

**JUDICIAL COUNCIL MEETING**  
**Minutes of December 18, 2001, Meeting**

The Judicial Council of California business meeting began at 8:45 a.m. on Tuesday, December 18, 2001, at the Administrative Office of the Courts 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 Richard D. Aldrich, Norman L. Epstein, and Richard D. Huffman; Judges Gail A. Andler, Robert A. Dukes, William C. Harrison, Brad R. Hill, Ronald B. Robie, and Ronald M. Sabraw; Ms. Pauline W. Gee, Mr. Rex Heeseman, and Mr. Thomas J. Warwick, Jr.; and **advisory members:** Judges Stephen D. Bradbury and Wayne L. Peterson; Commissioner Bobby R. Vincent, Ms. Christine Patton, Mr. Arthur Sims, and Mr. Alan Slater.

**Absent:** Judges Aviva K. Bobb, Donna J. Hitchens, and Barbara Ann Zúñiga; Senator Martha Escutia, Assembly Member Darrell Steinberg, and Mr. John J. Collins.

**Others present included:** William C. Vickrey, Judge James Allen Bascue, Judge Terence L. Bruiniers, Ms. Beth Jay, Judge Jon M. Mayeda, Judge Douglas P. Miller (via phone), Associate Justice Joanne C. Parrilli, Ms. Judy Peterson, Ms. Linda Robinson, Mr. Victor Rowley, Judge Darrell W. Stevens, Mr. Doug Storm, Ms. Shelley Stump, Judge Arthur E. Wallace, Mr. Marc Wolf; **staff:** Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. James Carroll, Ms. Sandy Claire, Ms. Donna Clay-Conti, Ms. Jacquie DeMartini, Ms. Sherri Eng, Ms. Jane Evans, Ms. Denise Friday, Ms. Susan Goins, Ms. Sheila Gonzalez, Ms. Charlene Hammitt, Ms. Susan Hanks, Ms. Sue Hansen, Ms. Lynn Holton, Ms. Susan Hough, Ms. Kate Howard, Ms. Melissa Johnson, Mr. Kenneth Kann, Mr. Kenny Tracy, Ms. Camilla Kieliger, Ms. Bonnie Kong, Ms. Kourtney Krieger, Mr. Shawn Landry, Mr. Ray LeBov, Ms. Lisa Lightman, Ms. Kate Lucchio, Ms. Rita Mah, Ms. Stacey Mangni, Mr. Frederick Miller, Ms. Suzanne Murphy, Mr. Lyle Nishimi, Ms. Amy Nunez, Ms. Diane Nunn, Mr. Patrick O'Donnell, Mr. Ronald Overholt, Mr. Daniel Pone, Mr. Martin Riley, Mr. Michael Roddy, Mr. Richard Schauffler, Ms. Marcia Taylor, Ms. Nancy Taylor, Ms. Linda Theuriet, Ms. Karen Thorson, Ms. Eugenia Tripputi, Ms. Robin Velasquez; Mr. Joshua Weinstein, Mr. Michael Wright, Ms. Pat Yerian; **media representatives:** Ms. Donna Domino, *San Francisco Daily Journal*, and Mr. Kevin Livingston, *The Recorder*.

Except as noted, each action item on the agenda was unanimously approved on a motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated December 18, 2001, which was sent to members in advance of the meeting.)

**Approval of Judicial Council Meeting Minutes**

The council approved the minutes of the meeting of October 26, 2001.

## **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 three times since the October 26, 2001, Judicial Council meeting and that approved minutes from two of these meetings (but not from the one held on December 7, 2001) had been included in the council binders for the current meeting. Items approved by E&P included CASA grants and leasing agreements for court facilities. The December E&P meeting was devoted to budget issues, legislative items, and setting the council agenda for December.

### *Policy Coordination and Liaison Committee*

Associate Justice Marvin R. Baxter, chair, stated that the Policy Coordination and Liaison Committee (PCLC) had met two times since the council's October meeting. They reviewed and adopted recommendations on proposals for council-sponsored legislation for 2002, which proposals appear on today's agenda under items 1 and 7. The legislative proposals involve a range of issues, including civil procedures, small claims, jury waiver, family law pilot projects, unlawful detainer, and trial court operations. Two legislative proposals are on the council's consent agenda. Ongoing PCLC focuses include enhancing relationships with other court-related organizations. OGA staff is arranging the annual liaison meetings. The first one took place on December 13, 2001, with the Sheriffs Association, and proved to be very productive. Future liaison meetings will include meetings with representatives from the State Bar, California State Association of Counties (CSAC), Consumer Attorneys of California, California Civil Defense Counsel, California Criminal Defense Bar, California District Attorneys' Association, and the California Attorney General. Justice Baxter noted that staff and PCLC members have been particularly active in these productive meetings. Early next year, the council will host the Eighth Annual Judicial-Legislative-Executive Forum that includes representatives from the three branches of state government. A reception will follow the Chief's State of the Judiciary address to the Legislature, and the Judicial Council is encouraged to attend once the final date has been set.

### *Rules and Projects Committee*

Judge Ronald B. Robie, chair, reported that the Rules and Projects Committee (RUPRO) had met three times since the last council meeting. On October 25, RUPRO met to discuss item 10 on today's discussion agenda (new statewide case management rules and forms). On December 4, 2001, RUPRO met via videoconference and approved proposals to circulate during the winter invitation-to-comment cycle. These proposals will be brought before the council at their meeting in April 2002. The committee also reviewed two proposals currently being brought to the council's attention: amendments to rule 6.50 (item 5 on the consent agenda) regarding the Governing Committee of the Center for Judicial Education and Research and item 9 on the discussion agenda, which deals with the education, experience, and training standards for court-appointed child custody investigators and evaluators. The committee also met yesterday regarding an additional item to circulate for comment—the proposed standards of conduct for mediators in court-

connected mediation. The committee also reviewed three other items that are on today's council agenda: proposed rules on public access to electronic trial court records (item 12), the proposed policy on access for low- and moderate-income litigants (item 2), and the proposed rules on the authority and duties of administrative presiding justices and appellate court administrators (item 15). RUPRO also updated the Internal Policies and Guidelines for Rules, Forms, and Standards. The policy now has a provision that allows advisory committees to hold public hearings in the course of developing a proposal or to obtain additional comment after a proposal has been approved to circulate.

