

**JUDICIAL COUNCIL MEETING**  
**Minutes of November 14, 1997, Meeting**

The Judicial Council of California meeting began at 8:35 a.m. on Friday, November 14, 1997, at the Administrative Office of the Courts (AOC) offices 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, Roger W. Boren, Carol A. Corrigan, and Richard D. Huffman; Judges Benjamin Aranda III, Paul Boland, J. Richard Couzens, Albert Dover, Lois Haight, Brenda Harbin-Forte, Melinda A. Johnson, Michael B. Orfield, Eleanor Provost, and Kathryn D. Todd; Mr. Maurice Evans, Mr. Sheldon H. Sloan, Ms. Glenda Veasey, and Mr. Brian C. Walsh; and **advisory members:** Judge Dwayne Keyes, Hon. Nori Anne Walla, Ms. Sheila Gonzalez, Mr. Stephen V. Love, and Mr. Ronald Overholt.

**Absent:** Senator John L. Burton, Assembly Member Martha M. Escutia, and Mr. Joseph A. Lane.

**Others present included:** Mr. William C. Vickrey; Justice Christopher Cottle; Judges John Flaherty, Steven Jahr, Owen Lee Kwong, Glenn Mahler, and Kathleen O'Leary; Mr. Jerome I. Braun, Mr. Jake Dear, Ms. Beth Jay, Mr. Richard Loftus Jr., Mr. David F. Phillips, Ms. Leticia Sepulveda, and Ms. Sandy Waters; **staff:** Ms. Martha Amlin, Mr. Starr Babcock, Ms. Jessica Fiske Bailey, Ms. Francine Batchelor, Mr. Michael Bergeisen, Ms. Wendi Berkowitz, Mr. Scott Beseda, Ms. Juliet Briskin, Ms. June Clark, Ms. Eunice Collins, Ms. Shelly Danridge, Ms. Charlene Depner, Ms. Lesley Duncan, Ms. Claudia Fernandes, Mr. Jeff Fesunoff, Mr. Michael Fischer, Ms. Kate Harrison, Ms. Katharine Holland, Ms. Lynn Holton, Ms. Kate Howard, Ms. Fea Jacobson, Ms. Melissa Johnson, Ms. Fran Jurcso, Mr. Joe Lantenberger, Mr. Ray LeBov, Mr. Greg Loarie, Ms. Catherine Lowe, Mr. Ben McClinton, Ms. Linda McCulloh, Ms. Ellen Mize, Mr. Martin Moshier, Ms. Judy Myers, Ms. Diane Nunn, Ms. Nzinga Nyagua, Mr. Taryn Ravazzini, Ms. Nini Redway, Ms. Rebecca Ross, Mr. Victor Rowley, Ms. Kady von Schoeler, Ms. Dale Sipes, Mr. Hampton Smith, Ms. Sharon Smith, Mr. John Toker, Ms. Kiri Torre, Ms. Cara Vonk, Mr. Anthony Williams, Mr. Jonathan Wolin, Mr. Jerry Yalon, and Ms. Pat Yerian; **media representatives:** Mr. Philip Carrizosa, *L.A. Daily Journal*, Mr. Dave Kline, *L.A. Metropolitan News*, and 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 two binders of Agenda, Reports, and Recommendations, dated November 14, 1997, which were sent to members in advance of the meeting.)

### **Minutes of the October 16, 1997, Meeting**

*Council action:*

Judge Harbin-Forte moved that the Judicial Council approve the minutes of the October 16, 1997, meeting.

The motion passed.

### **Council Committee Presentations**

Reports on committee activities were distributed for submission into the binders of Agenda, Reports, and Recommendations, dated November 14, 1997.

COUNCIL ITEMS 1A–C, 1E–Q, and 2–4 WERE APPROVED AS CONSENT ITEMS, PER THE SUBMITTERS’ RECOMMENDATIONS.

#### **ITEM 1 Rules, Forms, and Standards**

##### **Tab A Amendments to Probate Forms Concerning Decedents’ Estates, Guardianships, and Conservatorships (Form DE-110 et seq., Form GC-020 et seq.)**

The Probate and Mental Health Task Force proposed numerous changes in forms used in probate proceedings to conform to legislation enacted in 1996.

*Council action:*

The Judicial Council, effective January 1, 1998, revised the forms used in probate proceedings as follows:

1. Approved the following new form for optional use:  
*Attachment Requesting Special Orders Regarding Dementia* (GC-313)
2. Revoked the following forms:
  - a. *Petition for Probate* (for deaths before January 1, 1985) (DE-110)
  - b. *Proof of Subscribing Witness* (DE-130)
  - c. *Creditor’s Claim* (DE-170)
  - d. *Proof of Service by Mail of Order Appointing Guardian or Conservator* (GC-030)

3. Revised the following forms:

- a. *Petition for Probate* (DE-111)
- b. *Notice of Hearing* (DE-120)
- c. *Notice of Petition to Administer Estate* (DE-121)
- d. *Citation (Probate) and Proof of Service* (DE-122)
- e. *Summons (and Proof of Service)* (DE-125)
- f. *Proof of Subscribing Witness* (DE-131)
- g. *Proof of Holographic Instrument* (DE-135)
- h. *Order for Probate* (DE-140)
- i. *Duties and Liabilities of Personal Representative (and Acknowledgment of Receipt)* (DE-147)
- j. *Letters* (DE-150)
- k. *Request for Special Notice* [same as GC-035] (DE-154)
- l. *Notice of Administration to Creditors* (DE-157)
- m. *Inventory and Appraisal* [same as GC-040] (DE-160)
- n. *Inventory and Appraisal Attachment* [same as GC-041] (DE-161)
- o. *Notice of Proposed Action (Objection—Consent)* (DE-165)
- p. *Waiver of Notice of Proposed Action (and Revocation of Waiver)* (DE-166)
- q. *Creditor's Claim* (DE-172)
- r. *Allowance or Rejection of Creditor's Claim* (DE-174)
- s. *Order Prescribing Notice* [same as GC-022] (DE-200)
- t. *Spousal Property Petition* (DE-221)
- u. *Spousal Property Order* (DE-226)
- v. *Report of Sale and Petition for Order Confirming Sale of Real Property* [same as GC-060] (DE-260)
- w. *Order Confirming Sale of Real Property* [same as GC-065] (DE-265)
- x. *Ex Parte Petition for Authority to Sell Securities and Order* [same as GC-070] (DE-270)
- y. *Ex Parte Petition for Approval of Sale of Personal Property and Order* [same as GC-075] (DE-275)
- z. *Affidavit re Real Property of Small Value (\$20,000 or Less)* (DE-305)
- aa. *Petition to Determine Succession to Real Property (Estates \$100,000 or Less)* (DE-310)
- bb. *Order Determining Succession to Real Property (Estates \$100,000 or Less)* (DE-315)
- cc. *Notice of Hearing—Guardianship or Conservatorship* (GC-020)
- dd. *Order Dispensing With Notice—Guardianship or Conservatorship* (GC-021)
- ee. *Order Prescribing Notice* [same as DE-200] (GC-022)
- ff. *Request for Special Notice* [same as DE-154] (GC-035)
- gg. *Inventory and Appraisal* [same as DE-160] (GC-040)
- hh. *Inventory and Appraisal Attachment* [same as DE-161] (GC-041)
- ii. *Report of Sale and Petition for Order Confirming Sale of Real Property* [same as DE-260] (GC-060)
- jj. *Order Confirming Sale of Real Property* [same as DE-265] (GC-065)

