availability of telephone appearances to a wider range of cases.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendation amending rule 298 to clarify it and extend it to a wider range of hearings.

Item A9 Petition for Name and Gender Change (adopt forms NC-200, NC-220, and NC-230; revise form NC-110)

The Civil and Small Claims Advisory Committee recommends adopting forms and amending an existing form to conform to legislation and provide standardized forms for use by persons submitting a combined petition for a decree of name and gender change.

Council action:

The Judicial Council, effective January 1, 2003, approved the following recommendations:

1. Adopt *Petition for Change of Name and Gender* (form NC-200);
2. Adopt *Order to Show Cause for Change of Name and Gender* (form NC-220);
3. Adopt *Decree Changing Name and Gender* (NC-230); and
4. Revise *Name of and Information About the Person Whose Name Is to Be Changed* (form NC-110).

Item A10 Civil Harassment and Workplace Violence (revise forms CH-120, CH-130, CH-131, CH-140, WV-120, WV-140, and WV-150)

The Civil and Small Claims Advisory Committee recommends revising forms to include statutorily required notices and to revise proofs of service for civil harassment forms.

Council action:

The Judicial Council, effective January 1, 2003, approved the revision of the following forms:

1. *Order to Show Cause and Temporary Restraining Order (Harassment)* (form CH-120);
2. *Order After Hearing on Petition for Injunction Prohibiting Harassment* (form CH-140);
3. *Order to Show Cause and Temporary Restraining Order (Workplace Violence)* (form WV-120);
4. *Order After Hearing on Petition of Employer for Injunction Prohibiting Violence or Threats of Violence Against Employee (Workplace Violence)* (form WV-140);
5. *Instructions for Petitions to Prohibit Workplace Violence* (form WV-150);
6. *Proof of Personal Service (Harassment)* form CH-130; and
7. *Proof of Service by Mail (Harassment)* (form CH-131).

Item A11 Forms to Be Recorded (revise forms AT-135; AT-165; EJ-001; EJ-100; EJ-130; DE-226; DE-265/GC-065; DE-305; DE-315; GC-150; and GC-350)

The Civil and Small Claims Advisory Committee and the Probate and Mental Health Advisory Committee recommend revising forms to make it easier for the documents to be recorded and to remove recorder boxes from forms on which they are not necessary.

Council action:

The Judicial Council, effective January 1, 2003, approved the revision of the following forms:

1. *Writ of Attachment (Attachment)* (form AT-135);
2. *Notice of Attachment (Attachment)* (form AT-165);
3. *Abstract of Judgment (Civil)* (form EJ-001);
4. *Acknowledgment of Satisfaction of Judgment* (form EJ-100);
5. *Writ of Execution* (form EJ-130);
6. *Spousal Property Order (Probate)* (form DE-226);
7. *Order Confirming Sale of Real Property (Probate)* (form DE-265/GC-065);
8. *Affidavit Regarding Real Property of Small Value (Probate)* (form DE-305);
9. *Order Determining Succession to Real Property (Probate)* (form DE-315);
10. *Letters of Temporary Guardianship or Conservatorship* (form GC-150); and
11. *Letters of Conservatorship* (form GC-350).

Item A12 Civil Rules: Miscellaneous Technical Amendments (amend Cal. Rules of Court, rules 229, 1601, and 1615; repeal rules 222.1 and 374)

The Civil and Small Claims Advisory Committee recommends amending rules to conform to recent legislation and to make technical changes or corrections.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations to:

1. Repeal rule 222.1 (Notice of waiver of jury trial) because it has been superseded by statute;
2. Amend rule 229 (Proposed jury instructions) to correct an outdated reference to rule 201(b);
3. Repeal rule 374 (Motions concerning trial setting conferences) as obsolete because case management conferences are presently used to set trials instead of separate trial setting conferences;
4. Amend rule 1601 (Arbitration hearing list) to be consistent with the new rules on civil case management; and
5. Amend rule 1615 (The award; entry as judgment; motion to vacate) to correct a statutory reference.

Item A13 Order Granting Attorney's Motion to Be Relieved as Counsel—Civil (revise form MC-053)

The Civil and Small Claims Advisory Committee recommends revising an order form to include a provision indicating where the client must be served after the motion to be relieved as counsel is granted.

Council action:

The Judicial Council, effective January 1, 2003, approved the revision of *Order Granting Attorney's Motion to Be Relieved as Counsel—Civil* (form MC-053) to include a provision indicating where the client must be served after the motion to be relieved as counsel is granted.

Item A14 Pretrial Rules (amend Cal. Rules of Court, rules 313, 321, and 323; repeal rule 377)

The Civil and Small Claims Advisory Committee recommends amending rules on law and motion hearings to be clearer and consistent with the policy favoring the use of plain language. The committee further recommends repealing a rule on advisory juries that is no longer necessary.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations to:

1. Amend rules 321 and 323 to be clearer and consistent with the policy favoring the use of plain language;
2. Amend rule 313 to be consistent with the relettering of rule 323; and
3. Repeal rule 377 as no longer necessary.

Item A15 Unlawful Detainer Judgment Forms (approve forms UD-110, UD-110S, UD-115, and UD-116)

The Civil and Small Claims Advisory Committee recommends adopting four new forms to provide parties and the court with directions for completing all steps necessary to enter an unlawful detainer (a) judgment, (b) conditional judgment (c) stipulation for entry of judgment, and (d) declaration for default and judgment by the court.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations to:

1. Approve *Judgment—Unlawful Detainer* (form UD-110) for use in simple unlawful detainer cases after (1) default, for a clerk’s judgment for possession of the premises only, or (2) default or court trial, for a court judgment including money damages;
2. Approve *Judgment—Unlawful Detainer Attachment* (form UD-110S) as an attachment to form UD-110 for entry of a conditional judgment when plaintiff has breached the covenant to provide habitable premises to the defendant;
3. Approve *Stipulation for Entry of Judgment (Unlawful Detainer)* (form UD-115) to identify the elements of a stipulation for entry of judgment, and to provide a road map to help the parties and the court answer questions such as when, where, and how many (and in what amount) payments will be made or other conditions performed and what happens if payments or performance are not made as agreed; and
4. Approve *Declaration for Default Judgment by Court (Unlawful Detainer—Code Civ. Proc., § 585(d))* (form UD-116).

Item A16 New Optional Form, *Authorization to Appear on Behalf of Party (Small Claims)* (approve form SC-109)

The Civil and Small Claims Advisory Committee recommends approval of a new optional statewide form to conform to legislation that permits specified persons to appear on behalf of a small claims party if a declaration is filed.

Council action:

The Judicial Council, effective January 1, 2003, approved an optional form, *Authorization to Appear on Behalf of Party (Small Claims)* (form SC-109), to meet the requirements in Code of Civil Procedure section 116.540 of the Small Claims Act, and permit specified persons to appear on behalf of a small claims party if a declaration is filed.

Item A17 Fee Waiver Forms *Order on Application for Waiver of Court Fees and Costs* and *Order on Application for Waiver of Additional Court Fees and Costs* (revise forms 982(a)(18) and 982(a)(18.1))

The Civil and Small Claims Advisory Committee recommends revising forms to:

1. Provide an option for stating “other” reasons for denying in whole or in part an application for a fee waiver on page 2 of each form;
2. Add an optional box to indicate that the court address for an evidentiary hearing on the application is the same as in the caption on the form; and
3. Add “Clerk” to the signature line as an option to grant in full a nondiscretionary fee waiver.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations to revise the fee waiver forms *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)).