### **Judicial Council Court Visit Report**

Judge Robert A. Dukes reported on a recent visit to the Superior Courts of Mariposa and Madera Counties. Council members Thomas J. Warwick, Jr. and Aviva K. Bobb accompanied Judge Dukes on the visit. Also participating in the visit were members of the AOC staff.

Judge Dukes mentioned that Mariposa County has the oldest operating courthouse west of the Mississippi. It's an impressive, historical building, but, according to their presiding judge, it's an inadequate facility for criminal proceedings. They need a more secured facility. They have a good working relationship with their county and sheriff. Madera County has some very difficult facility issues. Because their historic building was condemned 20 years ago, they were forced to move to a condemned high school where they still preside, sharing offices with the Madera County Board of Supervisors. They're also technologically challenged. They don't have computers and still do statistics by hand. They are looking forward to being trained on the SUSTAIN system beginning early next summer. Their case management system works well, and they have a good relationship with their sheriff.

### **Announcement in Recognition of the 75th Anniversary of the Judicial Council and 40th Anniversary of the Administrative Office of the Courts**

Chief Justice Ronald M. George announced that the month of December marks the 75th anniversary of the Judicial Council's first meeting in the Earl Warren Building. (On November 2, 1926, the voters of California had approved a ballot proposition forming the Judicial Council.) California has the largest and most complex judicial system in the nation with 1,600 judges and justices, 21,000 court employees, and 451 locations. California is also one of just two states that each have a broadly represented body to act as a board of directors of the judiciary. In 1960, the voters approved the position of the Administrative Director of the Courts, with the AOC being established in 1961. The 40th anniversary of the AOC allows the judiciary to have a co-equal footing with the other branches. Chief Justice George encouraged council members to take part in the California Judicial Administration Conference (CJAC) to be held the week of January 28, 2002, in San Francisco. A dinner honoring the council's anniversary will be held on

January 29, 2002. Current and former members of the council will be invited to this dinner to commemorate the anniversary.

### **Public Comment Related to Trial Court Budget Issues**

The Chief Justice noted that there had been no requests for public comment.

## **CONSENT AGENDA**

The Chief Justice was informed that no items from the Consent Agenda had been moved to the Discussion Agenda.

### **ITEM 1 JUDICIAL COUNCIL–SPONSORED LEGISLATION**

#### **Item 1A Transfer of Cases for Lack of Subject Matter Jurisdiction (Code Civ. Proc., § 396) (Action Required)**

Because the trial courts in every county in California have now unified, cases are no longer transferred between municipal and superior courts. Instead, cases may be reclassified under procedures set forth in Code of Civil Procedure sections 403.010 through 403.090.<sup>1</sup> A case originally brought as a limited civil case may be reclassified as either an unlimited civil case if later pleadings raise issues exceeding the jurisdictional limits for a limited civil case. An unlimited civil case may be reclassified as a limited civil case when amended pleadings change its jurisdictional classification.

The question has been raised whether section 396 is still needed. Transfer of a case from one trial court to another within a county is generally unnecessary because each county has only one unified trial court. Transfers from one superior court to another (in different counties, of course) are most often made to change venue (Code Civ. Proc., §§ 396b, 397) rather than because of lack of subject matter jurisdiction. Venue is not jurisdictional except in the few cases where the California Constitution or a statute makes a local place of trial part of the grant of subject matter jurisdiction. (*Lipari v. Dept. of Motor Vehicles* (1993) 16 Cal.App.4th 667, 672.)

*Council action:*

The Judicial Council will sponsor legislation to amend Code of Civil Procedure section 396 to delete the fifth and sixth paragraphs, which are obsolete because of trial court unification, and to divide the remaining paragraphs into five lettered subdivisions.

<sup>1</sup> These sections have been amended by AB 1700, effective January 1, 2002, for greater clarity and ease of implementation. (Stats. 2001, ch. 824.)

**Item 1B      Expeditious Service of Opposition and Reply Papers in Summary Judgment Motions (Code Civ. Proc., § 1005) (Action Required)**

For most motions in civil cases, service of opposition and reply papers under Code of Civil Procedure section 1005 must be in a manner reasonably calculated to ensure delivery to the other party or parties not later than the close of the next business day after the time the opposition or reply is filed. But this statutory requirement for expeditious service does not apply to summary judgment motions. As a result, even though such motions are of substantial importance and the preparation of responsive papers is generally more complicated and time-consuming than for other motions, the opposition and reply papers in such motions may be served in a less expeditious manner.

*Council action:*

The Judicial Council will sponsor legislation to amend Code of Civil Procedure section 1005 to provide that service of opposition and reply papers in summary judgment motions be served in accordance with that statute.

**Item 1C      Small Claims: Request to Postpone Hearing (Code Civ. Proc., §§ 116.340, 116.570) (Action Required)**

There is a legal conundrum regarding the timing of a request to postpone a small claims hearing date. Code of Civil Procedure section 116.570 specifies no time limit for making the request by letter or by Judicial Council form.

*Council action:*

The Judicial Council will sponsor legislation to:

1. Amend Code of Civil Procedure section 116.340 to change the minimum time for service of a small claims court claim from 10 to 15 days before the hearing date if the defendant resides within the county and from 15 to 20 days if the defendant resides outside the county; and
2. Amend Code of Civil Procedure section 116.570(a) to require that a request to postpone a small claims hearing date for good cause be filed at least 10 days before the hearing date unless the requesting party gives the court good cause why the request is being filed later.