- kk. *Ex Parte Petition for Authority to Sell Securities and Order* [same as DE-270] (GC-070)
- ll. *Ex Parte Petition for Approval of Sale of Personal Property and Order* [same as DE-275] (GC-075)
- mm. *Petition for Appointment of Temporary Guardian or Conservator* (GC-1110)
- nn. *Order Appointing Temporary Guardian or Conservator* (GC-140)
- oo. *Letters of Temporary Guardianship or Conservatorship* (GC-150)
- pp. *Petition for Appointment of Guardian of Minor* (GC-210)
- qq. *Consent of Guardian, Nomination, and Waiver of Notice* (GC-211)
- rr. *Order Appointing Guardian of Minor* (GC-240)
- ss. *Letters of Guardianship* (GC-250)
- tt. *Petition for Appointment of Probate Conservator* (GC-310)
- uu. *Attachment Requesting Special Orders Regarding Dementia* (GC-313)
- vv. *Citation for Conservatorship and Proof of Service* (GC-320)
- ww. *Order Appointing Court Investigator (Probate Conservatorship)* (GC-330)
- xx. *Declaration on Medical Inability to Attend Court Hearing* (GC-335)
- yy. *Order Appointing Probate Conservator* (GC-340)
- zz. *Duties of Conservator and Acknowledgment of Receipt of Handbook* (GC-348)
- aaa. *Letters of Conservatorship* (GC-350)
- bbb. *Petition for Exclusive Authority to Give Consent for Medical Treatment* (GC-380)
- ccc. *Order Authorizing Conservator to Give Consent for Medical Treatment* (GC-385)

**Tab B            Amendment to *Form Interrogatories* Definition of the Term  
INCIDENT (Forms FI-120 and FI-129)**

The Civil and Small Claims Advisory Committee proposed amendments to the definition section of *Form Interrogatories* (FI-120) and *Form Interrogatories —Economic Litigation* (FI-129). The amendments will give the propounding party the option of selecting the current preprinted definition of the term INCIDENT or inserting the party’s own definition for the case.

*Council action:*

The Judicial Council amended, effective January 1, 1998, forms FI-120 (*Form Interrogatories*) and FI-129 (*Form Interrogatories — Economic Litigation*) to give the propounding party the option of inserting the party’s own definition of INCIDENT where the action arises from a course of conduct or a series of events occurring over a period of time.

**Tab C      *Order for Restitution to Crime Victim (New Form CR-110)***

The Criminal Law Advisory Committee proposed approval of a new form, *Order for Restitution to Crime Victim* (CR-110) (restitution order), to implement recent statutory amendments concerning restitution to victims of crime.

Judge Couzens requested that a blank line for the victim's name be inserted at line 3a in lieu of phrase "the victim named above."

*Council action:*

The Judicial Council approved, effective January 1, 1998, form CR-110, the *Order for Restitution to Crime Victim*, amended to insert a blank line for the victim's name at line 3a in lieu of phrase "the victim named above."

**Tab D      **Implementation of Criminal Convictions Records Act (Cal. Rules of Court, rule 895)****

Justice Cottle presented the item, assisted by Mr. John Toker of AOC staff. Justice Cottle stated that the Criminal Law Advisory Committee recommends implementation of the Criminal Convictions Records Act (Cal. Rules of Court, rule 895), which requires courts to report specified information to the Department of Justice for entry into a computer database that can be used to generate records to prove a prior conviction.

Justice Cottle stated that the courts already report information about criminal convictions to the Department of Justice. The proposed rule would require the courts to perform two additional acts: (1) in cases involving a guilty plea, the court must report whether the defendant was informed of and waived all constitutional rights and whether the court found the plea to be intelligent and voluntary; and (2) the court must provide certification that the information reported correctly reflects the court record.

Justice Cottle stated that the rule would make it easier for law enforcement agencies to obtain information and to prove prior convictions.

Judge Johnson questioned whether the rule would shift the burden to the defendant. Justice Cottle said that the rule would make it easier to resolve whether a prior conviction is a matter of fact or not.

Mr. Love expressed concern about the increased workload for court staff as a result of the rule. He asked whether defense counsel would use the declaration or still require certified copies of the record, thereby increasing the workload of court personnel. He noted that the Legislature inserted language in the act stating that implementation of the act should not be construed to require courts to acquire new equipment or to implement

any new procedures. Mr. Love said that the council should inform the Legislature that there *are* cost factors involved in implementation of the act.

Judge Dover stated that some of these problems and costs might disappear with electronic transfers. He also suggested that section 2(iii), line 15, be amended to include “and there was a factual basis.” Justice Cottle said that other parts of the rule are based on the Constitution and that a factual basis is rooted in statute. The Chief Justice noted that the reasons for entering a plea might be other than a factual basis.

Judge Couzens stated that section 2, line 9, of the rule makes reference to a guilty plea and should be amended to include a no contest plea. He also asked whether the information submitted could be used as proof of a prior conviction.

Judge Harbin-Forte suggested that section 2, line 13, of the rule be amended to conform to *People v. Tahl*, to include reference to the defendant’s right to compel the attendance of witnesses at no cost to the defendant. Staff indicated that *Tahl* did not specifically enumerate this right and therefore the amendment was unnecessary. After reviewing the case, Judge Harbin-Forte agreed.

*Council action:*

Judge Couzens moved that the Judicial Council, effective July 1, 1998, adopt rule 895 with section 2, line 9, amended to read “In the case of a guilty plea or nolo contendere, whether. . . .” The rule would require courts to report specified information to the Department of Justice for entry into a computer database that can be used to generate records to prove a prior conviction.

The motion passed.

**Tab E            Proposed Amendments to Sentencing Guidelines (Cal. Rules of Court, rule 428)**

The Criminal Law Advisory Committee proposed an amendment to rule 428(b) that would remove language invalidated by the California Supreme Court in *People v. Hall* (1994) 8 Cal.4th 950.

*Council action:*

The Judicial Council, effective January 1, 1998, amended rule 428(b) to remove limitations on the aggravating factors a court may consider in deciding what term to impose for an enhancement.

**Tab F            Amendments to Forms Concerning Civil Harassment (CH-100 to CH-150) and *Emergency Protective Order (CLETS) (1295.90)***

The Family and Juvenile Law Advisory Committee proposed amendments to (1) the Judicial Council civil harassment forms to conform to statute and to delete outdated references, and (2) the *Emergency Protective Order (CLETS [California Law Enforcement Telecommunications System]) (1295.90)* form to add stalking as a basis for issuing an order.

*Council action:*

The Judicial Council:

1. Effective January 1, 1998, adopted the new *Application and Order for Reissuance of Order to Show Cause* (Form CH-125) for optional use.
2. Effective January 1, 1998, revised the following Judicial Council civil harassment forms for optional use:
  - a. *Petition for Injunction Prohibiting Harassment* (Form CH-100)
  - b. *Response to Petition for Injunction Prohibiting Harassment* (Form CH-110)
  - c. *Order to Show Cause and Temporary Restraining Order (CLETS)* (Form CH-120)
  - d. *Proof of Personal Service (Harassment)* (Form CH-130)
  - e. *Proof of Service by Mail (Harassment)* (Form CH-131)
  - f. *Order After Hearing on Petition for Injunction Prohibiting Harassment (CLETS)* (Form CH-140).
3. Sponsored legislation to amend Code of Civil Procedure section 527.6 to include family and household members in civil harassment actions.
4. Effective January 1, 1998, amended the mandatory *Emergency Protective Order (CLETS) (1295.90)* to include the word “stalking” in items 3 and 10.

