

**JUDICIAL COUNCIL MEETING**  
**Minutes of the December 2, 2005, Meeting**  
**San Francisco, California**

Chief Justice Ronald M. George, Chair, called the meeting to order at 8:45 a.m. on Friday, December 2, 2005, at the Administrative Office of the Courts (AOC) in San Francisco, California.

**Judicial Council members present:** Chief Justice Ronald M. George; Senator Joseph Dunn; Justices Marvin R. Baxter, Candace D. Cooper, Richard D. Huffman, and Eileen C. Moore; Judges J. Stephen Czulger, Michael T. Garcia, Suzanne N. Kingsbury, Charles W. McCoy, Jr., Barbara J. Miller, Douglas P. Miller, Dennis E. Murray, William J. Murray, Jr., and Michael Nash; Mr. Anthony P. Capozzi, Mr. Rex S. Heinke, Ms. Barbara J. Parker, and Mr. William C. Vickrey; **advisory members:** Judges Terry B. Friedman and Frederick Paul Horn; Commissioner Ronald E. Albers; Ms. Tamara Lynn Beard, Ms. Deena Fawcett, Mr. Alan Slater, and Ms. Sharol Strickland.

**Absent:** Assembly Member Dave Jones; Judge Richard E. L. Strauss; Mr. Thomas V. Girardi.

**Others present included:** Justices Roger W. Boren and James R. Lambden; Judges Robert B. Freedman and Sharon J. Waters; Mr. Stanley Bissey, Mr. James Otto Heiting, and Ms. Beth Jay; **staff:** Ms. Elizabeth Ashford, Mr. Michael Bergeisen, Mr. Dennis Blanchard, Ms. Tula Bogdanos, Ms. Dianne Bolotte, Mr. David Bonowitz, Ms. Deborah Brown, Ms. Jennifer Buznick, Ms. Sheila Calabro, Mr. James Carroll, Ms. Casie Casados, Ms. Roma Cheadle, Ms. June Clark, Ms. Kim K. Davis, Ms. Connie Delago, Mr. Douglas Denton, Mr. Michael Fischer, Mr. Bob Fleshman, Mr. Malcolm Franklin, Ms. Pearl Freeman, Mr. Ernesto Fuentes, Mr. Scott Gardner, Ms. Susan Goins, Mr. Ruben Gomez, Ms. Dena Graff, Ms. Lynn Holton, Ms. Kathleen T. Howard, Mr. Kenneth L. Kann, Mr. Gary Kitajo, Ms. Leanne Kozak, Mr. John Larson, Mr. Robert Lowney, Mr. Chris Magnusson, Ms. Ruth McCreight, Mr. Lee Morhar, Mr. Stephen Nash, Ms. Paula Negley, Ms. Diane Nunn, Mr. Patrick O'Donnell, Mr. Ronald G. Overholt, Ms. Christine Patton, Ms. Sarah Pecora, Mr. Charles Perkins, Ms. Kelly Quinn Popejoy, Ms. Romunda Price, Mr. Michael M. Roddy, Ms. Rona Rothenberg, Mr. Larry Schoenke, Ms. Nancy Spero, Ms. Pat Sweeten, Mr. Ernie Swickard, Ms. Marcia M. Taylor, Mr. Todd Torr, Mr. Courtney Tucker, Mr. Jack Urquhart, Mr. Jim Vesper, Mr. Joshua Weinstein, Mr. Tony Wernert, and Ms. Daisy Yee; **media representatives:** Mr. Mike McKee, *The Recorder*, and Mr. John Roemer, *San Francisco Daily Journal*.

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 2, 2005, that was sent to members in advance of the meeting.)

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

The Chief Justice noted that there had been no requests from the public to comment on trial court budget issues.

### **Approval of Minutes of the November 4, 2005, business meeting**

The minutes of the November 4, 2005, will be submitted for approval at the February 24, 2006, Judicial Council business meeting.

## **Judicial Council Committee Presentations**

### *Executive and Planning Committee*

Justice Richard D. Huffman, chair of the Executive and Planning Committee (E&P), reported that the committee had met three times since the last council meeting.

On November 7, 2005, the committee met by telephone to begin the process of reviewing materials and developing the agenda for the council's December 2, 2005, meeting.

On November 18, 2005, the committee met by telephone to review more materials and further develop the agenda for the council's December 2, 2005, meeting. The committee also approved a proposal concerning the appointment of members of each of several advisory committees to the Governing Committee of the Center for Judicial Education and Research to enhance the liaison relationships between the advisory committees and the board. E&P approved the proposal contingent on there being no objection by the chairs of the affected council advisory committees. The committee directed staff, in that event, to ask these chairs to submit to the committee at least two names for each vacancy, which can then be considered for forwarding to the Chief Justice for his selection and appointment. At the same meeting, E&P—pursuant to delegation by the council—approved the budgets for 2005–2006 for the Judicial Administration Efficiency and Modernization Fund and the Trial Court Improvement Fund. E&P also reviewed nominations for the Court Facilities Transitional Task Force, Court Interpreters Advisory Panel, and Civil and Small Claims Advisory Committee and developed recommendations to be forwarded to the Chief Justice.

On December 1, 2005, the committee met in a joint session with the Interim Court Facilities Panel to review the research methodology that is being considered for calculating proposed judgeship needs over the next 20 years.

### *Policy Coordination and Liaison Committee*

Justice Marvin R. Baxter, chair of the Policy Coordination and Liaison Committee (PCLC), reported that the committee had met once since the last council meeting.

On November 21, 2005, the committee met to review the proposal for the Judicial Council to sponsor legislation in 2006 to amend the judicial article of the California

Constitution, article VI. The proposal has undergone several revisions in the interim, and the committee voted to approve the proposal and its recommendation to be presented to the full council later today, on the discussion agenda.