**Item 1D      Repeal of Expired Unlawful Detainer Pilot Project (Code Civ. Proc., § 1167.25) (Action Required)**

Code of Civil Procedure section 1167.2, which established a pilot project in several trial courts requiring deposit with the court of unpaid prospective rent for the period from the date of commencement of the unlawful detainer action to the date of the anticipated trial, expired and was repealed effective July 1, 1999. Another section that immediately followed the pilot project, Code of Civil Procedure section 1167.25, provided for service on holdover tenants in cases participating in the pilot project. This section is obsolete and was inadvertently not repealed at the time that section 1167.2 was repealed.

*Council action:*

The Judicial Council will sponsor legislation to repeal Code of Civil Procedure section 1167.25, which provides for service on holdover tenants under a pilot project that expired and was repealed effective July 1, 1999 (Code Civ. Proc., § 1167.2).

**Item 1E      Small Claims Advisor Immunity (Code Civ. Proc., §§ 116.260, 116.940; Gov. Code, § 818.9) (Action Required)**

Under the Small Claims Act, small claims advisors and other court employees and volunteers are immune from liability for free advice given to small claims court litigants under Code of Civil Procedure sections 116.260 and 116.940. Because many counties and courts use independent contractors to perform this mandated service (either full or part time), to fulfill the intent of the Small Claims Act, the statutes should be amended to clarify that independent contractors are also intended to be immune from liability for individual assistance provided on behalf of the county.

*Council action:*

The Judicial Council will sponsor legislation to amend Code of Civil Procedure sections 116.260 and 116.940 and Government Code section 818.9 to clarify that independent contractors, in addition to employees and volunteers, are not liable for any free advice provided to small claims court litigants pursuant to the Small Claims Act, specifically Code of Civil Procedure section 116.260.

**Item 1F      Family and Juvenile Law Cleanup (Code Civ. Proc., §§ 527.6, 527.8; Welf. & Inst. Code, § 213.5(a)–(c)) (Action Required)**

Existing statutes relating to domestic violence and harassment are inconsistent regarding the courts' authority; the specific information required in custody orders; and provisions for re-issuance of protective orders. This proposal seeks to provide the court with needed flexibility and consistency.

*Council action:*

The Judicial Council will sponsor legislation to clean up a number of statutes to achieve the following:

1. Amend Code of Civil Procedure sections 527.6 (civil harassment) and 527.8 (workplace violence) to allow the courts to issue injunctions as well as temporary restraining orders to protect family or household members of parties seeking such protection;
2. Amend Welfare and Institutions Code section 213.5(a)–(b) (providing for ex parte orders in juvenile dependency cases) to ensure that custody and visitation orders incorporate the domestic violence protections contained in Family Code section 6323(c)–(d); and
3. Amend Welfare and Institutions Code section 213.5(c) to allow a court to reissue a temporary restraining order prior to service in juvenile law cases.

**Item 2      Approval of an Access Policy for Low- and Moderate-Income Persons  
(Action Required)**

The ability of many of California’s low- and moderate-income residents to effectively participate in the justice system is limited by economic barriers, including lack of access to legal assistance, inability to pay court fees, and lack of access to technology. Rules, forms, programs, and legislative proposals adopted by the council have the potential to impede access for low- and moderate-income persons.

The California Commission on Access to Justice, which includes members appointed by the Chief Justice, has requested that the Judicial Council adopt a policy that seeks to identify and address existing barriers as well as to prevent actions, rules, standards, and forms adopted by the council from creating additional barriers to participation by low- and moderate-income litigants. The Access and Fairness Advisory Committee also supports the policy.

*Council action:*

The Judicial Council adopts a policy on access to the court system for low- and moderate-income persons as recommended by the California Commission on Access to Justice, as follows:

1. When establishing or revising court rules, standards, or forms, or when considering positions on proposed legislation, the Judicial Council’s advisory committees should expressly consider the impact of the proposed action on low- and moderate-income litigants and address that impact in the report to the council. Staff should ensure that comments on these proposals would be

sought from groups and entities representing or advocating for litigants who face economic and other barriers to the effective use of the judicial system. A list of such entities will be maintained and updated on an annual basis by the Administrative Office of the Courts.

2. Council advisory committees will begin a process to solicit comments from the legal services community to identify issues and concerns regarding existing rules, standards, and forms, with comment from the groups and entities included on the AOC list maintained as directed in the preceding paragraph, to determine the extent to which any of these create economic barriers to access. The advisory committees will determine the extent to which new rules, standards, or forms would affirmatively increase access. Thereafter, each committee will, as part of its annual plan, review new projects and proposals using the same standards.
3. The Center for Judicial Education and Research will attempt to ensure that economic access issues are included in the curriculum development process and integrated into substantive courses as appropriate in education for judges, court administrators, and staff.
4. Attorneys with knowledge of low- and moderate-income issues will be encouraged to apply for membership on council advisory committees and task forces.
5. AOC staff will provide a copy of this policy, and may provide technical assistance to the extent that resources allow, to local courts to help them develop and maintain their own procedures for evaluating local practices consistent with the goals and mechanisms set forth in paragraph 1.
6. To assist the implementation of this policy, the AOC will develop and disseminate to the council, its committees, and trial court presiding judges information concerning successful practices, rules, standards, and forms developed by courts to improve economic access.
7. The liaison between the council's Access and Fairness Advisory Committee and the California Commission on Access to Justice will be continued to coordinate work and information on appropriate issues of fairness and access.