**Tab G      Amendments to Rules, Forms, and Standards of Judicial Administration Governing Juvenile Court Proceedings (Cal. Rules of Court, rules 39.3, 201, 240, 1401, 1402, 1421, 1440–1447, 1466, 1470–1478, 1487, 1488, 1493, and 1496; Standards of Judicial Administration, section 23; and Forms *Waiver of Rights* (JV-190), *Order for Prisoner’s Appearance at Hearing* (JV-450), *Petition for Waiver of Parental Consent re Abortion* (AB-100), *Questionnaire and Declaration of Petitioner* (AB-105), *Confidential Affidavit of Minor* (AB-110), *Declaration Regarding Maturity and Best Interest* (AB-115), *Findings and Order re Abortion Without Parental Consent* (AB-120), *Order Authorizing Abortion Without Parental Consent* (AB-125), and *Notice of Appeal* (AB-130))**

The Family and Juvenile Law Advisory Committee recommended (1) amendments to rules 1401, 1421, 1466, 1487, 1488, 1493, and 1496, and to forms JV-190 and JV-450, to define terms and to conform to recent statutory changes; (2) amendments to rules 201 and 1402 to permit nonsubstantive variances in forms generated by the California State Department of Social Services’ new statewide computerized case management system; (3) an amendment to rule 1422, the repeal of rules 1440–1447 and 1470–1478, and the adoption of rules 1440–1447 and 1470–1476 to clarify and simplify procedures applicable to initial hearings in dependency and delinquency cases; and (4) the repeal of rules 39.3 and 240, section 23 of the Standards of Judicial Administration, and Forms AB-100–AB-130 to conform to the recent decision by the California Supreme Court overturning the parental consent to abortion statute.

*Council action:*

The Judicial Council, effective January 1, 1998:

1. Amended rules 1401, 1421, 1466, 1487, 1488, 1493, and 1496, and *Waiver of Rights* (JV-190) and *Order for Prisoner’s Appearance at Hearing* (JV-450) to define terms and to conform to recent statutory changes;
2. Amended rules 201 and 1402 to permit nonsubstantive variances for forms generated by the California State Department of Social Services’ new statewide computerized case management system;
3. Amended rule 1422, repealed rules 1440–1447 and 1470–1478, and adopted rules 1440–1447 and 1470–1476 to clarify and simplify procedures applicable to initial hearings in dependency and delinquency cases; and
4. Repealed rules 39.3 and 240, section 23 of the Standards of Judicial Administration, and Forms AB-100–AB-130 to conform to the recent decision by the California Supreme Court overturning the parental consent to abortion statute.



**Tab H        Amendments to Rules and Forms Applicable to Appellate Review of Juvenile Dependency Proceedings (Cal. Rules of Court, rules 39.1A and 39.1B); and Forms *Denial of Petition Rule 39.1B (JV-826)*, *Notice of Action (JV-828)*, and *Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B (JV-820)***

The Family and Juvenile Law Advisory Committee, Juvenile Law Subcommittee, proposed (1) amending rule 39.1A to remove the January 1, 1998, sunset clause; (2) amending rule 39.1B to clarify procedures relating to appellate review of orders setting a hearing under Welfare and Institutions Code section 366.2; and (3) new and revised forms for use in appellate review under rule 39.1B.

*Council action:*

The Judicial Council, effective January 1, 1998:

1. Amended rule 39.1A, governing appeals from juvenile proceedings, to delete:
  - a. Subdivision (j) to remove the January 1, 1998, sunset clause; and
  - b. The phrase “experimental statewide project on” from the title of the rule.
2. Amended rule 39.1B, on procedures relating to appellate review of orders setting a hearing under Welfare and Institutions Code section 366.26, to:
  - a. Revise subdivision (a) to specify that writ petitions filed under rule 39.1B shall be handled in conformance with standard writ practice and procedure except as otherwise specified;
  - b. Add new subdivision (l) to specify that (1) the court may deny the petition by means of a new, optional Judicial Council form, *Denial of Petition (JV-826)*, in appropriate cases; and (2) in all cases in which the court intends to issue a determination on the merits, the court shall issue an Order to Show Cause or an Alternative Writ;
  - c. Move the text relating to the filing of a response from subdivision (k) to new subdivision (m);
  - d. Revise subdivision (o) to specify that absent exceptional circumstances the appellate court shall review the petition for extraordinary writ and decide it on the merits by written opinion.
3. Approved the following new forms for optional use in appellate review under rule 39.1B:
  - a. *Denial of Petition (JV-826)*
  - b. *Notice of Action (JV-828)*.
4. Amended the *Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B (JV-820)* to conform to the requirement under rule 39.1B(f) that an adult party sign the form.

**Tab I            Amendments to Appellate Rules Governing (1) Oral Arguments in the Supreme Court and Court of Appeal; (2) Service of Briefs and Other Documents; and (3) Review of Decisions of the Public Utilities Commission (Cal. Rules of Court, rules 22, 22.1, 40(f), and 58(a))**

The Appellate Advisory Committee proposed several amendments to the rules on appeal.

*Council action:*

The Judicial Council, effective January 1, 1998:

1. Repealed rule 22 and adopted rules 22 and 22.1 to establish the time limits, order, and number of counsel in oral argument in the Supreme Court and the Court of Appeal.
2. Amended rule 40(f) to require that:
  - a. All documents and briefs filed in an appeal be served on all parties; and
  - b. Proof of service include the name of each party represented by each attorney served.
3. Amended rule 58(a) to recognize a statutory change that allows certain decisions of the Public Utilities Commission to be reviewed by the Court of Appeal. (Stats.1996, ch. 855, amending Pub. Util. Code, § 1759.)

**Tab J            Amendment to Rule Concerning Eligibility Criteria for Attending Traffic Violator School (Cal. Rules of Court, rule 851)**

The Traffic Advisory Committee recommended amendments to rule 851 to allow commercial drivers to attend traffic violator school.

*Council action:*

The Judicial Council, effective January 1, 1998, amended rule 851 concerning vehicle code infraction pretrial diversion eligibility criteria for attending traffic violator school.

**Tab K            1998 Revisions to the California Rules of Court, rule 850, Uniform Bail and Penalty Schedules**

The Traffic Advisory Committee recommended approval of the 1998 revisions to the Uniform Bail and Penalty Schedules to bring them into conformance with new legislation. In addition, it recommended adoption of language in the preface of the Uniform Bail and Penalty Schedules to clarify inconsistencies in adjudicating Vehicle Code section 16028(a) offenses (evidence of financial responsibility), and it deleted the mandatory appearance for speeding infractions of 26 miles per hour or more above the speed limit.

*Council action:*

The Judicial Council, effective January 1, 1998, adopted the 1998 revisions to rule 850 (Uniform Bail and Penalty Schedules).

**Tab L            Adoption of the Uniform Standards of Practice for Providers of Supervised Visitation (Cal. Standards Jud. Admin., § 26.2)**

The Family Law Subcommittee of the Family and Juvenile Law Advisory Committee recommended adoption of the Uniform Standards of Practice for Providers of Supervised Visitation as section 26.2 of the California Standards of Judicial Administration. These standards fulfill the requirement stated in legislation enacted in 1996 that the Judicial Council develop standards for providers of supervised visitation.

*Council action:*

The Judicial Council adopted, effective January 1, 1998, the Uniform Standards of Practice for Providers of Supervised Visitation as section 26.2 of the California Standards of Judicial Administration.

**Tab M            Approval of Technical Amendments to Court Records Management Standards**

Staff recommended approval of technical amendments to court records management standards.

*Council action:*

The Judicial Council amended, effective January 1, 1998, the Court Records Management Standards by making the following corrections:

1. Re-letter the second subdivision “e” as “f” and re-letter subsequent subdivisions;
2. Correct “rule 1011” in re-lettered subdivision (h) to read “rule 999.1” and correct Government Code section “68080.8” to read “68090.8”;
3. Replace the last sentence in the advisory committee comment to re-lettered subdivision (l), which talks about the “proposed” comprehensive and simplified retention schedule, with a reference to the adopted Government Code sections sponsored by the Judicial Council; and
4. Remove the last sentence in re-lettered subdivision (o) to delete the reference to the Records Management Advisory Committee, which is no longer in existence.

