

JUDICIAL COUNCIL MEETING
Minutes of December 13, 2002, Meeting

The Judicial Council of California business meeting began at 8:40 a.m. on Friday, December 13, 2002, at the Administrative Office of the Courts (AOC) in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

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

Absent: Senator Martha M. Escutia, Assembly Member Ellen M. Corbett, and Ms. Ann Miller Ravel.

Others present included: Judges Andrew P. Banks, William A. MacLaughlin, Carla M. Singer, and Darrell W. Stevens; Mr. Ron Albers, Ms. Marilyn K. James, Ms. Beth Jay, and Mr. Michael D. Planet; **staff:** Ms. Tamara Abrams, Ms. Heather Anderson, Mr. Ralph Baird, Mr. Michael Bergeisen, Mr. Dennis Blanchard, Ms. Beverly Burton, Ms. Francine Byrne, Ms. Roma Cheadle, Ms. Penny Davis, Ms. Claudia Fernandes, Mr. Michael Fischer, Mr. Bob Fleshman, Mr. Ruben Gomez, Ms. Sue Hansen; Ms. Tina Hansen, Ms. Lynn Holton, Ms. Susan Hough, Ms. Kate Howard, Ms. Melissa Johnson, Mr. Ken Kann, Mr. Ray LeBov, Ms. Sally Lee, Ms. Lisa Lightman, Mr. Frederick Miller, Ms. Vicki Muzny, Mr. Stephen Nash, Ms. Kristin Nichols, Mr. Lyle Nishimi, Mr. Patrick O'Donnell, Ms. Sue Oliker, Ms. Eraina Ortega, Mr. Ronald G. Overholt, Ms. Christine Patton, Mr. Dan Pone, Ms. Mary Roberts, Mr. Michael Roddy, Ms. Rona Rothenberg, Ms. Francis Shehadeh, Ms. Beth Shirk, Ms. Marlene Smith, Ms. Sonya Smith, Ms. Nancy Spero, Ms. Pat Sweeten, Ms. Marcia Taylor, Ms. Nancy Taylor, Ms. Karen Thorson, Mr. Courtney Tucker, and Ms. Pat Yerian; **media representatives:** Mr. Jeff Chorney, *The Recorder*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated December 13, 2002, that was sent to members in advance of the meeting.)

Public Comment Related to Trial Court Budget Issues

Chief Justice Ronald M. George noted that there had been no requests for public comment.

Approval of Judicial Council Meeting Minutes of August 30, 2002, and November 1, 2002.

The council approved the minutes of its August 30 and November 1, 2002, meetings.

Special Comments

The Chief Justice welcomed two judges visiting from the Superior Court of Orange County, Judges Andrew P. Banks and Carla M. Singer, and thanked Judge Frederick Paul Horn for coordinating their visit.

The Chief Justice also welcomed Assistant Presiding Judge William A. MacLaughlin of the Superior Court of Los Angeles County and announced that Judge MacLaughlin was attending in an unofficial capacity, as a new council member selected to replace Judge Robert A. Dukes.

The Chief Justice then praised the publication *The Path to Equal Justice*, which had been passed out to everyone prior to the meeting. The Chief acknowledged the efforts of the California Commission on Access to Justice in producing the status report on access to justice over the last five years.

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 twice since the council's last business meeting. The committee met November 25 to set the agenda for the December 13, 2002, council meeting. The committee also reviewed a report from the Family and Juvenile Law Advisory Committee's Selection Review Committee recommending the allocation of federal Access to Visitation Grant funds. On behalf of the Judicial Council, the committee approved the allocation of \$1,723,750 to 40 superior courts for a variety of projects and reviewed nominations materials pertaining to the replacement of Judge Dukes on the council. The committee forwarded three names to the Chief Justice, who selected Judge MacLaughlin as Judge Dukes's replacement.

E&P held another meeting December 12. The committee discussed the Judicial Council site visits for 2003 with the aim of formalizing the process and improving the recruitment of members of the council to participate. Subject to resource limitations, the committee reviewed a schedule of site visits that will be submitted to council members. Justice Huffman stressed the importance of the site visits—as an opportunity both to continue the work the Chief Justice undertook when he visited all of the counties and to learn from the trial courts about their issues and give them a chance to ask questions about the activities of the council. A visit is scheduled for February 6–7, 2003, in Los Angeles County. Justice Huffman urged council members to notify Ms. Sweeten if they are interested in participating in the visit.