Item A18 Clarifying Revisions to Optional Forms: *Case Questionnaire* and *Request for Statement of Witnesses and Evidence* (revise forms 982(a)(21) and 982(a)(22))

The Civil and Small Claims Advisory Committee recommends revising the forms to clarify that the forms should be used in limited civil cases only.

Council action:

The Judicial Council, effective January 1, 2003, approved to:

1. Revise form 982(a)(21), *Case Questionnaire* (adding the words “–*For Limited Civil Cases (Under \$25,000)*”), to clarify in the title and footer that the form should be used in limited civil cases only and to indicate that if a case questionnaire is used, only this form may be used; and
2. Revise form 982(a)(22), *Request for Statement of Witnesses and Evidence* (adding the words “–*For Limited Civil Cases (Under \$25,000)*”), to clarify in the title and footer that the form should be used in limited civil cases only.

Item A19 Mentally Disordered Offenders: Form to Challenge or Accept a Recommendation of Treatment (adopt form CR-170, *Notification of Decision Whether to Challenge Recommendation*)

The Criminal Law Advisory Committee recommends adopting a form, *Notification of Decision Whether to Challenge Recommendation*, to assist the courts, practitioners, and mentally disordered offenders who have been receiving outpatient treatment in challenging or accepting a recommendation for further treatment.

Council action:

The Judicial Council, effective January 1, 2003, approved the adoption of form CR-170, *Notification of Decision Whether to Challenge Recommendation*, to assist the courts and practitioners in carrying out the mandate of Penal Code section 2972.1.

Item A20 Abstracts of Judgment for Prison Commitments in Criminal Cases (revise forms CR-290, CR-290A, CR-290.1, and CR-292)

The Criminal Law Advisory Committee recommends revising forms to make them consistent with current statutes and conform to legislative changes that have occurred since the forms were last updated.

Council action:

The Judicial Council, effective January 1, 2003, approved the revision of forms CR-290 (*Abstract of Judgment—Prison Commitment—Determinate*), CR-290A (*Abstract of Judgment—Prison Commitment [Attachment Page]*), CR-290.1 (*Abstract of Judgment—Prison Commitment—Determinate Single, Concurrent, or Full-Term Consecutive Count Form*), and CR-292 (*Abstract of Judgment—Prison Commitment—Indeterminate*) to bring them up to date and improve usability.

Item A21 Governmental and Family Law: New and Revised Forms for Initiating and Processing Child Support Cases (revise form FL-600; adopt form FL-683, *Order to Show Cause (Governmental)*)

The Family and Juvenile Law Advisory Committee recommends revising a form to make it more understandable for litigants and to more accurately track statutory language. The committee also recommends adopting a new form adapted to governmental child support actions and notices mandated in such actions.

Council action:

The Judicial Council, effective January 1, 2003, approved to:

1. Revise form FL-600, the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)*; and
2. Adopt for mandatory use new form FL-683, *Order to Show Cause (Governmental)*.

Item A22 Child Support: New *Minutes and/or Order or Judgment* and related forms (approve forms FL-692, FL-693, and FL-694 for optional use in lieu of mandatory forms; revise form FL-450)

The Family and Juvenile Law Advisory Committee recommends approving optional forms for use in lieu of existing mandatory forms to better serve those courts that prefer to generate orders in the courtroom for the most common orders in a governmental child support action. The committee also recommends revising a form to add a warning that submission of the form to the court will not result in modification of child support.

Council action:

The Judicial Council, effective January 1, 2003, approved for court use in lieu of existing mandatory forms:

1. *Minutes and/or Order or Judgment (Governmental)* (form FL-692);
 2. *Guideline Findings Attachment (Governmental)* (form FL-693);
 3. *Advisement and Waiver of Rights for Stipulation (Governmental)* (form FL-694);
- and

The Judicial Council, effective January 1, 2003, approved the revision of:

4. *Request for Hearing Regarding Wage and Earnings Assignment (Family Law—Governmental—UIFSA)* (form FL-450).

Item A23 California Youth Authority Commitment (amend Cal. Rules of Court, rule 1494; adopt rule 1494.5; and adopt form JV-732)

The Family and Juvenile Law Advisory Committee recommends amending a rule, adopting a rule, and adopting a new form to establish a procedure for making required judicial findings and orders when committing a youth to the California Youth Authority (CYA). The form will include necessary findings and case-specific information that will enable CYA to provide the youth necessary and appropriate discipline and treatment.

Council action:

The Judicial Council, effective January 1, 2003, approved to amend rule 1494 of the California Rules of Court to delete subdivision (c) and relocate the language of that subdivision in rule 1494.5; adopt rule 1494.5, requiring the court to make specific findings involving the commitment of a youth to CYA and to provide CYA with relevant case information; and adopt form JV-732, to contain all the necessary findings and case information for CYA commitment.

Item A24 Juvenile Delinquency Forms: *Promise to Appear—Juvenile and Deferred Entry of Judgment—Dismissal and Sealing Order* (revise form JV-635; approve form JV-755)

The Family and Juvenile Law Advisory Committee recommends revising a form to more accurately state the law and approving an optional form to fulfill the courts' need for guidance on how to dismiss and seal records following completion of the deferred entry of judgment process.

Council action:

The Judicial Council, effective January 1, 2003, approved to:

1. Revise form JV-635, *Promise to Appear—Juvenile*, to more accurately state the law as codified at Welfare and Institutions Code section 629(b) and to make other technical changes; and
2. Approve for optional use form JV-755, *Deferred Entry of Judgment—Dismissal and Sealing Order*, to fulfill the courts' expressed need for guidance on how to dismiss and seal records following completion of the deferred entry of judgment process created by Proposition 21.

Item A25 Juvenile Restraining Orders (amend Cal. Rules of Court, rule 1429.5; revise forms JV-245, JV-250, FL-306/JV-251, and DV-800/JV-252)

The Family and Juvenile Law Advisory Committee recommends amending a rule and revising forms to comply with recent amendments to the Welfare and Institutions Code, clarify juvenile court procedures, and include in the juvenile law process certain family law procedures regarding firearm relinquishment and reissuance of temporary restraining orders.

Council action:

The Judicial Council, effective January 1, 2003, approved to:

1. Amend Rule 1429.5 to clarify existing requirements and to add subdivisions to make the rule consistent with recent amendments to Welfare and Institutions Code section 213.5;
2. Revise form JV-245, *Application and Declaration for Restraining Order—Juvenile* and form JV-250, *Restraining Order—Juvenile (CLETS)*, to conform to the amendments to Welfare and Institutions Code section 213.5 and the conventions adopted for the new “plain-language” domestic violence forms;
3. Revise form FL-306, *Application and Order for Reissuance of Order to Show Cause (Family Law—Governmental—Uniform Parentage—Custody and Support—Juvenile)* to add juvenile law form number JV-251; and
4. Revise form DV-800, *Proof of Firearms Turned In or Sold (Domestic Violence Prevention)* to add juvenile law form number JV-252.

Item A26 Juvenile Law: Delinquency Foster Care (amend Cal. Rules of Court, rules 1429.3 and 1496; adopt rules 1496.2 and 1496.3; revise form JV-625)

The Family and Juvenile Law Advisory Committee recommends amending and adopting rules and revising a form to be in compliance with statutory requirements and to more thoroughly describe procedures for obtaining a guardianship of a ward.