**Item 3      Equal Access Fund—Distribution of Funds for Partnership Grants (Action Required)**

The Judicial Council annually provides \$950,000 of Equal Access funds through the State Bar's Legal Services Trust Fund Commission ("commission") to legal services providers for

Partnership Grants, which fund programs conducted jointly with trial courts to provide legal assistance to self-represented litigants. The commission is currently reviewing applications from legal services agencies and anticipates making recommendations to the Judicial Council for approval of the distribution of these grants on December 14, 2001. This will not provide the council with sufficient time to review the report of the commission prior to its December 18, 2001, meeting. The grants for these programs are scheduled to begin on January 1, 2002. The next meeting of the Judicial Council is scheduled for January 30, 2002.

*Council action:*

The Judicial Council, under the authority of the Budget Act of 2001 (which establishes the Equal Access Fund), delegates to the Executive and Planning Committee authority to approve payments for awards proposed by the Legal Services Trust Fund Commission for Partnership Grants for this program year and for subsequent years. The Executive and Planning Committee will follow the criteria adopted by the council at its meeting of August 27, 1999.

**Item 4          Review of the Statewide Uniform Child Support Guideline (Action Required)**

Family Code section 4054 requires the Judicial Council to periodically review the statewide uniform child support guideline to recommend to the Legislature appropriate revisions. The current review is due to be submitted to the Legislature on or before December 31, 2001.

The review must include economic data on the cost of raising children, case study analysis on the actual application of the guideline, and analysis of guidelines from other states. In addition, this review includes an evaluation of how California's statewide uniform child support guideline deals with the following factors: the treatment of low-income obligors, the merits of gross v. net income as the base for calculating child support, and the treatment of additional dependents.

*Council action:*

The Judicial Council approves the report entitled *A Review of California's Statewide Uniform Child Support Guideline* and directs staff to forward it to the Legislature.

**Item 5          Rule 6.50 Regarding the Governing Committee of the Center for Judicial Education and Research (CJER) (amend Cal. Rules of Court, rule 6.50) (Action Required)**

At its October 26, 2001, meeting, the council discussed the amendment of rule 6.50 without taking action so that the president of the California Judges Association (CJA)

could comment on the revision. Based on the council’s discussion and the comments subsequently received from the president of CJA, the following additional amendments to the rule are suggested:

- A provision is added that the president of CJA may submit nominations to the Executive and Planning Committee for positions on the Governing Committee.
- A Judicial Council comment to the rule is added to acknowledge the CJA’s role in the creation of the Center for Judicial Education and Research (CJER).

*Council action:*

Effective December 18, 2001, the Judicial Council adopts the amendments to rule 6.50 as recommended at the October 26, 2001, Judicial Council meeting and as stated above.

**Item 6      Conflict of Interest Codes for the Administrative Office of the Courts and Habeas Corpus Resource Center (Action Required)**

Since the Administrative Office of the Courts’ (AOC) Conflict of Interest Code was last amended (in December 2000) and the Habeas Corpus Resource Center’s (HCRC) Conflict of Interest Code was adopted (in 1999), 11 job classifications have been created at the two agencies. Staff analyzed the functions of each position and determined that these classifications needed to be added to the codes to bring them up to date

Every conflict of interest code, including amended codes, must be submitted to and approved by a “code-reviewing body.” (Gov. Code, §§ 87303, 87306.) The Judicial Council is the code-reviewing body for “any state agency within the judicial branch of government” where no other code-reviewing body has been specified. (Gov. Code, § 82011(h).) The council is the code-reviewing body for the AOC and the HCRC.

*Council action:*

The Judicial Council:

1. Adopts the revised Conflict of Interest Code for the Administrative Office of the Courts, which recognizes the reorganization of divisions and adds 10 new job classifications (regional administrative director, supervising audio-visual/video technician, internal auditor, senior internal auditor, supervising internal auditor, senior contract specialist, supervising contract specialist, public information officer, production and mail services supervisor, and supervising facilities planner); and
2. Adopts the revised Conflict of Interest Code for the Habeas Corpus Resource Center, which adds a new job classification (mitigation specialist).

## DISCUSSION AGENDA

### ITEM 7 JUDICIAL COUNCIL–SPONSORED LEGISLATION

#### Item 7A Requirements for Presenting and Resolving Claims Against the Trial and Appellate Courts, the Judicial Council, and the Administrative Office of the Courts (Gov. Code, §§ 810–996.6) (Action Required)

Ms. Sue Hansen reported both the PCLC and Litigation Management Committee made recommendations regarding tort claims. Persons who seek damages from a public entity must file a claim with that entity. Historically, claims against courts have been presented to the county where the trial courts are located. Now, as a result of the recent separation of the courts from the counties, persons wishing to present claims against trial courts, or trial court judges or employees, are not sure where to file these claims. To resolve the ambiguity, it is recommended that the council sponsor legislation to amend the Tort Claims Act (TCA) to describe explicitly the requirements for presenting and resolving claims and litigation against the trial courts, appellate courts, judges, the Judicial Council, and the Administrative Office of the Courts (AOC). The committees are recommending as an interim approach that each trial court be deemed a “local public entity” (with the Judicial Council identified as the “board” of each court) for purposes of the TCA and, consistent with that approach, that the council approve the filing with the Secretary of State and the clerk of each county the information necessary to have the trial courts included in the Roster of Public Agencies. For example, the proposed amendments would tell claimants that if they have a claim against the court or the judge, they should submit that claim to the court executive officer for that county.

Associate Justice Richard D. Huffman moved for approval of the recommendations. The motion was seconded.

*Council action:*

The Judicial Council:

1. Will sponsor legislation in 2002 to amend the Tort Claims Act to describe explicitly the requirements for presenting and resolving claims and litigation against the trial courts, appellate courts, judges, the Judicial Council, the Administrative Office of the Courts (AOC), and employees of those entities; and
2. Approves, as an interim approach, the treatment of each trial court as a “local public entity,” with the Judicial Council identified as the “board” of each court, for purposes of the TCA and, consistent with that approach, approves the filing with the Secretary of State and the clerk of each county the information necessary to have the trial courts included in the Roster of Public Agencies.