The committee, acting on behalf of the council, approved the State Bar Legal Services Trust Fund Commission's recommendations for the allocation of \$950,000 in Equal Access Fund partnership grants.

In its role of reviewing the nominations to the council's advisory committees and making recommendations to the Chief Justice for filling vacancies on these committees, E&P has also undertaken the task of beginning a review of advisory committee membership. The committee has been conducting ongoing discussions about the substantial growth that has taken place in some of the committees, resulting in more people and categories than are even called for in the California Rules of Court. The focus of the review is to determine whether the committee should make recommendations to the Chief Justice to fill all or only some of the vacant positions. A letter will be sent out next week to each of the advisory committees. A member of E&P will contact each of the chairs of the committees. In February E&P plans to meet with the chair of the Rules and Projects Committee to review a process of dividing work plan reviews between two of the internal committees and to examine whether the advisory committees need to continue at their present sizes. Hopefully, by the time the recruiting drive begins in March, the committee will be able to confer with the Chief to see whether it is rational to recruit for every vacant position.

Special Comments

The Chief Justice announced that he has appointed Judge MacLaughlin to the Executive and Planning Committee.

Policy Coordination and Liaison Committee

Associate Justice Marvin R. Baxter, chair, reported that the policy committee had met once by conference call on November 30, 2002. The committee reviewed and adopted recommendations on proposals for Judicial Council-sponsored legislation in the year 2003. Those recommendations are on the agenda for council action. The proposals address a wide range of issues, including civil procedures, small claims, jury lists, family and juvenile law, alternative dispute resolution, and cleanup legislation for consistency with trial court unification.

The committee is proceeding with the liaison meetings that are held in the Chief Justice's offices. A meeting with Attorney General Bill Lockyer has already occurred, and the committee will meet with consumer attorneys next week.

Other forthcoming meetings will be with the State Bar, the California State Association of Counties, California Attorneys for Criminal Justice, the California Civil Defense Council, and the California District Attorneys Association. Justice Baxter emphasized the importance of these meetings for forging solid relationships that will be needed in next year's legislative session.

Item 1B Juvenile Law: Juvenile Court Restraining Order Procedures (Welf. & Inst. Code, §§ 213.5(b)(1), 213.51) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to enhance the court’s ability to issue protective orders in juvenile delinquency matters and to ease the requirements for service in juvenile dependency matters, to make these provisions consistent with requirements in analogous Family and Welfare and Institutions Code sections.

Currently, procedures pertaining to issuance and service of restraining orders in different contexts vary. As a result, judicial discretion to protect certain individuals is unnecessarily limited, and service of process for specific orders is overly burdensome for the party seeking the order.

Council action:

The Judicial Council will sponsor legislation to:

1. Amend Welfare and Institutions Code section 213.5(b)(1) to allow the court to protect not only the delinquent child who is the subject of the 601 and 602 petition, but also any other child in the household, as is currently the law for juvenile dependents; and
2. Add Welfare and Institutions Code section 213.51 to allow a restrained person to be served by mail if the contents of the order are identical to the contents of a previous temporary restraining order that was personally served.

Item 1C Delete Remaining Obsolete References to Municipal Courts in Venue Provisions (Business and Professions Code, Civil Code, Code of Civil Procedure, Education Code, Fish and Game Code, Harbors and Navigation Code, Health and Safety Code, Labor Code, Penal Code, Public Resources Code, and Water Code) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to delete obsolete references to municipal courts in specified venue provisions. The amendments generally would designate venue on a countywide basis for all cases to which those statutes apply. A few sections have special provisions for cases involving acts on bodies of water or in “districts” that extend to multiple counties or only part of a county.