Council action:

The Judicial Council, effective January 1, 2003, approved to:

1. Amend rule 1429.3 to delete most of subdivision (c) and all of subdivision (d), pertaining to guardianships of wards;
2. Amend rule 1496 to conform the requirements for six-month status review hearings, permanency planning hearings, and post-permanency status review hearings to those in the newly revised Welfare and Institutions Code sections 727.2 and 727.3; add requirements regarding notice in conformity with section 727.4; and clarify the probation officer's reporting requirements, as provided by sections 706.5, 706.6, 727.2, 727.3 and 727.4;
3. Adopt rule 1496.2 to replace language removed from rule 1429.3 (c) and (d) and to clarify the procedures for appointing a guardian for a ward in juvenile court;
4. Adopt rule 1496.3 to include in the rules the requirements for termination of parental rights under existing section 16508.1 and section 727.32 of the Welfare and Institutions Code, as required by federal law; and
5. Revise form JV-625, *Notice of Hearing—Juvenile Wardship Proceeding*, to provide that the child's appearance at the hearing may be designated by the court as either mandatory or optional and to allow the form to be used for permanency hearings, as well as other types of hearings.

Item A27 Juvenile Law: Joint Assessment Procedures for Children (adopt Cal. Rules of Court, rule 1403.5)

The Family and Juvenile Law Advisory Committee recommends adopting a rule to establish a joint assessment procedure required by legislation.

Council action:

The Judicial Council, effective January 1, 2003, approved adoption of rule 1403.5 to establish the joint assessment procedure required by Senate Bill 940.

Item A28 Juvenile Police Records: Notice for Release of Records and Objection; and Petition to Obtain Law Enforcement Agency Report (approve form JV-580; revise form JV-575)

The Family and Juvenile Law Advisory Committee recommends approving a form and revising a form to ensure compliance with legislation regarding notification for release of a child's juvenile police records.

Council action:

The Judicial Council, effective January 1, 2003, approved for use in Los Angeles County a new form JV-580, *Notice to Child and Parent/Guardian Re: Release of Juvenile Police Records and Objection*, and revised form JV-575, *Petition to Obtain Report of Law Enforcement Agency/Juvenile* to comply with the requirements of Senate Bill 940.

Item A29 Juvenile Law: Local Psychotropic Medication Forms (amend Cal. Rules of Court, rule 1432.5)

The Family and Juvenile Law Advisory Committee recommends amending a rule and clarifying the use of a form regarding the administration of psychotropic medication to children under the jurisdiction of the juvenile dependency court.

Council action:

The Judicial Council, effective January 1, 2003, approved to amend rule 1432.5 of the California Rules of Court to:

1. Eliminate the current requirement that courts submit local supplemental psychotropic medication forms for council approval; and
2. Clarify that Judicial Council form JV-220 must be filed along with any supplemental local forms.

Item A30 Juvenile Law: Child Custody and Visitation Orders (revise forms JV-200 and JV-205)

The Family and Juvenile Law Advisory Committee recommends revising forms to clarify case identification, and statutorily defined responsibilities and to identify a form's correct authorizing statute and rule. The revisions also clarify the child's primary residence, the notice required for a change in residence, and whether the child's parents are married; they also incorporate technical changes.

Council action:

The Judicial Council, effective January 1, 2003, approved to revise form JV-200, *Custody Order—Juvenile*, to:

1. Promote correct identification of the juvenile case and clarify the relation of the case to any actual or potential related family law cases;
2. Clarify the statutorily defined responsibilities of parties, counsel, and court personnel for transmitting and filing the order;
3. Clarify the child's primary residence, the notice required for a change in the child's residence, and whether the child's parents are married;
4. Identify the form's correct authorizing statutes and rule; and
5. Incorporate technical changes.

In addition, the Judicial Council, effective January 1, 2003, approved to revise form JV-205, *Visitation Order—Juvenile*, to:

1. Incorporate technical changes and identify the form's correct authorizing statute and rule.

Item A31 Family Law: *Proof of Service of Summons; Application and Order for Reissuance of Order to Show Cause* (revise form FL-115 and adopt form FL-306/JV-251)

The Family and Juvenile Law Advisory Committee recommends revision of a form and adoption of a new form to reflect changes in filing procedures and required forms and to provide a method for reissuing orders to show cause in cases not involving domestic violence.

Council action:

The Judicial Council, effective January 1, 2003, approved to revise form FL-115 to reflect changes in filing procedures and required forms and to adopt form FL-306/JV-251 to provide a method for reissuing orders to show cause in cases not involving new plain-language domestic violence forms.

Item A32 Family Law Rules: *Renumbering and Revision of Title Five of the California Rules of Court* (renumber, amend, and repeal Cal. Rules of Court, per attached table; amend rule 233)

The Family and Juvenile Law Advisory Committee recommends renumbering, amending and repealing family law rules to make them consistent with other Judicial Council rules, reflect changes in the law and procedure, and make them easier to read and more accessible to court users.

Council action:

The Judicial Council, effective January 1, 2003, approved to:

1. Amend rule 233;
2. Amend and renumber rules 1108–1280.5 as 5.10–5.400; and
3. Repeal rules 1218–1220, 1222, 1226–1235, 1238–1239, 1241–1242, 1244–1245, 1270, 1272–1273, 1279, 1280.9 and 1281–1299.77 of the California Rules of Court.

Item A33 Juvenile Law: Technical Amendments (amend Cal. Rules of Court, rule 1432)

The Family and Juvenile Law Advisory Committee recommends amending a rule to correct an erroneous code reference.

Council action:

The Judicial Council, effective January 1, 2003, approved to amend rule 1432(f) to correct an erroneous citation to the Welfare and Institutions Code.

Item A34 Judicial Service Advisory Committee (adopt Cal. Rules of Court, rule 6.57)

The Task Force on Judicial Service recommends adopting a rule to create a Judicial Service Advisory Committee and to establish its area of focus and membership.

Council action:

The Judicial Council, effective January 1, 2003, approved to adopt rule 6.57 of the California Rules of Court to create the Judicial Service Advisory Committee and to establish its area of focus and membership.

Item A35 Judicial Sabbatical Pilot Program (adopt Cal. Rules of Court, rule 6.151)

The Task Force on Judicial Service recommends adopting a rule to establish a judicial sabbatical pilot program.

Council action:

The Judicial Council, effective January 1, 2003, approved to adopt rule 6.151 of the California Rules of Court to establish a judicial sabbatical pilot program.

Item A36 Probate Forms: Technical Revisions of Three Decedent's Estate, Conservatorship, and Guardianship Forms (revise forms DE-160/GC-040, GC-310, and GC-313)

The Probate and Mental Health Advisory Committee recommends revising forms to conform to recent legislation and to make technical corrections.

Council action:

The Judicial Council, effective January 1, 2003, approved to:

1. Revise form DE-160/GC-040, *Inventory and Appraisal*, by changing the instruction for completion of the Statement About the Bond portion of the form and by adding rule 7.501 of the California Rules of Court to the supporting authorities cited at the bottom right of the form; and
2. Revise form GC-310, *Petition for Appointment of Probate Conservator*, by adding the references to a proposed conservatee's domestic partner now required by Probate Code section 1813.1.

Item A37 Statewide Procedures and Eligibility Criteria for Traffic Violator School Attendance (amend Cal. Rules of Court, rule 851)

The Traffic Advisory Committee recommends amendment of rule 851 of the California Rules of Court to further standardize and clarify the procedures and criteria for traffic violator school attendance.