The motion passed.

Chief Justice George congratulated AOC Education Division Director Karen Thorson for her recent receipt of the Warren E. Burger Award, one of the most prestigious judicial branch awards in the nation. Chief Justice George also praised Southern Regional Administrative Director Sheila Gonzalez's recent induction into the Warren E. Burger Society.

**Item 7B      Family Court Improvement Pilot Project (Action Required)**

Ms. Diane Nunn indicated that the PCLC was recommending the Judicial Council sponsor legislation to authorize four pilot programs to enhance and improve family court proceedings. The Family and Juvenile Advisory Committee had suggested the changes due to the changing demographics within California. Through this proposal, staff hopes that innovative approaches will be developed to address those changing needs.

*Discussion*

Associate Justice Richard D. Huffman asked what kinds of projects would be included. Ms. Nunn noted that unified family and juvenile court systems would address areas of resources, calendaring, active management of cases, and the use of volunteer programs.

Associate Justice Huffman moved for approval of the committee's recommendations. The motion was seconded.

*Council action:*

The Judicial Council will sponsor legislation to authorize the establishment of up to four pilot projects to enhance and improve family court proceedings.

The motion passed.

Mr. William Vickrey thanked Ms. Nunn for leading an AOC response to victims of the September 11 tragedy in New York City. Three court officers from the New York AOC lost their lives while aiding emergency crew at the World Trade Center. Four thousand dollars was raised from the AOC, Supreme Court, and various appellate districts. Chief Judge Kay sent a thank-you to the staff for the kindness and thoughtfulness of the efforts from California.

## **Item 7C      Jury Waiver (Code Civ. Proc., § 631) (Action Required)**

Judge Douglas P. Miller reported (via phone) that the proposed amendments to the primary statute on waiver of jury trials (Code Civ. Proc., § 631) are based on the experience of judges that there is a great deal of game playing by both plaintiffs and defendants with regard to the waiver and request of jury trials. There is confusion regarding the payment of fees routinely in multiple-party cases. This results in major problems to the courts. The problem of a significant amount of game playing was mentioned in the comments received from the public regarding the payment of fees and waivers of jury trials. The proposed amendment to section 631 would require payment of advance fees to streamline and make the rule more effective. Consumer Attorneys were supportive of the amendments.

Mr. Patrick O'Donnell indicated that the Civil and Small Claims Advisory Committee members have received positive comments on the proposal. Judges shared their experiences with the committee and supported the legislation. Judge Miller mentioned that the Civil and Small Claims Advisory Committee plans to amend the complaint and cross-complaint forms to include a box where a jury can be demanded or waived. An independent form may also be created to demand or waive a jury.

### *Discussion*

Associate Justice Richard Huffman asked for clarification. He said it was his impression that the PCLC decided the box on the pleading forms would provide for waiver of jury trial, not demand. Judge Miller said that might be a viable option. Associate Justice Richard D. Aldrich said that would be the preferred choice of the PCLC. Justice Aldrich also added that various bar groups have reviewed and offered their support on the proposed change.

Associate Justice Richard D. Huffman moved for approval of the committee's recommendations. The motion was seconded.

### *Council action:*

The Judicial Council will sponsor legislation to amend Code of Civil Procedure section 631 to clarify the circumstances under which the right to a jury may be waived and to create greater certainty about whether a case will be tried by a jury.

The motion passed.

**Item 8 Collaborative Justice Courts Advisory Committee Report Approval  
(amend Cal. Rules of Court, rule 6.56(d)) (Action Required)**

Judge Darrell W. Stevens acknowledged Nancy Taylor and Sandy Claire, staff to the Collaborative Justice Courts Advisory Committee, and consultant Shelley Stump. He explained that the committee was formed on January 1, 2000, expanding the scope of the Oversight Committee for the California Drug Court Project to include a full range of collaborative courts. In December 2000, as a result of the passage Proposition 36, the work of the committee was expanded. Some of the duties of the committee include: developing criteria for and evaluating collaborative courts, developing best practices, collecting data, assessing and measuring the success of local collaborative courts, and recommending educational standards.

Data collection and evaluation has been a challenge for staff. The AOC Research and Planning staff has undertaken evaluations of three drug courts in the state (Butte, San Diego, and Los Angeles Counties). The planners ran into difficulty getting necessary report information. Their report was scheduled for completion in December 2001, but due to the problems experienced, the report will now be completed in early 2002. Phase 2 will be a test model of eight additional courts. Preliminary data collected by the state's Alcohol and Drug Program found that between 1999 and 2001, 95 percent of the drug tests taken by drug court participants were negative, and 94 percent of the children born to drug court participants were drug-free. Judge Stevens also reported on the current funding resources via grants and educational programs the committee has participated in.

If the council approves continuation of the committee, it should include a charge to continue to measure the effectiveness of the collaborative justice courts, provide technical assistance, identify funding sources at the state and national levels in order to become less dependent on grants, and encourage ongoing participation in continuing education programs for collaborative justice court program participants.

*Discussion*

Associate Justice Richard D. Huffman asked what the ongoing evaluation process would be if the required report deadline of November 2001 were removed. Judge Stevens commented that an annual report should be appropriate.

Associate Justice Huffman moved for approval of the committee's recommendations provided that a committee report is presented on an annual basis to the council. The motion was seconded.

*Council action:*

The Judicial Council:

1. Approves the continued existence of the Collaborative Justice Courts Advisory Committee with its current structure;
2. Accepts the interim report of the Collaborative Justice Courts Advisory Committee;
3. Amends rule 6.56 of the California Rules of Court to remove subdivision (d), which required the report to be presented to the council by November 1, 2001, regarding committee structure, charge, progress, and continuance; and
4. Specifies that the committee provide an annual report to the Judicial Council.

The motion passed.