Council action:

The Judicial Council will sponsor legislation to:

1. Amend Business and Professional Code section 17511.12; Civil Code sections 798.61 and 1780; Code of Civil Procedures section 393; Education Code section 48295; Fish and Game Code sections 12150 and 12151; Harbors and Navigation Code sections

- 664 and 667; Health and Safety Code sections 108580, 110375, 111880, 111895, 117070, and 117120; Labor Code section 6436; Penal Code sections 1035, 1038, and 1462.2; Public Resources Code section 5560; and Water Code section 310; and
2. Repealed Penal Code sections 1034 and 1039 to delete remaining obsolete references to municipal courts in venue provisions.

Item 1D Unlawful Detainer: References to Municipal Courts in Restrictions on Access to Records (Code Civ. Proc., § 1161.2(e)) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to delete obsolete references to municipal courts and municipal court judicial districts. This proposed amendment would revise the language of the statute for consistency with trial court unification. It would make no substantive change to current law, which already provides for opting out of the restriction on a countywide basis.

Council action:

The Judicial Council will sponsor legislation to revise Code of Civil Procedures section 1161.2(e) to delete obsolete references to municipal courts and municipal court judicial districts.

Item 1E Local Jury Lists (Code Civ. Proc., § 198.5) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to delete a new requirement that each prospective juror be given an “opportunity to elect to serve on a jury with respect to a trial held anywhere in the county.” Committee members were concerned that the new provision could be interpreted as permitting potential jurors to arbitrarily select the locations where they would serve as jurors. Additionally, they were concerned that the provision would be difficult to administer because it would require multiple lists—some for people on “local” juries and others for people who served countywide.

Council action:

The Judicial Council will sponsor legislation to delete the new requirement in Code of Civil Procedures section 198.5 that each prospective juror be given an “opportunity to elect to serve on a jury with respect to a trial held anywhere in the county.”

Item 1F Small Claims: Technical Amendments to Definitions (Code Civ. Proc., § 116.130) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to make technical amendments to small claims definitions related to parties and declarations.

Council action:

The Judicial Council will sponsor legislation to amend:

1. Code of Civil Procedures section 116.130(e) to add “limited liability partnership” to the definition of “person”; and
2. Code of Civil Procedures section 116.130(i) to add “under the laws of the State of California” to the definition of “declaration” to provide for a legally sufficient out-of-state declaration should one be filed in a small claims action.

Item 1G Witness Fees for Trial Court Employees (Govt. Code, §§ 68097, 68097.1, 68097.2) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to clarify that a trial court is entitled to be reimbursed for the full costs it incurs if a trial court employee is required to testify as a witness as a result of a subpoena.

Council action:

The Judicial Council will sponsor legislation to clarify that a trial court is entitled to be reimbursed by the requesting party for the full cost it incurs when a trial court employee is required to testify as a witness in response to a subpoena.

Item 1H Guardian Ad Litem in Small Claims Actions (Code Civ. Proc., §§ 116.410, 116.530) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to (1) provide that an attorney may not be appointed a guardian ad litem in a small claims court action unless he or she is an immediate family member, a guardian, or a conservator of a minor or an incompetent party as defined, and that the appointment must be made in the minutes of the action and not later than the calling of the case for trial; and (2) expand the list of limited circumstances in which an attorney may appear in small claims court to include an attorney who is an immediate family member, a guardian, or a conservator appearing on behalf of a minor or an incompetent person.

Council action:

The Judicial Council will sponsor legislation to:

1. Provide that an attorney may not be appointed a guardian ad litem in a small claims court action unless he or she is an immediate family member, a guardian, or a

conservator of a minor or an incompetent party as defined, and that the appointment be made in the minutes of the action and not later than the calling of the case for trial; and

2. Expand the list of limited circumstances in which an attorney may appear in small claims court to include an attorney who is an immediate family member, a guardian, or a conservator appearing on behalf of a minor or an incompetent person.

Item 1J¹ Alternative Dispute Resolution—Judicial Arbitration (Code Civ. Proc., §§ 1141.10, 1141.11, 1141.12, 1141.16, 1141.18, 1141.24, 1141.29) (Action Required)

The Policy Coordination and Liaison Committee recommends sponsoring legislation to amend the judicial arbitration statutes to (1) delete outdated language; (2) reflect current trial court case management practices; (3) clarify and simplify the statutory language; and (4) allow the court to set an arbitration hearing earlier than 210 days after the filing of the complaint, in cases in which the parties have stipulated to such an earlier hearing or in which the parties have stipulated or the court has ordered that discovery will remain open after the arbitration hearing.