Council action:

The Judicial Council, effective January 1, 2003, approved to amend rule 851 of the California Rules of Court to further standardize and clarify the procedures and criteria for traffic violator school attendance and to authorize a clerk to allow traffic violator school for speeding offenses only if the violation is 25 miles per hour or less over the speed limit.

Item B Trial Court Litigation Management (amend litigation management policies)

The Litigation Management Committee recommends that the Judicial Council amend its litigation management policies to provide that the Judicial Council's Litigation and Excess Liability Funds will not be used for any fees, costs, settlement obligations, and judgments in claims or lawsuits arising from accidents that occur while judicial officers and court employees are driving county-owned vehicles.

Council action:

The Judicial Council, effective November 1, 2002, approved to amend its litigation management policies, first adopted at the council's December 1999 meeting and amended in July 2000 and December 2000, to provide that the Judicial Council's Litigation and Excess Liability Funds will not be used for any fees, costs, settlement obligations, and judgments in claims or lawsuits arising from accidents that occur while judicial officers and court employees are driving county-owned vehicles. If the county declines to accept responsibility in the event of such claims or lawsuits, the trial court would be required to pay for such fees, costs, settlement obligations, and judgments from its own court operations budget.

Item D Reporting of the Record Task Force: Report on Its Formation and Recent Activities

The purpose of this report is to formally inform the Judicial Council of the formation and progress of the newly created Reporting of the Record Task Force. This task force will report directly to the council. The task force's chair and staff request that the council review and file this report.

Council action:

The Judicial Council reviewed and filed the report.

DISCUSSION AGENDA

Item E Rules, Forms, and Standards

Item E1 Appellate Procedure: Transfer of Appellate Division Cases to the Court of Appeal (repeal and adopt Cal. Rules of Court, rules 61–69 and 106–107)

Ms. Heather Anderson, Senior Attorney of the Office of the General Counsel (OGC) presented the report on behalf of the Appellate Advisory Committee. This proposal would amend the rules regarding transfer of superior court appellate division cases to the Court of Appeal. These rules implement the Court of Appeal's authority under Code of Civil Procedure section 911 to transfer appellate division cases where the superior court certifies the case for transfer or the Court of Appeal determines that transfer is necessary to secure uniformity of decision or to settle an important question of law. The Appellate Advisory Committee began reviewing these rules in response to the Supreme Court's opinion in *Snukal v. Flightways Manufacturing Inc.*, in which the court concluded that, under the current rules, the Court of Appeal does not have the authority to review limited issues on transfer and then remand the remaining issues back to the superior court. When the

committee members began delving into the rules, however, they saw a number of other things they believe should be changed. In particular, the current rules only provide for transfer when the case has been certified for transfer by the superior court or when the appellate division decision is published or will be published. They do not provide a procedure by which parties can provide input by petitioning the Court of Appeal to transfer the case. The rules also contain a number of outdated references, such as to municipal and justice courts and to appellate departments rather than appellate divisions.

Ms. Anderson reported that the proposal before the council is a comprehensive rewrite of these rules. The proposal would (1) authorize the limited review and remand procedure that was discussed in the *Snukal* case; (2) broaden the Court of Appeal's transfer authority; and (3) authorize the Court of Appeal to transfer a case on its own motion regardless of whether the decision of the appellate division was to be published, which would make the Court of Appeal's transfer authority similar to the Supreme Court's transfer authority in transferring Court of Appeal's decision matters to the Supreme Court. In addition, when a superior court declines either to certify a case for publication or for transfer, the proposed rules would (4) permit the parties to petition the Court of Appeal for transfer and (5) authorize parties where a case has been published to send a letter to the Court of Appeal supporting or opposing transfer. Both of these procedures would provide input from the parties to assist the Court of Appeal in making a decision about the transfer.

Council action:

The Judicial Council approved the following recommendations, effective January 1, 2003, repealing rules 61–69 and 106–107 of the California Rules of Court and adopting new rules 61–69 and 106–107 in the form in which they appear in the report to:

1. Implement a new limited review and transfer procedure for cases transferred from the appellate division of the superior court to the Court of Appeal;
2. Authorize parties to petition the Court of Appeal to transfer a case when the superior court has declined to certify the case for transfer or publication;
3. Permit the Court of Appeal to transfer a case on its own motion regardless of whether it has been certified for publication;
4. Update the rules to reflect changes in the law; and
5. Simplify the rule language.

The motion passed.

Item E2 Revision of Appellate Rules: Second Installment—Rules 19–29.9 (repeal Cal. Rules of Court, rules 19–29.9; adopt revised rules 19–29.9, new rules 36.1, 36.2, and 47.1, and related Advisory Committee Comments; amend rules 5, 13, and 40)

Mr. Peter Belton, Special Consultant of the Office of the General Counsel presented the report on behalf of the Appellate Advisory Committee. The purpose of the previous and second installments are to bring the rules on appeal into the 21st century, both in content and format, and to revise them so they are easily read and understood by practitioners, court personnel, and justices. The process entailed clearing away of obsolete materials, rewriting the structure of the rules to be logical in chronology and in sequence, removing redundant provisions, and simplifying the language.

The most significant changes made relate to:

1. Separate rules for the Court of Appeal and the Supreme Court;
2. Judicial notice and findings or evidence on appeal;
3. Notice of oral argument;
4. Finality of decision after postfiling order for publication;
5. Finality of decision after consent to increase or decrease in amount of money judgment;
6. No specification of costs when judgment reversed in its entirety;
7. Reorganization of rules governing review in the Supreme Court;
8. Recognition of additional ground of review in the Supreme Court;
9. Length of petition for review, answer, or reply;
10. Time for filing briefs on the merits in the Supreme Court;
11. Length of brief on the merits;
12. Dismissal of review as “improvidently granted”;
13. “Remand” rather than “transfer” for decision;
14. Supreme Court decisions final on filing;
15. Supreme Court decision on request of court of another jurisdiction;
16. Adoption of new rule 36.1;
17. Adoption of new rule 36.2;
18. Adoption of new rule 47.1;
19. Amendment of rule 5;
20. Amendment of rule 13; and
21. Amendment of rule 40.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations repealing existing rules 19–29.9 of the California Rules of Court, adopt revised rules 19–29.9, and new rules 36.1, 36.2, and 47.1, and related advisory committee comments, and amend rules 5, 13, and 40, to clarify the meanings of the rules and facilitate their use by practitioners, parties, and court personnel.

The motion passed.

Item E3 Rules on the Form of Papers Presented for Filing, Judicial Council Forms, and Local Court Forms (amend Cal. Rules of Court, rules 200, 201.5, 202, and 202.5; adopt rules 200.1, 200.2, 200.3, 201.3, and 201.4; and amend and renumber rules 203, 203.5, 249, 387, 982, and 982.1)

On behalf of the Civil and Small Claims Advisory Committee, Judge Douglas P. Miller, Assistant Presiding Judge of Superior Court of Riverside County, presented the report on two issues for discussion, reflecting the committee's primary goals:

1. To increase access for self-represented litigants by making it easier for them to use the court system; and follow its procedures; and
2. To increase uniformity.