**Tab N Guidelines for Diversion Drug Court Programs (Cal. Standards Jud. Admin., § 36)**

The Oversight Committee recommended adoption of California Standards of Judicial Administration, § 36 — Guidelines for diversion drug court programs. These guidelines would be used in evaluating the impact of the California drug court grant program and would assist courts in developing and administering pre-plea drug courts in compliance with Penal Code section 1000.5.

*Council action:*

The Judicial Council adopted, effective January 1, 1998, California Standards of Judicial Administration, § 36 — Guidelines for diversion drug court programs.

**Tab O Amendments to Standards Concerning Education of Judicial Officers on the Conduct of Voir Dire and of Judicial Officers, Court Staff, and Jury Staff on the Treatment of Jurors (Cal. Standards Jud. Admin., § 8.8)**

The Blue Ribbon Commission on Jury System Improvement recommended that the Judicial Council amend section 8.8 of the Standards of Judicial Administration to encourage the Center for Judicial Education and Research (CJER) to produce educational materials and programs focused on the conduct of voir dire, particularly in criminal cases and juror treatment, that can be distributed to all judges for use and review. The CJER Governing Committee proposed amendments to section 8.8 to implement the commission's recommendations.

*Council action:*

The Judicial Council adopted, effective January 1, 1998, revised Standard of Judicial Administration section 8.8.

**Tab P Family Law (Child Support Enforcement) Rules and Forms (Cal. Rules of Court, rules 1276, 1285.32, 1285.65, 1299.01, 1299.07, 1299.13, 1299.17, 1299.22, 1299.25, and 1299.43)**

The Family and Juvenile Law Advisory Committee recommended changes to child support enforcement rules and forms: revision to rule 1276 to allow the use of federally mandated interstate forms in California courts, and technical changes to some of the forms recently adopted to implement Statutes 1996, chapter 957. (Assem. Bill 1058 [Speier].)

*Council action:*

The Judicial Council, effective January 1, 1998:

1. Amended California Rules of Court, rule 1276 to allow the use of federally mandated interstate forms in California courts.
2. Made technical amendments to the following forms:
  - a. Rule 1285.32 – *Responsive Declaration to Motion for Simplified Modification of Order for Child, Spousal, or Family Support*
  - b. Rule 1285.65 – *Ex Parte Application for Wage and Earnings Assignment Order*
  - c. Rule 1299.01 – *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations and Statement of Rights and Responsibilities (Governmental)*
  - d. Rule 1299.07 – *Stipulation for Judgment or Supplemental Judgment Regarding Parental Obligations and Judgment (Governmental)*
  - e. Rule 1299.13 – *Judgment Regarding Parental Obligations (Governmental)*
  - f. Rule 1299.17 – *Declaration for Amended Proposed Judgment (Governmental)*
  - g. Rule 1299.22 – *Stipulation and Order (Governmental)*
  - h. Rule 1299.25 – *Notice of Wage and Earnings Assignment (Governmental)*
  - i. Rule 1299.43 – *Notice of Opposition and Notice of Motion on Claim of Exemption (Governmental)*.

**Tab Q      Reimbursement of Costs in Change of Venue Criminal Cases (Cal. Standards Jud. Admin., § 4.2)**

The Court Administrators Advisory Committee proposed technical and nonsubstantive revisions to several subdivisions of section 4.2 of the Standards of Judicial Administration and the repeal of section 4.2(e)(4), on the grounds that the language is inconsistent with the statutory language of Penal Code section 1037(c), relating to reasonable and necessary costs.

*Council action:*

The Judicial Council approved the amendments to section 4.2 of the Standards of Judicial Administration relating to the reimbursement of costs in change of venue criminal cases, effective January 1, 1998.

## **ITEM 2      Judicial Council Legislative Guidelines and Precedents**

The AOC's Office of Governmental Affairs recommended adoption of the 1997 restatement of Judicial Council Legislative Guidelines and Precedents.

*Council action:*

The Judicial Council adopted the 1997 restatement of Judicial Council Legislative Guidelines and Precedents.

## **ITEM 3      Approval of Amendments to the Administrative Office of the Courts Conflict of Interest Code**

The Political Reform Act of 1974 (Gov. Code, § 81000 et seq.) requires public agencies to adopt conflict of interest codes. The Administrative Office of the Courts (AOC) staff recommended approval of proposed technical revisions to add two new job classifications to the Conflict of Interest Code for the AOC.

*Council action:*

The Judicial Council approved the addition of two new job classifications to the Conflict of Interest Code for the Administrative Office of the Courts.

## **ITEM 4      Amendments to Standards of Judicial Administration on the Court's Duty to Prohibit Bias, on Reasonable Accommodation for Court Personnel, and on Time Standards and Persons with Disabilities (Cal. Standards Jud. Admin., §§ 1, 1.4, and 2.5)**

The Access and Fairness Advisory Committee proposed: (1) amendments to section 1 of the Standards of Judicial Administration, relating to the court's duty to prohibit bias; (2) adoption of new section 1.4, concerning reasonable accommodation for court personnel with disabilities; and (3) referral of new section 2.5, relating to time standards and accommodating persons with disabilities, back to the advisory committee for further consideration.

*Council action:*

The Judicial Council, effective January 1, 1998:

1. Amended section 1 of the Standards of Judicial Administration;
2. Added section 1.4 to the Standards of Judicial Administration; and
3. Referred new section 2.5 of the Standards of Judicial Administration to the Access and Fairness Advisory Committee for further consideration.

## ITEM 5 Awards

### Tab A Approval of the 1997 Ralph N. Kleps Awards

Judge Kathleen E. O’Leary, Chair of the California Judicial Administration Conference Planning Committee, presented the item, assisted by Mr. Scott Beseda of AOC staff. She stated that 31 applications were considered by the committee for an award recognizing improvement in the courts. No applications were received for courts with 0–6.9 judicial position equivalents. Judge O’Leary noted that for the first time site visits were conducted to most of the courts applying for an award.

#### *Council action:*

Judge Todd moved that the Judicial Council:

1. Approve the following Ralph N. Kleps Awards for 1997:
  - a. Category 2 (counties with 7.0–23.9 judicial position equivalents)
    - i. *Placer County Superior and Municipal Courts*  
Placer County Peer Court
    - ii. *Shasta County Courts*  
Shasta County Courts Addicted Offender Program
  - b. Category 3 (counties with 24.0–99.9 judicial position equivalents)
    - i. *San Bernardino Superior and Municipal Courts*  
Forms Automation Program
    - ii. *Santa Clara County Superior Court Family Division*  
Santa Clara County Family Court and Family Court Services  
Comprehensive Program of Intervention
    - iii. *Ventura County Superior and Municipal Coordinated Courts*  
Interactive Take Home Traffic School
  - c. Category 4 (Counties with 100 or more judicial position equivalents)
    - i. *Los Angeles Municipal Court*  
Implementation of Trial Court Performance Standards
    - ii. *Los Angeles County Superior Court and the Administratively Unified Courts*  
Los Angeles County Superior Court Summer Youth Mentoring Program
    - iii. *Los Angeles County Superior Court and the Administratively Unified Courts*  
“The Constitutional Rights of the Big Bad Wolf”
    - iv. *South Orange Municipal Court*  
Domestic Violence Temporary Restraining Orders
    - v. *The Four Municipal Courts of San Diego County: El Cajon, North County, San Diego, and South Bay*  
Court Customer Service Training Program
    - vi. *San Diego Municipal Court*  
Civil and Small Claims Automated Case Management System

- vii. *San Diego County Superior Court*  
Touch Screen Case Index
  - 2. Instruct staff to compile a short synopsis of each project nominated, including contact person in that court, and to disseminate the information to all courts before December 31, 1997.
- The motion passed.