Council action:

The Judicial Council will sponsor legislation to amend judicial arbitration statutes to:

1. Delete outdated language;
2. Reflect current trial court case management practices;
3. Clarify and simplify the statutory language; and
4. Allow the court to set an arbitration hearing earlier than 210 days after the filing of the complaint when the parties have stipulated to such an earlier hearing or when the parties have stipulated or the court has ordered that discovery will remain open after the arbitration hearing.

Item 2 Reimbursement of Funding for Extraordinary Costs in a Homicide Case (Action Required)

The AOC staff recommends approval of funding for a one-time reimbursement to the Superior Court of San Luis Obispo County for extraordinary expenses incurred as a result of a change of venue for a high-profile homicide death penalty case that was heard in Monterey County.

¹ “Item 1I” was not used

Council action:

The Judicial Council approved a one-time reimbursement to the Superior Court of San Luis Obispo County for extraordinary expenses in the case of *People v. Allan Krebs*.

Item 3 Additional Special Fund Allocations for Fiscal Year 2002–2003 (Action Required)

The AOC staff recommends that the council approve proposed additional allocations from the Judicial Administration Efficiency and Modernization Fund (Modernization Fund) and the Trial Court Improvement Fund (TCIF) for statewide projects to benefit trial court operations and administration. One project from the Modernization Fund totals \$65,000. One project and a program set aside from the TCIF total \$1,498,830. An additional item, involving no increase in dollars, is the revision of the scope of a TCIF allocation previously approved by the council.

Council action:

The Judicial Council approved proposed additional allocations from the Modernization Fund and TCIF for statewide projects to benefit trial court operations and administration.

Item 4 Juvenile Court Forms: Approval of Translation Policy (Action Required)

The Family and Juvenile Law Advisory Committee recommends that the council approve a policy of prioritizing certain juvenile law forms for translation into targeted languages without returning to the council for adoption of each translated form.

Council action:

The Judicial Council approved the proposed translation policy for forms used in juvenile court and related proceedings—that the forms can be translated into targeted languages without returning to the council for the adoption of each translated form.

Item 5 Conflict of Interest Code for the Administrative Office of the Courts (Action Required)

The AOC staff recommends that the Judicial Council adopt a revised Conflict of Interest Code for the Administrative Office of the Courts that will reflect the addition of new job classifications over the past year.

Council action:

The Judicial Council, effective December 13, 2002, adopted the revised AOC Conflict of Interest Code, which adds five new job classifications (senior manager in Executive

Office Programs, senior manager in Human Resources, facilities management specialist in Finance, senior editor in the Administrative Services Unit, and meeting and conference services supervisor in the Administrative Services Unit).

Item 6 2003 Uniform Bail and Penalty Schedules (revise schedules) (Action Required)

The Traffic Advisory Committee recommends revisions to the Uniform Bail and Penalty Schedules to achieve conformance with recent legislation and with statutory requirements.

Council action:

The Judicial Council, effective January 1, 2003, adopted the revised 2003 Uniform Bail and Penalty Schedules.

Item 7 Appellate Rules: Technical Amendments to Rules 35 and 187.5 to Permit Use of CD-ROMs (amend Cal. Rules of Court, rules 35 and 187.5) (Action Required)

The Appellate Advisory Committee recommends amending the two rules to permit the use of CD-ROM technology.

Council action:

The Judicial Council approved amending rules 35 and 187.5 to permit the use of CD-ROM technology.

DISCUSSION AGENDA

Special Comment

Chief Justice Ronald M. George announced the following two changes in the discussion agenda:

Item 11: This item will be removed from the agenda pending the Supreme Court's action on an interim change to the canons. The matter will be taken up at a later date, after further research.

Item 15C: A new item has been added concerning the council's sponsorship of legislation to provide continuous funding for the payment of court-appointed counsel in the absence of a State Budget. Ms. Marcia Taylor of the AOC will present this item. Ms. Taylor will provide an oral report, and there will be no written materials. The Chief

Justice pointed out that vendors are not paid in the absence of a State Budget, and that court-appointed counsel are considered vendors although they perform court-mandated and constitutionally mandated functions.