Regarding the first goal, rules 201(j) and 2014 of the California Rules of Court, both involve the same concept. Neither Judicial Council mandatory forms nor local forms from the individual courts or even papers filed with the courts can be rejected by the courts merely because they are written in a color other than blue or black. The committee has had years of ongoing discussion on this issue and has sought comments from various counties and found that there are significant issues and problem in different counties. In Riverside County, they have allowed forms and papers to be provided to the court in handwriting, and this has worked well.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations to:

1. Amend the Introductory Statement of the California Rules of Court and rules 200, 201, 201.5, 202, and 202.5;
2. Adopt rules 200.1, 200.2, 200.3, 201.3, and 201.4; and
3. Amend and renumber rules 203, 203.5, 249, 387, 982, and 982.1 as rules 236.5, 243.9, 299, 202.7, 201.1, and 201.2.

It is approved that the clerk must not reject a paper for filing solely on the grounds that it is handwritten or hand printed, or the handwriting or hand printing is in a color other than blue or black.

The motion passed.

Item E4 Ex Parte Applications (amend Cal. Rules of Court, rule 379)

Judge Douglas P. Miller reported inconsistencies in rule 379 and areas requiring clarification. For instance, in subdivision (a)(1) it indicates that notice has to be given in a reasonable time, while subdivision (b) indicates that notice has to be given before 10:00 a.m. absent exceptional circumstances. The committee clarified (a)(1) to include the provision that the notice had to be given as per the applicable time period under (b).

Regarding issues related to exceptional circumstances, the committee felt that they needed to be further clarified. A provision was added in (b) that provided the opportunity for a shorter time in unlawful detainer proceedings when notice given is reasonable. Subdivision (e)(3) was amended to provide an explanation as to what needs to be included in the declaration. A provision was added in (c) that indicated that the clerk must not reject an ex parte application for filing and must promptly present the application to the appropriate judicial officer for consideration whether or not the clerk felt that it didn't comply with the notice time provisions and the provisions set forth in (a) and (b). Judge Miller reiterated that the committee felt that these revisions would increase access and uniformity. The committee gave a greater explanation of what was needed in detail in the declaration in (e)(2) and (e)(3).

Council action:

The Judicial Council, effective January 1, 2003, approved to amend rule 379 to provide for a shorter notice period for unlawful detainer cases and to make other clarifying changes.

The motion passed.

Special Comment

The Chief Justice acknowledged the incoming chair of the Civil Procedure and Small Claims Advisory Committee, Judge Elihu M. Berle from the Superior Court of Los Angeles County.

Item E5 Electronic Filing and Service (adopt Cal. Rules of Court, rules 2050–2060; repeal Cal. Standards Jud. Admin., § 37)

On behalf of the Court Technology Advisory Committee, Justice Joanne C. Parrilli provided an overview of the committee's proposal for a statewide rule on electronic filing. The Legislature directed the formulation of the rule by the passage of Code of Civil Procedure section 1010.6 in 1999. The committee began its work in 1997, and the council adopted an earlier Standard of Judicial Administration, section 37. The proposed rule takes a reasonable and conservative approach to electronic filing. It is the committee's view that this approach will again balance competing interests in the fields of law and technology and will encourage the development of programs at the courts that will wed case management systems to the filing process in a way that would minimize the need for duplicating efforts by court personnel. The committee had two major points of controversy: the close of the business day provision in rules 2050 (a) and 2059 (c) and the limitation on case type in which the court can order electronic filing, in rule 2053.

The committee, with some dissenting members, voted to limit the category of cases on which the court can order mandatory electronic filing to those currently set out in Code of

Civil Procedure section 1010.6. The committee agrees that a conservative approach is warranted.

Council action:

The Judicial Council approved the following recommendations, effective January 1, 2003:

1. Adopt rules 2050–2060 of the California Rules of Court to provide uniform statewide rules on electronic filing and service in the trial courts; and
2. Repeal section 37 of the California Standards of Judicial Administration.

The motion passed.

Special Comment

Chief Justice George congratulated and presented a plaque to Justice Joanne Parrilli, outgoing chair of the Court Technology Advisory Committee, for her valuable leadership in court administration and in appreciation for her many years of dedicated service to advancing court technology.

Item E6 Unified Family Courts: Implications for Technology

Ms. Diane Nunn, Director of the Center for Families, Children & the Courts (CFCC), noted that within the Judicial Council’s operational plan for fiscal years 2000–2001 through 2002–2003, under Goal IV: *Quality of Justice and Service to the Public*, is an objective to implement a statewide strategy for establishing unified or coordinated family court systems. In furtherance of this objective, the council specifically authorizes the establishment of six mentor courts by June 2003. The mentor courts are expected to implement the council’s goal for improving the coordination of proceedings involving families and children by reducing the number of conflicting orders and the number of unnecessary court appearances, improving the quality and quantity of information available to judicial officers for informed decisionmaking, and providing appropriate services that assist family members in resolving issues that have brought them to the courts. The objective is to assist those courts that want to do this or who are already “*reconfiguring themselves to provide a global approach to resolving related issues affecting a single family where they are raised in marital dissolution, child custody, juvenile delinquency, dependency, conservatorship, guardianship, domestic violence, or related to criminal matters.*” As part of the planning process, a symposium was held September 23–25, 2002, in San Jose. Teams from 31 planning grant courts and from several nonplanning grant courts attended the conference and participated in the symposium. Representatives from these courts cited the limitations of their case management systems and the difficulties of identifying and coordinating all cases involving a “given family” as possible impediments to successfully implementing coordination or unification plans. To effectively move forward with the implementation of Goal IVc of the council’s operational plan, CFCC

recommends that the council adopt the policy on unified and coordinated family court systems.

The recommendation is that the council direct staff, in collaboration with both the Family and Juvenile Law Advisory Committee and the Court Technology Advisory Committee to:

1. Oversee and facilitate the development of requirements that will define the specific needs of unified family courts; and
2. Ensure that those needs are incorporated in the requirements for case management systems certified for the state courts of California.

Discussion

A question was raised as to how the standards will be integrated into the unified family court process, and who is going to be contributing the data to whom to set what standards.

Staff explained that the work, in terms of setting the standards, will be done in the Court Technology Advisory Committee, which will establish the guidelines and standards for case management systems. Those standards and case management system should not freeze in place existing structures in our court system but should ensure the flexibility that is needed for a unified family court system.

A concern was raised as to the language “oversee.” It was suggested that the wording be changed to “*staff assist and facilitate*” rather than “*oversee*” because the advisory committees oversee their own work.

Council action:

The Judicial Council approved the recommendations that, the council directs staff, in collaboration with both the Family and Juvenile Law Advisory Committee and the Court Technology Advisory Committee to:

1. Assist and facilitate the development of requirements that will define the specific needs of unified family courts; and
2. Ensure that those needs are incorporated in the requirements for case management systems certified for the state courts of California.

The motion passed.

Item E7 Achieving Permanency for Children in California: A Resolution for the Courts

On behalf of the Family and Juvenile Law Advisory Committee, Ms. Audrey Evje, Attorney of the Center for Families, Children & the Courts, reported that in 1999 the Judicial Council proclaimed November to be Court Adoption and Permanency Month. At

that time the council had hoped that it would be a standing resolution. However, the council recognized that it is important to acknowledge the importance of adoption and permanency every year. Last year, on October 31, the council proclaimed, November to be Adoption Permanency Month for 2001. Today, the committee recommends that the Judicial Council adopt a resolution proclaiming the month of November 2002 to be Court Adoption and Permanency Month.

Council action:

The Judicial Council approved and adopted a resolution proclaiming the month of November 2002 to be Court Adoption and Permanency Month.