**Item 9      Court-Appointed Child Custody Investigators and Evaluators: Education, Experience, and Training Standards (adopt Cal. Rules of Court, rule 1257.4; approve forms FL-326 and FL-327) (Action Required)**

Ms. Susan Hanks and Ms. Diane Nunn presented the report to the council on behalf of the Family and Juvenile Law Advisory Committee. Ms. Hanks said that evaluators currently have inadequate training in the areas of child development, mental health issues, forensic investigation, and legal procedures. The committee has spoken extensively with individuals from private sector mental health associations, family law judges, attorneys, members of the public, and child custody evaluators. As a result of all of the meetings, a proposal has grown that covers curriculum for child custody evaluators, including a description of the number of hours required and the requisite experience for postgraduate level licensed mental health practitioners. Because of the challenges to implement this kind of legislation, a four-year phase-in time period is described, which details how an evaluator can comply. RUPRO and E&P have suggested modifications to the proposed rule and forms. One requested modification is that evaluators file a statement (if they're court connected) with the court that they've completed the training required, which required that the proposed new rule of court be modified. Ms. Nunn said that the same language was added to the form.

*Discussion*

Commissioner Bobby R. Vincent said this was an excellent job and something that is needed, but it only covers a small percentage of families that can afford these evaluations. He would like to see guidelines and procedures for what the mediators should consider before making recommendations to the court.

Associate Justice Richard D. Huffman moved for approval of the committee's recommendations. The motion was seconded.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Adopts rule 1257.4 to specify education, experience, and training standards for court-appointed child custody investigators and evaluators;
2. Approves form FL-326, *Declaration of Child Custody Evaluator Regarding Qualifications*; and
3. Approves form FL-327, *Order Appointing Child Custody Evaluator*.

The motion passed.

**Item 10 Case Management (repeal Cal. Rules of Court, rules 209–211, 215–221, 223, 224, 1590, 1590.2, and 1590.3; amend and renumber rules 208, 982.2, 1590.1, and 2101–2106; amend rules 212, 213, 222, 225, 226, 298, and 1580; adopt rules 201.7, 204.1, and 214; adopt form CM-110; and revoke form CM-100) (Action Required)**

Judge Douglas P. Miller explained that the process started approximately 10 years ago to consolidate and revamp case management rules. A two-year effort resulted in the production of uniform rules so that, in each county, case management would be handled in essentially the same way. Although there is flexibility under the rules that allows courts to use a different time period for setting the case management review, as far as the forms and procedures used, these would be unified and uniform in each of the counties. In the 58 counties, there were almost 58 different ways of doing fast-track and case management reviews, and in some of the larger counties, there were differences between the courts. This caused a great deal of confusion and consternation among attorneys. The procedures now have been made uniform for each of the counties and provide a timeline specifying when the complaint needs to be served, what happens if the complaint isn't served, and what happens if the complaint is served but hasn't been responded to. The rules also set up a case management review that can be done in person by appearing in court on the date specified after filing a case management statement, (which may be submitted either separately or jointly). The court can decide by local rule to have the case management review in limited civil cases done without a personal appearance. The primary concern about personal appearances was raised by the Superior Court of Los Angeles County, where they have a significant number of limited civil cases and felt the case management conference system would overwhelm them. Judge James Allen Bascue, Justice Norman L. Epstein, and Judge Elihu M. Berle aided in creating the

exception with regard to limited civil cases. The courts will need to have a hearing, but the hearing doesn't have to be an in-person hearing.

### *Discussion*

Chief Justice George stated that attorney liaison meetings frequently involve discussion of uniformity of rules. Moving forward in this area is one of the most appreciated accomplishments.

Ms. Christine Patton asked if the rules are now in contradiction to local rules or if they override local rules, and wanted verification that the area is not preempted. Mr. O'Donnell replied that the rules provide a comprehensive framework. For example, the rules may specify that a case management conference review occur within 180 days without specifying whether this is to occur on day 130 or 160. There will be flexibility on how the conference is to be held, such as allowance for telephonic meetings. In providing this framework, the rules require that, at a minimum, the review be done in all the cases in which it applies (most civil cases). They provide a standard form, and provide that, after the review, an order be issued that manages the rest of the case. Timing remains up to the court. Ms. Patton asked if courts would be able to have their own local rules as long as they don't contradict the case management rules. Mr. O'Donnell said she was correct; in fact, a variety of local rules will need to be developed to clarify how the procedures will work in each court.

Mr. Rex Heeseman asked how the implementation process will be built and whether there would be evaluations. Judge Miller said evaluation of rules is done on a regular basis and interested parties can write to the Civil and Small Claims Advisory Committee. Fine-tuning is to be expected. Mr. O'Donnell stated that a suggestion was provided by Judge Arthur E. Wallace to have a review after the one-year point to obtain feedback on how the rules are working.

Associate Justice Richard D. Aldrich noted the *Case Management Statement* (form CM-110) on page 40 of the report and asked when in the life of the case it is to be filed. Mr. O'Donnell replied that, under the new rules, it's filed 15 days before the date of the case management conference or review; under current practice, it's filed 5 days before. Associate Justice Aldrich asked for clarification of item 5 of this form (page 41 of the report) concerning jury or nonjury trial, in which either party can demand a jury. Mr. O'Donnell said this device would allow the court to know within the six-month period whether the trial will involve a jury. Associate Justice Aldrich asked if there was any section in the rule indicating any sanction for not demanding a jury under item 5. Mr. O'Donnell said the existing statute requires parties to make a jury demand at the time the case is set for trial on notice or, if not, within five days. The failure to make a jury demand on the *Case Management Statement* waives the right to a jury trial.

Ms. Pauline Gee asked if services would be offered for courts who wish to set up supplemental forms, yet still keep uniformity. Mr. O'Donnell said the educational and

implementation component would address this concern. There is an education and review process, and staff anticipates receiving feedback from the bar and other groups.