Item 8 Judicial Council Distinguished Service Awards for 2002 (Action Required)

Each year, three 2002 Distinguished Service Awards are presented for significant and positive contributions to court administration. This is the tenth anniversary of the awards, which are given to individuals who exemplify the strengths of leadership statewide that have improved the administration of justice. The awards will be presented at the California Judicial Administration Conference in February 2003.

Council action:

The Judicial Council unanimously approved the recommendations to give Distinguished Service Awards to the following individuals:

Hon. James A. Bascue, Superior Court of Los Angeles County, and Hon. Lois Haight, Supervising Judge of the Superior Court of Contra Costa County—Jurists of the Year; Ms. Tamara Beard, Executive Officer, Superior Court of Fresno County, and Mr. Ray LeBov, Director, Office of Governmental Affairs—Judicial Administration Award; and Professor Jay Folberg, University of San Francisco School of Law—Bernard E. Witkin Amicus Curiae Award.

The motion passed.

Item 9 Ralph N. Kleps Awards for 2002 (Action Required)

Mr. Michael D. Planet, Executive Officer, Superior Court of Ventura County, and Ms. Marilyn K. James, Chief Evaluation and Planning Officer, Superior Court of San Diego County, presented the recommendations from the Kleps Awards Committee for this year's recipients of the Ralph N. Kleps Awards, which honor the innovative contributions and the improvement of judicial administration made by individual courts in California. Mr. Planet pointed out that Justice Ronald B. Robie, chair of the Kleps Awards Committee, was unable to attend today's meeting due to a previous commitment. Mr. Planet praised Justice Robie for his excellent contributions and inspiring manner with regard to overseeing the selection process.

Council action:

The Judicial Council approved the Kleps Awards Committee's recommendations for the recipients of the 2002 Ralph N. Kleps Awards.

The motion passed.

Item 10 Rule on the Court Security Working Group (adopt Cal. Rules of Court, rule 6.170) (Action Required)

Mr. Michael Roddy, Regional Administrative Director for the Northern/Central Regional Office, presented a report in which AOC staff recommended adopting a rule to implement Government Code section 69927(a)(1) by creating the Court Security Working Group to recommend changes to the court security funding model.

Council action:

The Judicial Council adopted a rule to implement Government Code section 69927(a)(1) by creating the Court Security Working Group to recommend changes in the court security funding model. In addition, should the committee have to be recast due to recommended changes to the template thereby requiring the inclusion of law enforcement or security personnel, the additional personnel will be members for and until the completion of the purpose for which they were added to the committee.

The amended motion passed.

Special Comment

Chief Justice George asked for a round of applause for Mr. Ray LeBov, who had been absent earlier when the council voted to award him with one of the 2002 Distinguished Service Awards—the Judicial Administration Award. The Chief indicated that this was one of the best-deserved awards and commended the efforts Mr. Le Bov and his staff have made for many years, and especially this year, to get the Court Facilities Bill through. Chief Justice George expressed his appreciation for Mr. Le Bov’s exemplary service.

Mr. LeBov expressed his thanks to everyone on the council, the Chief Justice, and Mr. William C. Vickrey for their contributions to the accomplishments of his entire staff. Mr. LeBov pointed out that these accomplishments were not just the council’s, but were due particularly to Justice Baxter, the staff of the Office of Governmental Affairs, and others throughout the judicial branch.

Item 11 Subordinate Judicial Officers: Practice of Law (Action Required)

This item was taken off the agenda, pending action by the Supreme Court in adopting an interim change to the canons and further study.

Item 12 Service of Summons by Publication (Code Civ. Proc., § 415.50(b) (Action Required)

The AOC staff recommends sponsoring legislation to eliminate the limitation that, when service of a summons occurs by publication, the summons must be “published in this state.”

Mr. Patrick O’Donnell of the Office of the General Counsel presented the report, and Mr. Dan Pone of the Office of Governmental Affairs remained available to answer any questions that might arise. Mr. O’Donnell pointed out that service by publication is really a matter of last resort. In the course of its legislative discussions the Civil and Small Claims Advisory Committee came across a problem with section 415.50(b), which provides that if the court orders service by publication it shall order the summons to be published in a “main” newspaper published in the state that is most likely to give actual notice to the party to be served. The recommendation of the Civil and Small Claims Advisory Committee is that a sentence be added to the statute providing that if the party to be served resides or is located outside the state, the court may also order the summons to be published in a main newspaper outside the state that is most likely to give actual notice to that party.