The motion passed.

The Chief Justice shared that he presided over the adoption hearing in Los Angeles several years ago. He found it to be a wonderful experience and encourages all to participate. He added that he would be glad to assign anybody to be a judge of that particular court in Alameda, Los Angeles, Sacramento, or Solano who is invited or is willing to participate.

**Item E8 Minimum Standards for Appointed Trial Counsel in Capital Cases
(adopt Cal. Rules of Court, rule 4.117)**

On behalf of the Criminal Law Advisory Committee, Mr. Joshua Weinstein, Attorney of the Office of the General Counsel, presented the report on rule 4.117 setting minimum standards for trial counsel appointed in capital cases. The rule requires appointment of a lead counsel but also allows the court to appoint associate counsel and a third or fourth counsel if necessary. The lead counsel under rule 4.117(d) would have to meet certain minimum qualifications, including:

1. Have ten years of criminal law litigation experience;
2. Have prior experience as lead counsel on other murder cases;
3. Be familiar with criminal procedure and the use of expert witnesses;
4. Have taken Minimum Continuing Legal Education (MCLE) specific to death penalty cases; and
5. Demonstrate the “*necessary proficiency, diligence, and quality of representation appropriate to capital cases.*”

Mr. Weinstein stated that associate counsel would have to satisfy similar, though not quite as stringent qualifications, notably requiring less experience in years and cases tried.

Subdivision (f) provides the court with flexibility to appoint eminently qualified counsel who may not meet the letter of the rules for either lead or associate counsel.

In making that appointment, the court is ordered to make certain considerations, such as:

1. The attorney’s criminal or civil trial experience;
2. The attorney’s death penalty experience;

3. The attorney's familiarity with California criminal procedure;
4. The attorney's experience in use of expert testimony or any specialized training;
5. The availability of other counsel to support and mentor that counsel;
6. Whether the attorney has taken MCLE specific to death penalty cases; and
7. Whether the attorney has attained a certification of specialization in criminal law from the State Bar.

He explained that the rule doesn't apply to public defenders, but it does state that the public defender should consider this rule in assigning deputy public defenders to handle death penalty cases. Since it was unclear that the council has the authority to order the public defender to assign a certain deputy public defender, the committee concluded it would be better to suggest to the public defender that the rule should be followed. The rule does apply to standby or advisory counsel, in case one has to step in to be the actual counsel in the case. The committee wanted to ensure that the qualifications are met before an attorney is appointed as standby or advisory counsel.

Some committee members felt that this rule is unnecessary as California already attracts excellent attorneys to represent death penalty defendants, partly because California compensates attorneys better than other states. There was a minority view that this rule could be used as a benchmark for arguing ineffective assistance of counsel, if a counsel was appointed under subdivision (f) who didn't meet the stringent qualifications for lead counsel. The minority was concerned that on appeal someone would say that trial counsel didn't meet the rules so per se they provided ineffective assistance of counsel. The majority of committee members recognized that concern, but felt that minimum statewide qualifications are still necessary. However, to allay fears that this rule would be used incorrectly, the last sentence of subdivision (a) reads, "These minimum qualifications are designed to assist the court in appointing qualified counsel and are not intended to be used as a standard by which to measure counsel's actual performance."

Many comments were received when the rule was circulated. Several commentators felt that the rule is too inflexible and couldn't be used in some of the more rural counties that don't have as many qualified attorneys. Other commentator stated that subdivision (f) gave the court too much flexibility and meant that there were no minimum standards. The committee believed that the flexibility in subdivision (f) is necessary for those rural counties that may not have attorneys who have as much qualifications and also for eminently qualified attorneys who may not have had death penalty-specific experience or meet the other minimum qualifications. The other main comment received is that there should be a statewide evaluation or certification board. The committee gave careful consideration to the suggestions and decided not to recommend implementing such a procedure now. However, committee members found the idea very interesting and will study it. At the next meeting, a subcommittee will be set up to study such an evaluation/certification board procedure, determine if it could work in California and whether to recommend it to the council.

Discussion

A concern was expressed that there is great potential the rule will be applied in different ways as a result of factors such as miscalculations that could be made as to experience.

A question was raised on a motion for new trial or on a claim for ineffective assistance of counsel, is it intended that any part of this rule be relevant?

Staff explained that this rule is not intended to be used to evaluate what counsel did after the appointment.

A question was raised as to whether the committee discussed the cost implication. For instance, from time to time public defenders declare themselves unavailable to handle capital cases because they don't have the resources. It is possible that some of the smaller public defender offices will take the position that, given the standards, they only have so many people who fit into that category and they are occupied with other cases. Therefore, a public defender's office will disqualify itself because, under the Judicial Council guidelines, it doesn't have the staff and therefore will need to go outside.

Staff explained that it has been the committee's experience that most public defender offices feel qualified to handle these cases and would not use the standards as a method to escape from handling these cases. Moreover, the committee concluded the judiciary should be trying to provide the best quality on the front end to reduce work of the Supreme Court and habeas on the back end.

Council action:

The Judicial Council approved recommendations, effective January 1, 2003, to adopt rule 4.117 of the California Rules of Court regarding minimum standards for appointed trial counsel in capital cases, with the exception that the following paragraph (a) would be substituted for the original statement of purpose in paragraph (a):

- (a) **[Purpose]** This rule defines minimum qualifications for attorneys appointed to represent persons charged with capital offenses in the superior courts. These minimum qualifications are designed to promote adequate representation in death penalty cases and to avoid unnecessary delay and expense by assisting the trial court in appointing qualified counsel. Nothing in this rule is intended to be used as a standard by which to measure whether the defendant received effective assistance of counsel.

The motion passed.

Justice Norman Epstein concluded to let the record reflect that the adoption of these rules does not establish a legal eligibility or ineligibility of an attorney to serve as counsel. An attorney who is admitted to practice is by that reason an attorney and can represent any

defendant in the courts of law in California. Consequently, in the event that an attorney is appointed who does not meet the standards, it doesn't mean that the defendant is without representation. The defendant is represented by an admitted attorney as counsel. Secondly, there is no effort in this to articulate a constitutional standard of effective representation. The Chief Justice concurred in those observations.

Item E9 Plain-Language Domestic Violence Restraining Order Forms and Plain-Language Adoption Forms

- (A) Plain-Language Domestic Violence Restraining Order Forms
- (B) Plain-Language Adoption Forms

On behalf of the Family and Juvenile Law Advisory Committee, Ms. Jennifer Walter, Supervising Attorney and Ms. Tamara Abrams, Attorney of the Center for Families, Children & the Courts, reported that the purpose of revising the domestic violence restraining order and adoption forms into plain language is to assist self-represented litigants to easily complete and comprehend them. A second project is to identify and prioritize other Judicial Council forms that are appropriate for similar revisions. They reported that staff are engaged in ongoing discussions about creating those lists and presenting them to the various committees.

Staff were commended for their extraordinary effort in increasing accessibility for self-represented litigants.

It was requested that the Family and Juvenile Law Advisory Committee undertake the same effort for civil harassment forms. The Chief Justice suggested that the request be a top priority for the advisory committee.