**Tab B      Approval of Distinguished Service Awards for 1997**

Judge Kathleen E. O’Leary, Chair of the California Judicial Administration Conference Planning Committee, presented the item. She stated that nomination forms were sent to all courts in July 1997. Ten nominations were considered by the committee for an award acknowledging significant and positive contributions to court administration.

Judge O’Leary noted that this is the fifth year that the Judicial Council will award the Distinguished Service Award. The awards were created to honor: (1) members of the judiciary for their extraordinary dedication to the highest principles of the administration of justice; (2) individuals for their significant contributions and leadership in the profession of judicial administration; and (3) members other than the judiciary for their outstanding contributions to the California courts.

*Council action:*

Judge Johnson moved that the Judicial Council approve the following Distinguished Service Awards for 1997:

- 1. Judge Steven E. Jahr, Jurist of the Year
- 2. Mr. Alan Slater, Judicial Administration Award
- 3. Governor Pete Wilson, Bernard E. Witkin Amicus Curiae Award

The motion passed.

**Tab C      Approval of 1997 Chief Justice Special Recognition Award**

Judge Kathleen O’Leary presented the item, assisted by Mr. Scott Beseda of AOC staff. She stated that Chief Justice George presented the first Special Recognition Award at last year’s California Judicial Administration Conference, following the first year of Chief Justice George’s tenure. This award recognizes efforts by individuals or courts to improve access, fairness, and diversity by promoting pro bono legal services within the judicial branch.



*Council action:*

Justice Corrigan moved that the Judicial Council:

1. Approve the following courts (and projects) as winners of the Chief Justice Special Recognition Awards for 1997:
  - a. *San Diego County Superior Court*  
Pro Bono Legal Services Program for Pro Per Clients
  - b. *Sacramento Superior and Municipal Courts*  
Sacramento Stand Down Rally
2. Instruct staff to compile a short synopsis of each project nominated, including contact person in that court, and to disseminate the information to all courts before December 31, 1997.

The motion passed.

#### **ITEM 6      Approval of Adjustments to the Fiscal Year 1997–98 Annualized Allocation Recommendation**

Judge Steven E. Jahr, Chair of the Trial Court Budget Commission (TCBC), presented the item, assisted by Ms. Lesley Duncan of AOC staff. He stated that total available funding in support of trial court operations for fiscal year 1997–98 is \$1.566 billion. Of this \$1.566 billion, funding for the interpreter program (\$32.8 million), a 0.5 percent reserve (\$7.9 million), and projected growth in fines and forfeitures (\$11.8 million) have been set aside for allocation later in the current fiscal year. A total of \$1.514 billion is available for distribution at this time. Actual trial court expenditures for fiscal year 1996–97, less Function 4 (Contract Interpreters) and half of Function 5 (Collections Enhancement), totaled \$1.512 billion.

Anticipated total funding for fiscal year 1997–98 (excluding the \$7.8 million reserve and the \$11.8 million in projected fine and forfeiture growth) is \$1.726 billion. Of the \$1.514 billion available this year, it is recommended that the balance of funding designated for the new judgeships be first allocated to those courts that received new judges in fiscal year 1996–97. TCBC recommends that the remainder of funds be allocated based on a percentage of fiscal year 1996–97 actual expenditures. Once the funding for 21 new judgeships is allocated, 47 courts face a funding shortfall when compared to actual expenditures in fiscal year 1996–97 (pending the allocation of the remainder of the reserve in the current year). The shortfall will total \$474,000, and TCBC recommends spreading it among the trial courts.

Judge Todd asked whether, in a later allocation recommendation, consideration will be given to COLAs (cost of living adjustments) already established (confirmed) or include those created from this point forward. Judge Jahr said that the likely recommendation will take into account only confirmed COLAs, because the policy, he thinks, requires

that COLAs be finalized in a formal contract (otherwise total allocation would include possibly inflated anticipated costs). Ms. Duncan noted that to date, based on a staff survey, confirmed costs for COLAs in fiscal year 1997–98 totaled \$13 million, more than the Judicial Council currently anticipates having available for allocation.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Adopt and approve an allocation schedule for fiscal year 1997–98, based solely on fiscal year 1996–97 actual expenditures, adjusted for the 21 new judgeships with the following additions:
  - a. Direct staff to augment the recommended allocation shown in column C of attachment 1 by any negative amount shown in column D (in the binder of Agenda, Reports, and Recommendations dated November 14, 1997);
  - b. That this augmentation be taken from any funds identified to be available for this purpose; and
  - c. That staff be directed to make recommendations to the council, after March 15, 1998, regarding replacing funds used for this augmentation from the reserve required by Government Code section 77209(b)(1).
2. Approve a third- and fourth- quarter distribution schedule consistent with the above recommended formula, allocating the remainder of the annual funding evenly between the third and fourth quarters.
3. With respect to the anticipated remaining amounts available for allocation for fiscal year 1997–98 (i.e., the 0.5 percent reserve [\$7.9 million] and projected growth in fines and forfeitures, revenue [\$11.8 million]), the TCBC will consider options for allocation of this funding at its January 8, 1998, meeting for consideration by the Judicial Council at its February 4, 1998, meeting.

The motion passed.

## **ITEM 7      Approval of Fiscal Years 1997–98 and 1998–99 Trial Court Coordination Plans**

Judge John Flaherty, Chair of the Trial Court Coordination Advisory Committee (TCCAC), presented the item, assisted by Ms. Fran Jurcso of AOC staff. He stated that trial courts are required to submit to the council a county coordination plan every two years. Judge Flaherty commented that two years ago all 58 counties eventually developed plans that were previously approved by the council for fiscal years 1995–96 through 1996–97.

He noted that each county’s plan for fiscal years 1997–98 through 1998–99 was due to the AOC on or before July 1, 1997. Judge Flaherty stated that the TCCAC reviewed coordination plans for all 58 counties. Based on that review, the committee returned 27 countywide coordination plans to courts for clarification and recommended approval of

31 plans. Courts from which clarification was requested were asked to submit revised plans by October 31, 1997. Based on a subsequent review of the resubmitted plans, the committee recommended approval of an additional 7 plans, for a total of 38 plans.

Justice Huffman asked what methodology is used by the committee in the plan review and approval process. Judge Flaherty stated that the committee looks at three key elements delineated in rule 991 (the rule of court concerning coordination). The committee divides into subcommittees to read a number of plans and report back to the full committee for a decision. The committee does not use a numerical methodology; instead it assigns committee members plans of specific, familiar courts. Both the subcommittee and full committee have the opportunity to ask questions, clarify issues, and discuss and vote on all plans.

Mr. Walsh asked why 20 of the plans were not approved. Judge Flaherty said that some counties have not submitted plans that meet the time frames set forth in rule 991 and/or substantive requirements set forth in rule 991; and others are close to meeting those requirements and just need some assistance.

Judge Boland asked how the committee gives guidance to counties with unapproved plans. Judge Flaherty said that the committee assists by sending a letter that states clearly its questions regarding the plan and offering a committee member to serve as a mentor.

Judge Todd asked why, if a plan was approved two years ago, it would not be approved now. Judge Flaherty noted that the code section governing coordination requires plan approval every two years and delineates staggered deadlines relating to coordination. Some counties may have met previous deadlines but may not be meeting current and upcoming deadlines.

Mr. Love stated that some courts have very serious concerns about meeting time frames due to circumstances beyond the courts' control. He commented that Santa Clara would have trouble meeting the requirement for a single personnel system, since the county has three contracts that will not allow that by the due date set forth in rule 991. Judge Flaherty stated that those types of issues must be taken into account.