Mr. Heeseman suggested that a date should be selected that allows a reevaluation to take place to enable judges and attorneys to address all the issues. He also raised the same concerns that were brought up by Associate Justice Aldrich with regard to item 5 on the Case Management Statement: it seems like more of an information request than a demand or waiver. In the area of jury waiver, it should be informational. Mr. O'Donnell said that under the statute, item 5 protects people. By failing to make a written demand, a jury trial is waived under current law. This item, therefore, actually protects people who are not aware of what section 631 of the Code of Civil Procedure provides.

Associate Justice Richard D. Huffman moved for approval of the committee's recommendations, noting Mr. Heeseman's suggestions. The motion was seconded.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Repeals rules 209, 210, 211, 215, 216, 217, 218, 219, 220, 221, 223, 224, 1590, 1590.2, and 1590.3 of the California Rules of Court;
2. Amends rules 982.2, 1590.1, 208, 2101, 2102, 2103, 2104, 2105, and 2106 and renumbers them as rules 201.8, 201.9, 204.2, 205, 206, 207, 208, 209, and 210, respectively;
3. Amends rules 212, 213, 222, 225, 226, 298, and 1580;
4. Adopts rules 201.7, 204.1, and 214;
5. Adopts *Case Management Statement* (form CM-110) for mandatory use; and
6. Revokes *Notice of Case Management Conference* (form CM-100).

The motion passed.

**Item 11      Update on Fiscal Year 2001–2002 and 2002–2003 Budgets (Action Required)**

Mr. William C. Vickrey stated that staff is currently involved in negotiations with the administration on budget requests for 2002–2003 and is discussing responsible reductions that can be made in the judicial branch to address the larger financial problems facing the state. Staff is requesting the Judicial Council to authorize staff to develop proposed

reductions for the current fiscal year of up to \$38 million to begin to assist with these financial problems and up to \$90 million in fiscal year 2002–2003; these would be one-time reductions for this year and next year. The request also delegates discretion for the Chief Justice and Mr. Vickrey to make final decisions on the issues while keeping the council informed with comprehensive updates by e-mail and/or conference call. At the same time, Mr. Vickrey requested limited authority to address issues regarding unification and one-day/one-trial issues and jury instruction efforts in Los Angeles County. Funding of up to \$50,000 per year for the next three years would be provided from the Court Improvement Fund to address public outreach efforts. The implementation of one-day/one-trial in Los Angeles County is approaching its final phase and will involve significant challenges for both the courts and communities. Mr. Vickrey also asked for authority to provide \$250,000 per year for the next three years for education programs to facilitate the unification changes taking place in Los Angeles and jury issues and the newly revised jury instructions. Specifically, he requested authority to negotiate a one-time reduction of the current year's budget by \$38 million and \$90 million for 2002–2003. Internal committee chairs will be kept up to date. As soon as final information is made available, the council will be notified by letter or e-mail. He also requested that the council approve a trust fund of \$50,000 per year for unification efforts in Los Angeles and \$250,000 per year for educational programs related to unification, one-day/one-trial, and jury instructions. Associate Justice Huffman noted that Mr. Vickrey has kept the Judicial Council fully informed of budget activities that are based on careful analysis.

Associate Justice Richard D. Huffman moved to recommend that the Chief Justice and Administrative Director of the Courts be authorized by the council to negotiate one-time reductions in the budget for this year of up to \$38 million and \$90 million for next year. He also moved to authorize the Chief Justice and the Administrative Director to take up to \$50,000 per year from the Court Improvement Fund to address public outreach activities in Los Angeles in connection with one-day/one-trial and up to \$250,000 per year for education programs related to jury issues for the same purpose. The motion was seconded.

Chief Justice George asked Judge Robert A. Dukes if March 1 was still the goal to have one-day/one-trial fully implemented in Los Angeles County. Judge Dukes mentioned that under the current usage of jurors, it couldn't be done. The last six weeks have been focused on reanalyzing case management and educating judicial officers in order to meet the goal on March 1. Chief Justice George mentioned that, with the exception of Alpine County, which received a special exemption, the program is being implemented statewide.

**Item 12      Public Access to Electronic Trial Court Records (adopt Cal. Rules of Court, rules 2070–2076; repeal Cal. Standards Jud. Admin., § 38) (Action Required)**

Associate Justice Joanne C. Parrilli, Ms. Melissa Johnson, and Judge Terence L. Bruiniers presented recommendations from the Court Technology Advisory Committee. The Judicial Council raised issues at their October 26 meeting regarding the proposed electronic access rules; the committee has since edited and reorganized them. On December 6, the committee debated and discussed these changes. At the meeting, the committee voted unanimously to recommend adoption of the rules. Justice Parrilli reviewed the changes made to the rules and thanked the committee for all of its efforts. She asked the council to keep in mind that the proposed rules are not the final word on electronic access to court records; they should be seen as California’s next step in fostering an appropriate joinder of technology and case management responsibilities. The electronic filing of documents will be the next step, and the proposed rules will be presented to the council in the future. The committee recommends an incremental and cautious approach to the electronic availability of court records in order to evaluate the success or failure of the efforts.

*Discussion*

Associate Justice Richard D. Huffman moved for approval of the committee’s recommendations. The motion was seconded.

*Council action:*

Effective July 1, 2002, the Judicial Council:

1. Adopts rules 2070–2076 of the California Rules of Court to establish (a) statewide policies on public access to trial courts’ electronic records that provide reasonable electronic access while protecting privacy and other legitimate interests and (b) statewide policies regarding courts’ contracts with vendors to provide public access to electronic court records; and
2. Repeals section 38 of the California Standards of Judicial Administration.

The motion passed.