Council action:

The Judicial Council approved the recommendations to adopt, revise, renumber, or revoke:

- (A) Plain-Language Domestic Violence Restraining Order Forms (adopt forms DV-105, DV-140, DV-150, DV-700, and DV-710; approve forms DV-101, DV-126, DV-160, DV-210, DV-250, DV-500, DV-505, DV-510, DV-520, DV-530, DV-540, DV-550, DV-560, DV-570, DV-800/JV252, and DV-810; revise DV-100, DV-110, DV-120, and DV-130; revise and renumber forms DV-125, DV-170, DV-200, and DV-600; and revoke form DV-150.
- (B) Plain-Language Adoption Forms (revise forms ADOPT-050, ADOPT-200, ADOPT-210, ADOPT-215, ADOPT-220, ADOPT-225, ADOPT-230, ADOPT-310, ADOPT-315, ADOPT-320, and ADOPT-325.

The motion passed.

Item E10 Appointment of CAPTA Guardians ad Litem for Children in Judicial Proceedings Involving Abuse or Neglect (amend Cal. Rules of Court, rules 1401 and 1438; adopt rule 1448)

On behalf of the Family and Juvenile Law Advisory Committee, Ms. Aleta Beaupied, Attorney of the Center for Families, Children & the Courts presented the report proposing the appointment of guardians ad litem for children in judicial proceedings involving abuse or neglect. The proposal as circulated for public comment included rule 4.120, entitled Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem for the child victim in a criminal prosecution for abuse and neglect of a child, as well as a new rule for 1471.5, entitled Child Abuse Prevention and Treatment Act guardian ad litem for a child victim in a delinquency proceedings for abuse and neglect of a child. The Criminal Law Advisory and Family and Juvenile Law Advisory Committees collaborated and reached a consensus on versions of these two rules for presentation to the council. However, questions were raised regarding the possible financial impact on county government and those rules were withdrawn for further study and will be recirculated during the winter 2003 rulemaking cycle to provide county governments and other interested parties an opportunity to comment.

The proposal presented to the council for approval recommends the adoption of rule 1448, which provides for the appointment of a CAPTA guardian ad litem for a child subject to a juvenile dependency petition. It defines the roles and responsibilities of the CAPTA guardian ad litem, emphasizing that the role of a CAPTA guardian ad litem appointed under rule 1448 is distinct from that of guardian ad litem appointed in all other civil, family, and criminal proceedings, and specifies that attorneys or in limited circumstances a Court Appointed Special Advocate (CASA), must be appointed as the CAPTA guardian ad litem. It also provides for the amendment of rule 1438 to clarify that references to a guardian ad litem in that rule are to a CAPTA guardian ad litem.

To further support the recommendations before the council, Ms. Dianne Nunn clarified that the discussion is about a CAPTA guardian ad litem, not the traditional guardian ad litem. She also addressed the privilege and sibling issue. Due to substantive changes in the law, the child now has standing to raise the psychotherapist-patient privilege independent of the parents and counsel. A recent statute gives a child standing to object to sibling placements and to assert the child-sibling relationship, which is more adversarial than the traditional notion that we're all there to look out for the child. The child does have an adversarial position, conceivably through parents and other siblings.

Discussion

A question was raised whether there are any pilot projects regarding the roles of attorneys and CASAs as CAPTA guardian ad litem.

Staff explained that there is a three-year pilot project in both Santa Clara and Santa Cruz Counties. Staff is looking at the most effective way to use both attorneys and CASAs for children, and how to optimally provide legal, investigative, and other types of services. The advisory committee will also try to address the privilege and sibling issues.

Staff reported that Senate Bill 2160 requires that the council adopt caseload standards. The council deferred action on that issue and requested that staff conduct a caseload study. The first stage of that study has been completed through focus group discussions, and has established some attorney performance standards. The next phase is a rolling two-week study to establish baseline data by identifying every attorney in the state who does dependency work and have them keep track of their activities over the course of the two-week period. The committee will then measure the extent of attorney contacts with their clients and how that varies with caseload, then establish focus groups to identify what should the minimum standards be. A group has already been identified to look at different models to effectively deliver the services, given finite resources. The target is to bring the results of the study before the council by May 2003. The sibling issues will be addressed in that study.

A question was asked about how the study is measuring the individual case with the individual lawyer.

Staff explained that it will be compared to the service delivery model, so that if an attorney reports his or her work, part of it is to understand what the context is, for example, whether they are individuals on a panel who has no support, or part of a firm or part of a public agency with secretaries, investigators, and social workers.

Council action:

The Judicial Council, effective January 1, 2003, approved the following recommendations to:

1. Amend rule 1401 to add a definition for “Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem”;
2. Amend rule 1438 to clarify that references to guardian ad litem in that rule are to guardian ad litem appointed for the purposes of CAPTA; and
3. Adopt new rule 1448 to specify the duties and responsibilities of CAPTA guardians ad litem appointed for children subject to juvenile dependency proceedings.

The motion passed.

Item E11 Domestic Violence: Criminal Protective Orders and Rules for Court Communication Regarding Child Custody Orders (adopt Cal. Rules of Court, rule 5.500; adopt form CR-165; and revise and renumber form MC-220)

Ms. Kate Howard, Assistant Director of the Office of Governmental Affairs reported that the rule and adoption of revision to forms that are required in this report flow from legislation passed in 2001. The goal of Assembly Bill 160 is to reduce the number of conflicting or confusing domestic violence–related orders that involve the same parties.

The purpose of the statute is to deal with the enforcement issues that come up when law enforcement is called to the scene and one side may say “He’s not supposed to be here; I have a protective order” and the other side can say “I’m here because I’m allowed to have peaceful contact and I’m just trying to pick up my kids.” From the Legislature’s perspective, there is a significant issue that needed to be addressed. It left it to the Judicial Council to come up with communication protocol and to change the forms. In endeavoring to do so, it was difficult because the statutory language was vague and there were a lot of inherent problems with different courts issuing orders involving the same parties. But through the collaborative efforts of the staff and members of the Criminal Law and the Family and Juvenile Law Advisory Committees, with input by the Court Executives Advisory Committee, a solid consensus result was achieved.

Ms. Tamara Abrams described the following consensus reached for the council’s recommendations:

1. Courts are required to develop local rules. It was concluded that this would be a better approach instead of having one statewide rule, which will give the courts more flexibility. Courts have one year to develop these rules.
2. Courts are required to make reasonable efforts to communicate and to implement the requirements of the rule. This means that they do not have to exceed their current capacity they can utilize existing resources. They are not required to take on new technologies, for example telephone and e-mails.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations to adopt rule 5.500; revise form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding (CLETS)*; and revise and renumber form MC-220 as CR-160, *Protective Order in Criminal Proceeding (CLETS)* to:

1. Comply with the requirements of AB 160;
2. Promote communication among criminal, juvenile, and family courts regarding protective orders issued in criminal courts and child custody and visitation orders; and
3. Reduce the likelihood that courts will issue conflicting child custody orders and criminal protective orders regarding the same parties.

The motion passed.

Item E12 Subordinate Judicial Officers: Qualifications and Education (adopt Cal. Rules of Court, rule 6.660)

Ms. Sonya Smith, Associate Attorney of the Executive Office Programs Division, presented the report regarding rule 6.660, establishing minimum qualifications and training provisions for subordinate judicial officers (SJOs). Both the qualifications and the education provisions in this rule address needs created by recent legislation. Senate Bill 1316, which takes effect January 1, 2003, repeals all of the county specific provisions for minimum qualification standards for commissioners and referees. Nearly all of those standards set five years as the minimum State Bar membership requirement for SJOs. The standards set by the new rule would replace all of those provisions. The other legislative change this rule addresses is the new ability of courts to cross-assign SJOs of different types. The rules already contain education provisions that apply to subordinate judicial officers. But there isn't a rule that addresses the applicability of those provisions to SJOs who are temporarily cross-assigned to different positions. This rule fills that need by providing that SJOs must meet the educational requirement of any positions to which they are assigned.