Chief Justice George asked if there is a method to deal with these types of impossibilities. Judge Flaherty said that the committee has not been faced with a situation in which a county's plan would not be approved solely because of an impossible situation. He said that there are usually many reasons a plan is not approved. The committee reviews the individual circumstances tied to each plan when determining the final recommendation to the Judicial Council.

Mr. Overholt said the committee and council need to take into account the serious reasons for a county's ability or inability to coordinate its courts. But the council should

encourage successful court coordination, particularly in light of the passage of trial court funding and the courts' judgeship requests.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Approve trial court coordination plans for fiscal years 1997–98 through 1998–99 for the following courts: Alameda, Alpine, Butte, Calaveras, Colusa, Contra Costa, Del Norte, Fresno, Glenn, Humboldt, Imperial, Kings, Lassen, Marin, Mendocino, Modoc, Mono, Napa, Nevada, Placer, Plumas, Riverside, Sacramento, San Bernardino, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Ventura, and Yolo;
2. Accept summaries of the plans as stated in the binder of Agenda, Reports, and Recommendations dated November 14, 1997; and
3. Direct AOC staff to provide available assistance to those trial court systems whose plans are not yet approved as requested.

The motion passed.

## **ITEM 8      Approval of Trial Court Coordination Incentives**

Judge John Flaherty, Chair of the Trial Court Coordination Advisory Committee (TCCAC), presented the item, assisted by Ms. Fran Jurcso of AOC staff. He stated that rule 991(f) requires that the implementation of each county's trial court coordination plan for the countywide integration of support services be verified no later than February 1, 1997, according to a process determined by the Judicial Council.

Judge Flaherty said that in November 1996, the Judicial Council directed the TCCAC to develop a process to review the status of administrative coordination in each county or region. The committee was further directed to include in its review an assessment of the progress made in the other elements of rule 991 regarding judicial and case-processing coordination.

In January 1997, the council directed three of its advisory committees, the TCCAC, the Trial Court Budget Commission (TCBC), and the Court Profiles Advisory Committee (CPAC), to develop a proposal of incentives to encourage courts to implement coordination mandates and reward courts that had achieved coordination. The committees presented their proposal in a joint report that the council, in August, requested be sent out for comment.

In October, the council determined that in November it would review the scoring methodology that will be used in assessing a court system's progress in achieving trial court coordination. The scores would be used subsequently by other advisory committees that have authority over other coordination incentives such as budget and new judgeships.

Judge Aranda asked whether the recommended scoring methodology was used to determine approval of the 38 plans just voted on by the council. Judge Flaherty replied that it was not. The methodology is used to assess the progress of coordination according to a court's own plan—not for reviewing the plans themselves.

*Council action:*

Justice Huffman moved that the Judicial Council defer this item without discussion until December 1997, for consideration by the council, at which time:

1. The Trial Court Coordination Advisory Committee (TCCAC) will be expected to present a recommended report structure for use by the TCCAC in conveying its assessment of whether or not courts in a county or region have carried out the requirements of existing statutes and rules of court.
2. The council will approve a final report structure to be used by the TCCAC to document in narrative form the reasons and rationale in support of its final recommendations regarding compliance with existing statutes and rules of court.
3. The TCCAC will be directed to use the approved report format to inform the council of its recommendations regarding compliance with existing statutes and rules of court at a council business meeting on February 26 or 27, 1998, at a time and place to be determined.

The motion passed.

Mr. Steve Love distributed a memo detailing three recommendations made by the Presiding Judges and Court Administrators Advisory Committees regarding coordination. The recommendations were that: (1) the Judicial Council appoint an independent body to conduct appeals of coordination ratings lodged by trial courts, rather than having the TCCAC perform this task; (2) there be consideration for impediments beyond a court's control—e.g., facilities, technology, labor agreements—and that these impediments be taken into account during the coordination rating process; and (3) the Judicial Council be advised that the two advisory committees have concerns about the weights assigned the various coordination elements, the ordering of the elements under the three broad coordination categories, and the relevance of certain coordination elements, among other issues, and that the advisory committees would like to offer long-term recommendations to enhance the coordination rating process.

Judge Dover stated his concern that the recommendations are inappropriate procedurally. They are belated comments on a process about which comments were solicited within the normal circulation-for-comment period. Judge Dover also expressed his concerns about the substance of the recommendations. He stated that they assume that a group other than the TCCAC would decide things differently than the group that has been working on the issues for five to six years. He stated that the TCCAC is a representative group and is appropriate to handle these matters.

Judge Flaherty noted that there has always been a tension between the TCCAC and the Presiding Judges Advisory Committee. He stated that the current process has an appeals component. He noted that there is a feeling among some courts that the TCCAC is trying to micromanage. He said it is his belief that the role of the TCCAC is to make courts successful at court coordination. Additionally, they work to cajole courts into following rule 991 and other coordination-related laws.

Mr. Walsh expressed his concern that the council not overstep its role as a board of directors. The council directed the TCCAC as to what the goals of coordination are and what boundaries the committee should work within. The committee is doing a great job of working within those boundaries and meeting the goals.

Mr. Sloan asked whether the council is a part of the appeals process, allowing those with disapproved plans to present before the council. The Chief Justice stated that this is not usually the case.

Judge Harbin-Forte commented that she hoped the examples of impediments to coordination beyond a court's control in recommendation two (facilities, technology, and labor agreements) were limiting. She expressed concern that one judge's disapproval of coordination might be seen as an impediment beyond a court's control. She also asked what technology would be beyond a court's control.

Mr. Overholt noted that recommendations two and three (assigning relative weight to different coordination elements) are current policy. The council should express its support for the TCCAC's continuing to do this.

Council members suggested alternative language for several of the recommendations made by the Presiding Judges and Court Administrators Advisory Committees.

*Council Action*

Mr. Walsh moved that the Judicial Council:

1. Disapprove the recommendation to appoint an independent body to conduct appeals of coordination ratings lodged by trial courts, rather than having the Trial Court Coordination Advisory Committee (TCCAC) perform this function;
2. Reaffirm that there be consideration for impediments beyond a court's control and that these impediments be taken into account by the TCCAC during the coordination rating process; and
3. Recognize that the concerns relative to the weights assigned the various coordination elements, the ordering of the elements under the three broad coordination categories, and the relevance of certain coordination elements are being addressed by the TCCAC.

The motion passed.

**ITEM 9      Amendment to Rule Governing Telephone Appearances (Cal. Rules of Court, rule 298)**

Judge Owen Lee Kwong presented the item, assisted by Ms. Wendi Berkowitz of AOC staff. He stated that amended rule 298 gives counsel the option, in all civil cases, of appearing by telephone in nonevidentiary law and motion hearings, probate hearings, and conferences. Notwithstanding this general proviso, the amended rule permits the court to require the personal appearance of counsel if the court determines that a personal appearance would materially assist in a determination of the proceeding or in settlement of the case. He said that courts must make these determinations on a case-by-base basis, to avoid blanket “local rules” prohibiting telephone appearances. In addition, he stated that counsel must appear personally for settlement conferences and final status conferences unless the court orders otherwise.

He said that the goal of the amended rule is to reduce the cost of litigation by allowing telephone appearances for routine hearings where personal appearances are not necessary.

Judge Dover moved for amendment of rule 298 as recommended.

Judge Provost asked whether statute allows or requires counsel to notify court and other counsel ahead of time of an intent to make a telephone appearance. Judge Kwong replied that there is such a requirement in statute already.

A council member said that there was an aspect of request for procedure in rule 827 and asked whether the two rules could be combined.

Mr. Bergeisen, AOC Legal Counsel, said that staff would draft a rule combining current rules 827 and 298 and circulate it to the council within the next several weeks for approval by order.