Justice Norman Epstein said the rules don’t provide part of Justice Parrilli’s oral report regarding the necessity of having a cautious approach and would hope that an annex to the motion would be inserted that this be studied for two years before reporting back to the council. Justice Parrilli mentioned that two minor revisions were provided to the council as a result of a previous RUPRO meeting. Judge Bruiniers mentioned that it will

take time for these electronic access rules to go into effect due to some courts' inability to provide the access.

Mr. William Vickrey recommended the council make a follow-up motion that would have staff prepare a progress report due in January 2004.

Associate Justice Norman Epstein moved for approval of Mr. Vickrey's recommendations. The motion was seconded.

*Council action:*

The Judicial Council requested that:

The Court Technology Advisory Committee and staff provide a report in January 2004 on the following topics of electronic access: (1) experiences the courts in California have had in the area of providing electronic access; (2) national trends, including experience in other courts and governmental entities; (3) developments in law as these relate to electronic access to records; (4) the reactions of public groups and other justice entities (both those who want increased access and those who have privacy concerns); (5) the assessment of relevant Judicial Council advisory committees on types of sensitive information that may be contained in case files, and views as to whether such information should be protected from publication on the Internet and how much information should be protected while allowing remote access to records; (6) statewide standards on the information to be included in registers of actions in consultation with the Court Executives Advisory Committee and other appropriate advisory committees; (7) recommendations, if any, as to possible amendments in the rules; and (8) a projected date as well as the financial implications of fully implementing the rule either as it exists or as amended by the council.

The motion passed.

**Item 13      Judicial Council Distinguished Service Awards for 2001  
(Action Required)**

Associate Justice Marvin Baxter announced that the Judicial Council would award the 2001 Distinguished Service Awards at the CJAC conference in January. This is the ninth year for these awards, which are the highest honors given by the Judicial Council for those who demonstrate extraordinary leadership and make significant contributions to the administration of justice in California. The panel (comprised of chairs of the internal council committees) met and nominated the following individuals: Administrative Presiding Justice Daniel J. Kremer of the Court of Appeal, Fourth Appellate District, for Jurist of the Year, Michael M. Roddy, Regional Administrative Director for Northern/Central California, for the Judicial Administration Award, and William A. Fenwick, Attorney, for the Bernard E. Witkin Amicus Curiae Award.

*Council action:*

The Judicial Council unanimously approved the recommendations to award the following individuals:

Administrative Presiding Justice Daniel J. Kremer of the Fourth Appellate District, Court of Appeal, for Jurist of the Year;  
Michael M. Roddy, Regional Administrative Director for Northern/Central California, for the Judicial Administration Award; and  
William A. Fenwick, Attorney, for the Bernard E. Witkin Amicus Curiae Award.

The motion passed.

**Item 14      Ralph N. Kleps Awards for 2001 (Action Required)**

Judge Jon M. Mayeda presented the Ralph N. Kleps Award nominations for 2001 to the council. The CJAC Planning Committee provided recommendations and were able to visit most of the 59 projects nominated. A high percentage of the programs involved Internet-related programs and intercourt or cross-county programs.

Judge Robert Dukes moved for approval of the recommendations. The motion was seconded.

*Council action:*

The Judicial Council approved the CJAC Planning Committee's recommendations for the 2001 Ralph N. Kleps Awards.

The motion passed.

**Item 15      Authority and Duties of the Administrative Presiding Justices and Appellate Clerk/Administrators (amend Cal. Rules of Court, rule 76; adopt rule 76.1) (Action Required)**

Ms. Marcia Taylor explained how the proposed amended rule clarifies the duties of the administrative presiding justice (APJ), including the area of supervision responsibilities. The new rule 76.1 addresses the role of the appellate court administrator. Comments received were summarized in the report.

*Discussion*

Associate Justice Richard D. Huffman stated that the changes made fairly accommodate the legitimate needs of the geographically separate divisions to run their daily affairs

while maintaining the clear line of authority that the APJ has with regard to budget responsibility for the entire district and ultimate authority over items that involve expenditures and modifications of facilities.

Associate Justice Richard D. Huffman moved for approval the committee's recommendations. The motion was seconded.

*Council action:*

The Judicial Council, effective January 1, 2002:

1. Amends rule 76 of the California Rules of Court, Authority and Duties of the Administrative Presiding Justice, to:
  - a. Clarify the responsibilities and authority of the administrative presiding justice to lead the court, establish policies, and allocate resources;
  - b. Clarify that the APJ has authority to act on behalf of the court for day-to-day operations of the court;
  - c. Provide that the APJ must secure the majority approval of the justices before implementing changes in court policies;
  - d. Provide that the APJ has sole authority for the operation, maintenance, renovation, expansion, and assignment of all faculties in the district, with certain exceptions for geographically separate divisions; and
  - e. Provide that the presiding justice of a geographically separate division has certain designated responsibilities for the division; and
2. Adopts rule 76.1 of the California Rules of Court, Authority and Duties of the Appellate Clerk/Administrator, to:
  - a. Provide for the authority and duties of the appellate clerk/administrator, and
  - b. Provide for the responsibilities of the assistant clerk/administrator of a geographically separate division.

The motion passed.

## **Circulating and Appointment Orders Approved**

### **Circulating Orders:**

**There were no circulating orders processed since the last business meeting.**

### **Appointment Orders:**

**Appointment Orders: Appointment to the Judicial Council Collaborative Justice Courts Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointment to the Judicial Council Trial Court Presiding Judges Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointment to the Judicial Council Court Executives Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Blue Ribbon Panel of Experts on Arbitrator Ethics**

For information only; no action necessary.

**Appointment Orders: Appointments to the Community-Focused Court Planning Implementation Committee (task force)**

For information only; no action necessary.

**Appointment Orders: Appointment to the Judicial Council Criminal Law Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Task Force on Judicial Ethics Issues**

For information only; no action necessary.

There being no further business, the meeting was adjourned at 11:15 a.m.

Respectfully submitted,

\_\_\_\_\_  
William C. Vickrey  
Secretary