Council action:

The Judicial Council will sponsor legislation to amend Code of Civil Procedure section 415.50(b) to eliminate the limitation that, when service of a summons occurs by publication, the summons must be “published in this state.”

The motion passed.

Item 13 Claims and Lawsuits Against the Judicial Branch (adopt Cal. Rules of Court, rule 6.201; amend Cal. Rules of Court, rules 6.14, 6.800) (Action Required)

Mr. Michael Bergeisen, Office of the General Counsel, presented the report. Mr. Bergeisen introduced Ms. Sue Hansen, the supervising attorney who oversees the council’s litigation management program. Mr. Bergeisen summarized the Litigation Management Committee’s recommendations that the council adopt a rule regarding management of all claims and lawsuits affecting the council, the AOC, the courts, and the judicial officers and employee of those entities, and that the council recommend to the Chief Justice the appointment of two appellate justice members of the council to the Litigation Management Committee.

Council action:

The Judicial Council, effective January 1, 2003:

1. Adopted rule 6.201 of the California Rules of Court;
2. Amended and renumbered rule 6.800;
3. Amended rule 6.14; and
4. Approved the appointment of two of the appellate court justices on the council as

members of the Litigation Management Committee.

The motion passed.

Item 14 Ethics Standards for Neutral Arbitrators in Contractual Arbitration (amend Cal. Rules of Court, division VI of the appendix) (Action Required)

The AOC staff recommends that the ethics standards for neutral arbitrators in contractual arbitration be amended to make them consistent with recently enacted statutes and to address comments received on the standards since their adoption in April 2002.

Mr. Bergeisen and Ms. Heather Anderson presented the report. Mr. Bergeisen stated that the item being submitted is amendments to the Ethics Standards for Neutral Arbitrators, which the council adopted earlier this year. The council was asked to direct staff to take two actions. The first was to again solicit comments on these standards from the public in about a year—after January 1, 2004—and direct staff to report to the council yet again on any recommended amendments. The second action was to forward to the appropriate members of the Legislature the public comments the staff has received in the last several months about the statutes governing arbitration, in hopes of causing the Legislature to address some issues that have been brought to the staff's attention.

Council action:

The Judicial Council, effective January 1, 2003:

1. Amended division VI of the appendix to the California Rules of Court to respond to public comment on the standards and recently enacted legislation;
2. Directed staff to transmit all of the public comments that raise concerns about statutory requirements or statutory language to the appropriate members of the Legislature; and
3. Directed staff to solicit comments on these standards after January 1, 2004, and report to the council on any recommended amendments to the standards.

The motion passed.

ITEM 15 JUDICIAL COUNCIL–SPONSORED LEGISLATION

Item 15A Subordinate Judicial Officers: Conversion of Positions to Judgeships (Action Required)

Ms. Kate Howard presented the Policy Coordination and Liaison Committee's recommendation concerning sponsoring a revised legislative proposal to convert eligible subordinate judicial officer (SJO) positions to judgeships. She outlined what was in

Assembly Bill 1698 and how this revised proposal differs. AB 1698 would have established legislative criteria by which the Judicial Council, in consultation with the courts, would evaluate SJO positions and then certain SJO positions would be deemed eligible for conversion. Senate leaders were not willing to delegate to the judicial branch the determination of which SJO positions, by court, would be eligible for conversion to judgeships. In general, when the Legislature statutorily creates new judgeships, it specifically identifies the number and the court that will receive an increase in judgeships.

Council action:

The Judicial Council approved in concept the revised proposal for SJO conversion legislation.

The motion passed.