Ms. Berkowitz said that there was a reason for the two separate rules. One applied to superior courts and the other to all trial courts.

*Council action:*

Justice Huffman moved to table the issue and refer it back to staff for additional research.

The motion passed.

Council members asked that staff identify how local courts and the bar would be notified of the rule change, if amended, and what technical and funding assistance could be given to presiding judges to implement the change.

**ITEM 10 Trial by Declaration for Traffic Infractions (Cal. Rules of Court, rule 828 and forms TR-200, TR-205, TR-210, TR-215, TR-220, and TR-225)**

This item was deleted from the agenda.

**ITEM 11 Amendment to Rule Governing the Judicial Council Traffic Advisory Committee (Cal. Rules of Court, rule 1034)**

Judge Glenn Mahler, Chair of the Traffic Advisory Committee, presented the item, assisted by Ms. Nzinga Nyagua of AOC staff. He stated that the committee has the responsibility for reviewing and approving the bail schedule. He stated that violations regarding fish and game, boating, forestry, public utilities, parks and recreation, and business licensing are included in the bail schedule and therefore reviewed by the committee. The committee recommends including these responsibilities specifically in the rule of court establishing the committee and its duties and functions.

In addition, he stated that since January 1996, representatives from the California Highway Patrol, Department of Motor Vehicles, and the Office of Traffic Safety have served as members of the Traffic Advisory Committee. The committee recommends amending rule 1034, to reflect the actual responsibilities and membership of the committee and to specify the government agencies represented on the committee. Justice Boren asked who appoints the governmental representatives to the committee. Judge Mahler stated that committee members and others recommend candidates and the Chief Justice makes the appointments.

*Council action:*

Judge Harbin-Forte moved that the Judicial Council amend, effective January 1, 1998, rule 1034 to accurately reflect the function, duties, and membership of the Traffic Advisory Committee.

The motion passed.

Chief Justice George asked Judge Mahler the status of the mandatory insurance law. Judge Mahler replied that the \$500 fine was mandatory and discretionary. Judge Mahler noted that this has not been specifically communicated to affected bodies. Ms. Nyagua stated that a letter had been prepared advising courts of discretion in this area. She said that concerns were raised and the letter was not sent. Chief Justice George asked for a report on this at the council's February meeting.



**ITEM 12 Proposals for Inclusion in the Judicial Council's 1998 Sponsored Legislation Program**

**Tabs A–D**

Justice Marvin R. Baxter, Chair of the Policy Coordination and Liaison Committee, presented the item, assisted by members of AOC staff. He stated that nine proposals were reviewed.

*Council action:*

Judge Dover moved that the Judicial Council sponsor legislation in 1998 that would:

1. Allow an in forma pauperis applicant who is an inmate of a county jail to have his or her statement of account certified by an officer of the county jail rather than an officer of the Department of Corrections;
2. Change the time for filing and serving documents relating to motions from 15 calendar days to at least 21 calendar days before the hearing for opening briefs; from 5 court days to at least 10 calendar days before the hearing for opposing briefs; and from 2 court days to at least 5 calendar days for reply briefs;
3. Correct technical and drafting errors, as well as practical implementation problems caused by the delayed implementation of AB 233 (trial court funding legislation); and
4. Allow the destruction of in forma pauperis applications at any time after the final disposition of the underlying case.

The motion passed.

**Tab F**

Ms. Kate Howard and Mr. Michael Fischer of AOC staff presented the proposal dealing with family law and domestic violence. They recommended sponsoring legislation making technical, conforming, and procedural changes to laws governing restraining orders. They noted that a question arose about procedures concerning paternity. The issue has been referred to the Family and Juvenile Law Advisory Committee for discussion.

*Council action :*

A council member moved that the Judicial Council sponsor legislation in 1998 that would:

1. Conform various procedures and make technical changes to the law related to three types of restraining orders:
  - a. Protective orders issued under the Domestic Violence Protection Act (DVPA), Family Code section 6200 et seq.;

- b. Civil harassment restraining orders issued under the Code of Civil Procedure section 527.6; and
- c. Restraining orders issued under the Workplace Violence Act, Code of Civil Procedure section 527.8.

The conforming and technical changes are:

- i. Expand the definition of "abuse" in the DVPA by adding a cross-reference to Family Code section 6320, which lists the specific behaviors that the court may enjoin in a DVPA restraining order;
  - ii. Conform the service procedures for obtaining a civil harassment protective order and restraining orders issued under the Workplace Violence Act with DVPA protective orders by making the time frame requirements the same for all types of orders;
  - iii. Include the definition of "unlawful violence" and "credible threat of violence" in the definition of "harassment" in the Code of Civil Procedure regarding civil harassment protective orders; and make conforming changes in Code of Civil Procedure section 527.8, the Workplace Violence Act;
  - iv. Include civil harassment restraining orders issued under the Code of Civil Procedure in the statewide Protective Order Registry; and
  - v. Add the phrase "other named family or household members" to the Code of Civil Procedure provisions on civil harassment protective orders and workplace violence protective orders.
- 2. Authorize the court to impose case management in any family law proceeding, without the consent of the parties.
  - 3. Allow the petition or complaint in a dissolution of marriage proceeding to include children born before the marriage to the same parties, and allow a determination of parentage to be made with respect to those children in the dissolution action.

The motion passed.

## Tab G

Ms. Diane Nunn and Ms. Kate Howard presented the proposal dealing with juvenile dependency and delinquency. They recommended sponsoring legislation regarding restraining orders, visitation orders, paternity findings, and guardianships in delinquency cases and adoptions in dependency cases. Justice Corrigan asked whether permitting juvenile court to issue restraining orders might allow for circumvention of rules. Judge Johnson stated that this legislation would pertain to delinquency cases only.

Judge Aranda expressed concern about legislation that would require all adoptions of dependent children to be heard in juvenile court. He stated that a two-tiered system would develop that would negatively affect children being adopted from the dependency system. Judge Haight said that she supports the proposal. It speeds up adoption and allows the juvenile dependency court to oversee the work of the social services department. Judge Dover said that the proposal does not require that the adoption take

place in the juvenile courtroom, only that it be done by a juvenile court judge. Judge Boland stated that keeping such adoptions in juvenile court provides for consistency in the proceedings.

Judge Couzens asked if current law permits filing for adoption as part of the dependency (Welf. & Inst., § 300) proceeding. Ms. Nunn said that a separate filing for adoption is necessary, and therefore the 300 file remains confidential.

*Council action:*

Justice Baxter moved that the Judicial Council sponsor legislation in 1998 that would:

1. Authorize the juvenile court to issue restraining orders in delinquency cases to protect the ward from household members and to protect victims of juvenile crime from the ward;
2. Authorize the juvenile court to make custody and visitation orders and paternity findings in delinquency cases;
3. Authorize the juvenile court to appoint a guardian in delinquency cases;
4. Require that all adoptions of dependent children be heard in the juvenile court; and
5. Change the term “probation officer” to “social worker” throughout the Welfare and Institutions Code section 300 statutes.

The motion passed.

**Tab H**

*Council action:*

Mr. Walsh moved that the Judicial Council sponsor legislation in 1998 that would equalize the compensation formula for all retired judicial officers who sit on assignment by using the same compensation formula currently used for retired judges sitting on assignment in trial court.

The motion passed.

**Tab I**

*Council action:*

Judge Dover moved that the Judicial Council sponsor legislation in 1998 that would eliminate the age-based reduction in retirement benefits and would eliminate the related reduction in surviving-spouse benefits.

The motion passed.