The comments received on this rule focused primarily on the minimum bar membership requirement issue and on whether that standard should be 5 or 10 years. Based on the split among the comments received, this seems to be a fairly close question. The comments favoring the 10-year minimum primarily argued that since SJOs are routinely sitting as temporary judges they should be required to meet the same minimum requirements as judges, which are 10 years. The comments favoring retaining the current 5-year standard generally stated that raising the standard to 10 years could cause recruitment problems in some courts. Staff recommends retaining the 5-year standards for the following reasons:

1. Because this is a statewide standard that is applicable across all courts and all types of SJOs, staff wants to preserve the court's flexibility to hire SJOs who meet their particular needs. The courts have very different attorney labor pools from which to draw their SJOs. They also use their SJOs in different ways and assign them to different types of cases. Some are used routinely as temporary judges and others almost exclusively for traffic and small claims. Since this standard establishes a minimum, it would leave courts free to hire SJOs with more experience if their situation is such that they need to assign SJOs as temporary judges. The courts have been exercising their hiring authority very well under the existing 5-year standard without complaints that the SJOs are under-qualified.
2. The council's policy is that the primary role of subordinate judicial officers is to perform subordinate judicial duties. The council and the courts are working toward the long-term goal of having judges perform the work that SJOs are now doing as temporary judges. Achieving that goal would mean that SJOs would be assigned increasingly to small claims and traffic infraction matters. Though a 10-year standard would not cause recruitment problems now, it could in the future as the actual work

being performed by SJOs changes. For these reasons the recommendation is to retain the current 5-year standard, but it is recognized that there are valid arguments in favor of both.

Discussion

A comment was made that the issue was discussed at the Meeting of the Board of Directors of the California Court Commissioners Association in early March. The members were uniformly in agreement that for the best interest of the courts it should be a 10-year standard because justice courts no longer exist and the municipal have fully consolidated with superior courts. Since there is one type of trial court, there should also be one standard for qualifying for judicial office.

The person who comes in for traffic or small claims expects and wants the same level of expertise from the person hearing their case as with other court matters. So with respect to subordinate judicial duties, subordinate doesn't necessarily mean unimportant to the general public. Members of the public would be better served if they are confident that the person hearing their cases has the same qualifications as a judge. The rule in defining SJO duties does it in a negative way. It reserves for judges anything that would lead to custodial incarceration, which left infractions that have limited dollar amounts and small claims. With respect to SJO duties, that doesn't necessarily mean that they are unimportant and should not have the same stature and be held with as much respect for the parties and for the public as other forms of litigation.

The 5-year rule was established when there was a municipal court. It's different now. The concept of one court and one standard is a policy that should be sought after and achieved in every situation.

It was reported that the California Judges Association also discussed the standards and gave three reasons for supporting a 10-year standard:

1. The 10-year standard better facilitates the unrestricted reassignment of SJOs depending upon the needs of a court;
2. A lower standard undercuts the concept of a single-tier trial court in the minds of the public; and
3. A higher bar by contrast promotes public confidence in the equality of justice.

An alternative action was offered in the form of a practical compromise that would set the standard at 10 years but, upon a finding from the presiding judge that there was good cause existing for a lower standard, a court would have the flexibility to hire a commissioner perhaps who has a minimum of 5 years. That would be the instance, for example, where there are insufficient applicants with minimum qualifications, particularly in rural counties.

In response, it was stated that it would better serve to follow the staff recommendation of 5 years as the minimum because it is consistent with the council's basic focus on the kinds of SJO work. The presiding judge would still have the discretion to hire the best-qualified person that he or she could find. If this person will be used as a temporary judge, an exception to the preferred assignment process, the presiding judge is still going to be looking for the best person for that job.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendation to adopt rule 6.660 of the California Rules of Court with a modification to the minimum qualification standard:

1. Establish a minimum qualification standard of 10 years of State Bar membership or, upon a finding of good cause by the presiding judge, a 5-year requirement; and
2. Require subordinate judicial officers to comply with all existing judicial education requirements applicable to their assignments.

The motion passed with nine members in support and eight in opposition.

Item E13 Probate Proceedings: Rules Governing Notice, Pleadings, Inventory and Appraisal, Accounts, Bonds, and Compensation in Probate Proceedings, and Concerning Compensation of Attorneys Representing Minors and Incompetent Persons (adopt Cal. Rules of Court, rules 7.50–7.55, 7.103, 7.104, 7.454, 7.550, 7.700–7.707, 7.750–7.756, and 7.955; amend rules 7.1–7.3, 7.102, 7.204, and 7.501; and amend the titles of chapters 2, 12, 15, and 16 of title 7)

Judge Stephen D. Cunnison presented the report on behalf of the Probate and Mental Health Advisory Committee. He reported on the first installment in fulfillment of the council's mandate to produce a comprehensive set of rules for probate practice and procedure. The committee expects its completion by next year. He acknowledged Justice Kay and Judge Miller for their considerable contributions. He pointed out that by far the greatest amount of comment was directed at rule 7.955. This was the committee's effort to steer a course between two opposing positions. One side advocated either adherence to a local rule that prescribes a particular percentage or at least makes a presumptive amount for compensation of counsel or the contingent fee agreement that the attorney reaches with the guardian ad litem. The other side held the view that there should be no reliance on any percentage whatsoever. A reasonable fee should be established by means other than reference either to a percentage fee contract or to a rule prescribing or suggesting a particular percentage.

Judge Miller commented that probate is probably the area of practice where there is greatest reliance on local rules and practices and procedures. The highest priority of the committee has been to develop a statewide system of rules for probate practice and it has substantially reached that goal. For the first time there are rules on notice and rules on

compensation of attorneys and fiduciaries. Also for the first time there is a consistent manner of dealing with the handling of supplemental pleadings in probate practice, the same terminology applies throughout the state, and the same kinds of determinations will be made by judges as to what kinds of notices of these pleadings will be given. The substantial form of the statewide rules is now in place. It is an indication of how far the process has that for the first time the committee is receiving calls and requests from local courts for assistance in revising their rules to reflect the fact that the statewide rules will be in place.

Concerning rule 7.955, the committee modified the rule because there was a disclosure of intent that the committee did not have that was discerned by the opponents of the rule. They believed that the committee was attacking the contingency fee; that was not the intent. The changes that have been made in response to the public comments have deflected that criticism and removed it as a legitimate criticism. The rule is fair, and it states the current state of decisional law and reaffirms the judges' authority to exercise discretion in determining what is a reasonable fee in cases involving minors and incompetent persons.

Council action:

The Judicial Council, effective January 1, 2003, approved the recommendations to:

1. Adopt rules 7.50–7.55, 7.103, 7.104, 7.454, 7.550, 7.700–7.707, 7.750–7.756, and 7.955 of the California Rules of Court;
2. Amend rules 7.1–7.3, 7.102, 7.204, and 7.501; and
3. Amend the titles of chapters 2, 12, 15, and 16 of title 7.

The motion passed.

Circulating Orders:

No circulating orders were approved since the last business meeting.

Appointment Order:

There being no further business, the meeting was adjourned at 12:30 p.m.

Respectfully submitted,

William C. Vickrey
Secretary