Item 15B Substance Abuse and Crime Prevention Act (Prop. 36): Transfer of Jurisdiction (Action Required)

Judge Darrell W. Stevens presented the Policy Coordination and Liaison Committee's recommendation that the council sponsor legislation to provide that if a person is sentenced pursuant to the Substance Abuse and Crime Prevention Act (Proposition 36), probation and jurisdiction will be transferred to the defendant's county of permanent residence at the discretion of the convicting. The proposal is designed to address a problem that prevents effective court supervision for Proposition 36 cases when an offense occurs outside the county of residence of the defendant. Proposition 36 requires that a defendant be granted probation with court-ordered drug treatment for up to two probation violations, and it provides for treatment based on the defendant's county of residence. The funding is administered by the Department of Alcohol and Drug Programs, which has issued a policy statement and recommendation for treatment to occur in the county of residence regardless of where the offense occurs.

Council action:

The Judicial Council will sponsor legislation to provide that if a person is granted probation pursuant to the Substance Abuse and Crime Prevention Act (Proposition 36), probation and jurisdiction will be transferred to the defendant's county of permanent residence at the discretion of the sentencing judge.

The motion passed.

Item 15C Court-Appointed Appellate Counsel (Action Required)

Chief Justice George provided background information concerning a proposal for legislation to continue payments to court-appointed appellate counsel when no State

Budget has been enacted. He noted that court-appointed counsel are regarded as being like all other state vendors, yet they are fundamentally different in that they perform a function that is not only court mandated but constitutionally mandated.

Ms. Marcia Taylor made an oral presentation supporting the continued payment of court-appointed appellate counsel under the circumstance that no State Budget has been enacted. She noted that from July 1 to mid-September of this year, these attorneys together were owed between \$2 million and \$3 million for services rendered. This resulted in a tremendous hardship on these attorneys, whose services are constitutionally mandated.

Court-appointed counsel are paid \$65 to 85 per hour, depending on the complexity of the case; the \$65 rate has been in effect for about 10 years. These relatively low rates make it increasingly difficult for courts to recruit and retain experienced defense attorneys.

Ms. Taylor noted that this last delay resulted in several people leaving the Court Appointed Appellate Counsel panel. Others are considering leaving because they cannot go that long without income and reimbursement for incurred expenses.

Council action:

The Judicial Council referred this issue to the Policy Coordination and Liaison Committee to consider supporting or sponsoring legislation to continue payments to court-appointed appellate counsel during the absence of a State Budget.

The motion passed.

Item 16 Update on Fiscal Year 2002–2003 and 2003–2004 Budgets (Action Required)

Chief Justice George stated that in California the judicial branch voluntarily stepped forward in the spring of 2001 to participate in this painful but necessary budget reduction process. In the last fiscal year we reduced our budget requests by \$213 million. We also absorbed a budget reduction of \$37.6 million—\$28.3 million for the trial courts and \$9.3 million for the appellate courts and the AOC. This year we were required to make further one-time reductions of \$154 million—5 percent of the total budget for the judicial branch. Now, with the state’s budget deficit continuing to grow, the Governor has proposed an additional \$60 million in midyear funding reductions and reductions totaling \$230 million in the fiscal year 2003–2004 budget.

Presiding judges and court executives of the trial courts and administrative presiding justices and clerk/administrators of the appellate courts have already made great efforts to manage current-year reductions in ways that have the smallest impacts on access to justice for our communities. Trial courts have had to reduce hours, services, and even

staff to operate within their reduced budgets. Budget management guidelines designed to assist the appellate courts and the AOC in reducing costs have been made available. Suggested actions include the following:

- A required 90-day vacancy period after an employee leaves a position, and a review to see whether the position can be eliminated;
- Reductions in the salary adjustment levels for staff;
- Restrictions on in-state and out-of-state travel;
- Setting a limit of two meetings per year for Judicial Council advisory committee meetings through the end of the fiscal year; and
- Cutbacks in staffing levels.

Chief Justice George reflected that “we may have pushed the limits of what is possible” when one considers the regrettable partial closure of some courts and the delay of vital reforms. While we need to carefully consider whether we can make the same level of reductions next year, we can make additional reductions if we have the strength of will to re-examine how we conduct our business in many areas, such as security, traffic adjudication, maintaining the record of court proceedings, etc.