## Tab E

Judge Mahler, Chair of the Traffic Advisory Committee, and Ms. Sandy Waters, a representative of the Department of Motor Vehicles (DMV), presented the next proposal, assisted by Ms. Nzinga Nyagua of AOC staff. Judge Mahler stated that the Traffic Advisory Committee recommended sponsoring legislation that would transfer the jurisdiction of driver's license sanctions to the DMV in cases involving driving under the influence of alcohol or drugs (DUI). He noted that currently both the court and the DMV can impose driver's license sanctions upon a DUI conviction. He stated that current law creates confusion.

It was noted that the Policy Coordination and Liaison Committee did not recommend this proposal for inclusion in the Judicial Council's sponsored legislation program.

Justice Baxter asked whether the DMV would be a better sponsor of this proposal. He also noted that key legislators oppose this idea, as does the Los Angeles District Attorney's office and the defense bar. Ms. Waters stated that the DMV has indicated that it would not sponsor such legislation currently, because the DMV feels that the judicial branch would be a more appropriate sponsor. Justice Baxter asked if the DMV had any information about the Governor's views on this issue. Ms. Waters did not have such information.

Judge Mahler acknowledged that some judicial officers have raised concerns that the transfer of this responsibility to the DMV would reduce judicial discretion. He stated that discretion, in this case, is illusory since sanctions are mandatory, not optional. He also noted that this proposal would apply to DUI and related sanctions only.

Judge Boland asked to what extent other alternatives were considered. Judge Mahler stated that without a change in legislation there may not be alternatives.

Mr. Walsh suggested working to fix the conflict in the legislation without reducing the courts' role in DUI cases. He said that the council should not turn over courts' responsibilities to an executive branch agency because to do so might give the perception that the courts are being soft on driving under the influence violations.

Judge Dover said he would like to see courts out of the driver's license business. He would like to give courts options such as community service, rather than jailing people for certain driving offenses.

Judge Aranda stated that this proposal was only a temporary and superficial solution. He requested further study by the committee with the goal of conforming the statutes so that sanctions issued by the court and the DMV are more consistent. He does not favor transferring responsibility for sanctions from the courts to the DMV.

*Council action:*

Judge Couzens moved that the Judicial Council not sponsor legislation on this proposal and direct the Traffic Advisory Committee to study the issue further.

The motion passed.

Judge Couzens suggested that the council help courts that have a consistent problem with understanding the distinction between DMV and court sanctions.

**ITEM 13    New Rule Concerning Questions of State Law Certified by Federal Appellate Courts and Other Courts (Cal. Rules of Court, rule 29.5)**

Chief Justice George stated that federal courts may certify questions of state law to the state's highest court for a definitive answer in more than 40 states. California is the only state in the Ninth Circuit that does not have a procedure for answering questions of state law from federal courts or courts of other states. Chief Justice George stated that the proposed rule creates a procedure for the California Supreme Court to answer questions of state law certified to it by the Supreme Court of the United States, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth. Ms. Linda McCulloh, of AOC staff, stated that the certification rule would avoid conflicts on matters of California law between federal and state courts, reduce needless litigation, and strengthen the primacy and sovereignty of California courts in resolving issues of state law.

Mr. Walsh asked whether referral to courts of appeal was included in the proposal. Chief Justice George said that it was deleted in response to comments received.

*Council action:*

Justice Huffman moved that the Judicial Council, effective January 1, 1998, adopt rule 29.5 to establish a procedure for the California Supreme Court to answer questions of state law certified to it by the Supreme Court of the United States, a United States Court of Appeals, or the court of last resort of any state, territory, or commonwealth.

The motion passed.

Chief Justice George thanked Mr. Jerome Braun and Mr. David Phillips of Farella, Braun, and Martel, for their efforts on behalf of this rule.

**ITEM 14 New and Amended Standard, Rules, and Forms Governing Small Claims (Cal. Standards Jud. Admin., sec. 16.7; Cal. Rules of Court, rule 982.7(a), Chapter 3, Small Claims Temporary Judges; and Forms SC-100, SC-120, SC-130, SC-133, SC-134, and SC-150)**

Ms. Cara Vonk, staff counsel to the Civil and Small Claims Advisory Committee, presented the item. In response to suggestions for improving small claims procedure, the committee recommended (1) amending a form to clarify when the judgment may be enforced and to clarify the judgment debtor's obligation to complete the *Judgment Debtor's Statement of Assets* form, (2) adopting a new form that orders a judgment debtor to appear and explain why the *Judgment Debtor's Statement of Assets* form was not completed and to answer questions about income and assets, and (3) amending several forms to clarify that the time to appeal denial of a Motion to Vacate the Judgment runs from hand delivery, or mailing, of the denial.

Additionally, several forms were amended to conform to statutory changes in small claims law and to make technical changes.

*Council action:*

Judge Boland moved that the Judicial Council recirculate for comment new section 16.7 of the California Standards of Judicial Administration that would establish a 14-day goal for all judges to decide submitted small claims cases.

The motion passed.

*Council action:*

Justice Huffman moved that the Judicial Council, effective January 1, 1998:

1. Amend the following forms for mandatory use in small claims court:
  - a. *Plaintiff's Claim and Order to Defendant* (SC-100)
  - b. *Defendant's Claim and Order to Plaintiff* (SC-120)
  - c. *Notice of Entry of Judgment* (SC-130)
  - d. *Judgment Debtor's Statement of Assets* (SC-133)
  - e. *Information for the Plaintiff* (SC-150).
2. Adopt new form *Application and Order to Appear for Examination* (SC-134) for mandatory use in small claims court to order the judgment debtor to appear and explain why the *Judgment Debtor's Statement of Assets* form was not completed as required by Code of Civil Procedure section 116.830 and to answer questions about income and assets.
3. Amend rule 982.7(a) of the California Rules of Court to add *Application and Order to Appear for Examination* (SC-134) to the list of mandatory small claims forms.

4. Amend "Division IV Rules for Small Claims Actions" to add "Chapter 3, Small Claims Temporary Judges" immediately above rule 1726 on qualifications and training of temporary judges and following "Chapter 2, Small Claims Advisors."

The motion passed.

#### **ITEM 15 STATUS REPORT ON SENATE CONSTITUTIONAL AMENDMENT 4: TRIAL COURT UNIFICATION**

Ms. Vonk and Mr. Anthony Williams, of the AOC's Office of Governmental Affairs staff, presented the item. They stated that Senate Constitutional Amendment (SCA) 4 provides for the voluntary unification of the superior and municipal courts of a county by a majority vote of the judges of both the superior and municipal courts. SCA 4 will appear on the June 1998 ballot and, if passed by the voters, goes into effect immediately. In amending Article VI of the California Constitution, enactment of SCA 4 will require conforming and implementing revisions to various California codes.

They reported that the California Law Revision Commission (CLRC) was commissioned by the Legislature to review all affected code sections and identify the conforming statutory revisions required to implement SCA 4. They noted that a working group was appointed by the Administrative Director of the Courts to identify all issues related to the implementation of SCA 4 and, on behalf of the council, assist the CLRC in drafting the statutory revisions required to carry out the objectives of SCA 4.

They stated that CLRC's Tentative Recommendations were circulated for comment and that the working group had reviewed them and recommended changes. Staff reported that the council will have the opportunity to review and take a position on the final recommendations of the CLRC when they are developed.

For information only; no action required.

**CIRCULATING ORDERS APPROVED SINCE LAST BUSINESS MEETING**

Circulating Order CO 97-12: Approval of Proposed Fiscal Year 1998-99 Trial Court Operations Budget

For information only; no action required.

n

**JUDICIAL COUNCIL APPOINTMENT ORDERS SINCE LAST BUSINESS MEETING**

For information only; no action required.

The meeting was adjourned at 1:55 p.m.

Respectfully submitted,

---

William C. Vickrey  
Secretary