Chief Justice George stated that, as we move forward in this uncertain fiscal environment, our goal is to continue to fully participate in discussions and to make sure reductions are made in a responsible way so that public access to the courts in vital areas is not unreasonably impaired. We will leave no stone unturned in reviewing options, including possible statutory changes and restructuring of operations that will enable the courts to function more efficiently while controlling costs.

We will also consider every possible option to increase revenues, including fee increases and an enhanced fine collection program. We will attempt to do everything possible to protect access to our courts.

The Chief Justice said that he will meet personally with the Governor as well as members of the Legislature to discuss how we can work together to protect the vital functions of the judicial branch.

Ms. Hansen said that additional fiscal year 2002–2003 reductions proposed by the Governor include an additional \$50 million for the trial courts and \$10 million for the appellate courts and the Judicial Council, which would bring our current-year reductions to \$214.5 million. For fiscal year 2003–2004 the Governor has proposed budget reductions for the trial courts of \$200 million, which represents 8.8 percent of the budget that we allocate to them. For the appellate courts and the Judicial Council, he has proposed \$29 million, representing 9.5 percent, which brings the total to \$229 million, or 8.9 percent.

There are several areas of the judiciary's budget that might be considered nondiscretionary, including judicial salaries and benefits; nonjudicial salaries and benefits; and operating expenses and employee salaries related to death penalty cases, criminal cases, juvenile cases, the Assigned Judges Program, rule making, and mandated programs and reports in the Habeas Corpus Resource Center. There are also the court-appointed counsel and related program support, rent for facilities, and security, which are all nondiscretionary. If all those areas are removed, that leaves only 26 percent of the budget that must absorb the reductions.

In the trial courts, nondiscretionary areas include subordinate judicial officer salaries; security; criminal costs, including transcripts and court employee salaries and benefits related to the criminal cases; family and juvenile, including court-appointed counsel and court employee salaries and benefits; court reporter costs, which represent 7 percent of our budget; jury costs, which represent 3 percent; costs related to traffic and processing of those cases; probate costs; contract interpreters; and rent and utilities. Therefore, the areas where the reductions must be absorbed represent only 39 percent of the budget.

Ms. Hansen said that what this really means is that the actual impact of the Governor's proposed reductions for the trial courts (\$200 million) really represents 22.5 percent instead of 8.8 percent, and the appellate courts' and Judicial Council's \$29 million represents 36.5 percent instead of 9.5 percent. Looking at the judiciary as a whole, \$229 million represents 23.7 percent, rather than 8.9 percent, of our discretionary funding.

Ms. Hansen stated that the Finance Division is working with the courts to find opportunities for expenditure reductions and revenue enhancements as well as infrastructure and operational changes. The staff is also looking at the approved allocations from the Modernization Fund and the TCIF and will recommend to the Administrative Director of the Courts projects or practices that can be deferred, reduced, or eliminated to help mitigate the impact on the courts. The staff will request that the council take action on those proposed reductions, as well as specific expenditure reductions or revenue enhancements, at the next meeting, if not sooner.

The AOC staff is recommending that the council delegate authority to the Chief Justice and the Administrative Director of the Courts to negotiate amendments to the fiscal year 2002–2003 and fiscal year 2003–2004 budgets as necessary.

A motion was made to approve the staff's recommendation.

Mr. Vickrey requested that, as part of the motion, the council also delegate the authority to suspend expenditures out of the TCIF and the Modernization Fund if that becomes

necessary. Earlier in the day, the council approved a variety of programs and projects that are high priorities but that he and the Chief Justice have the authority to suspend so that those funds can be redirected to the higher priority of maintaining current operations.

The motion was amended to include Mr. Vickrey's request.

Council action:

The Judicial Council delegated authority to the Chief Justice and the Administrative Director of the Courts to:

1. Negotiate amendments to the fiscal year 2002–2003 and fiscal year 2003–2004 budgets as necessary; and
2. Suspend expenditures out of the Trial Court Improvement Fund and the Judicial Administration Efficiency and Modernization Fund if that becomes necessary.

The motion passed.

Circulating and Appointment Orders Approved

Circulating Orders:

No circulating orders had been processed since the last meeting.

Appointment Orders

For information only; no action necessary.

There being no further business, the meeting was adjourned at 12:25 p.m.

Respectfully submitted,

William C. Vickrey
Secretary