Justice Baxter also reported that the Legislature has adjourned for its interim recess and will reconvene on January 4, 2006 for the second year of the 2005–2006 Legislative Session.

#### *Rules and Projects Committee*

Judge Suzanne N. Kingsbury, chair of the Rules and Projects Committee (RUPRO), reported that the committee had met once since the last council meeting.

On November 14, 2005, the committee met by telephone and recommended approval of all the items it had reviewed for today's meeting: items 2, 4, 6, and 8–10 on the consent agenda. RUPRO also recommends approval of item 14 on the discussion agenda, which addresses rules for temporary judges on quality assurance, training, ethics, and administration.

The committee recommended placing this proposal on the discussion agenda because of concerns about the administrative burden of the rules on smaller courts and courts that rarely use temporary judges, and concerns about implementation of training programs. The working group addressed the latter concern by indicating that there would be regional training meetings would be held at the regional offices to give courts tools and the outlines for setting up their own programs.

The committee's final concern was in the arena of privately compensated temporary judges. The working group's charge did not address that component of the use of temporary judges, and there was a consensus on the part of the RUPRO members that the subject should be studied to determine whether the rules should be changed as they pertain to privately compensated temporary judges.

#### **Chief Justice's Report**

The Chief Justice reported on a variety of activities and meetings since the last council meeting, including a periodic meeting with the administrative presiding justices of the Courts of Appeal. The California Channel videotaped for broadcast the question-and-answer-style meeting between the Chief Justice and a few dozen Sacramento PACE (Program for Accelerated College Education) students at the Sacramento courtroom used by the Court of Appeal and the Supreme Court. At a meeting of the National College of Probate Judges in San Francisco, the Chief Justice addressed the college on probate rules and procedures in California.

On November 14, 2005, the Chief Justice was interviewed by Scott Shafer of San Francisco public radio station KQED on the independence of the judiciary and other issues. The Chief Justice responded to questions from members of the public who called

in. Later that day, the Chief Justice attended a reception to recognize the staff members of the Administrative Office of the Courts (AOC) who had planned, coordinated, and executed an exceptional judicial administration conference in early September in San Diego, in conjunction with the annual meetings of the State Bar of California and the California Judges Association. That evening, the Chief Justice addressed the Commonwealth Club on judicial independence and access to justice. That address will be broadcast on the radio.

On November 16, the Chief Justice spoke on access-to-justice issues at a hearing in the Judicial Council Conference Center, co-sponsored by the Judicial Council and the Assembly Judiciary Committee. That hearing was chaired by Assembly Member Dave Jones of this council. That evening, the Chief Justice attended a meeting of the complex litigation judges, who meet regularly at varied locations to exchange best practices and solutions to typical problems. The Chief Justice expressed the desire that this pilot project—ably staffed by AOC Senior Attorney Susan Goins—become a permanent project and be extended to other locations in California.

On the next day, the Chief Justice conferred with presiding judges who were attending an orientation and court management program near San Francisco International Airport.

On November 18, the Chief Justice attended a meeting of the California State-Federal Judicial Council, which meets a few times each year. Half of the judges on the State-Federal Judicial Council are appointed by the Chief Justice, and the other half are appointed by the Chief Judge of the U.S. Court of Appeals for the Ninth Circuit—currently Mary M. Schroeder. Issues addressed by that council are access to justice, public confidence, and capital case processing.

On Tuesday, November 29, 2005, the Chief Justice, accompanied by Administrative Director of the Courts William C. Vickrey, Chief Deputy Director Ronald G. Overholt, and Office of Governmental Affairs Director Kathleen T. Howard, met with Governor Arnold Schwarzenegger, in his office in Sacramento, concerning budget issues. The meeting also was attended by the Governor's chief of staff and director of finance, the outgoing and incoming legal affairs secretaries, and others. The discussion with the Governor concerned policy initiatives and not, as in past years, funding for trial court operations—thanks to the adoption of the state appropriations limit for trial court funding.

The Chief Justice raised with the Governor the issue of an 8.5 percent salary increase for judges, which would be the second half of a 17 percent increase to which Governor Gray Davis had agreed but which had then been postponed because of the serious downturn in the state's economy shortly thereafter. Although the current Governor is not bound by an agreement made by his predecessor, the Chief Justice and his staff spoke about the need for an additional salary increase for judges in order to attract and retain the best people for the judiciary. They stressed with the Governor that in many areas in California the annual salaries of deputy public defenders, deputy district attorneys, and deputy county

counsels are as much as \$20,000 greater than the salaries of the judges before whom they appear. If necessary for political or fiscal reasons, that 8.5 percent increase for judges could come in two 4.25 percent increases, starting very shortly. Although commitments are not typically made at such meetings, the Governor seemed to take genuine interest and asked for specific numbers.

The Chief Justice also raised with the Governor the issue of discrepancies and inequities in judicial retirement under JRS II that arose from some incorrect assumptions about the average ages for judicial appointment and retirement. In the calculations of JRS II it had been assumed that judges would be appointed around age 40 and could retire after the required 20 years of service, at around age 60. In fact, judges generally are appointed around age 50, so retirement after 20 years of service means retirement at 70. The Chief Justice and his staff stated that the age of retirement for judges should be about 63 to 65 if they have the full number of years of service, and they should be given an option to retire with reduced benefits if they reach retirement age with less than the full number of years of service. The Governor and his staff appreciated this proposal but said complications arise because of the executive branch's current examination of public pensions generally. The Chief Justice and staff requested that inequities in the pensions for judges be addressed during that comprehensive examination of public pensions.

The Chief Justice and staff also discussed with the Governor the need for court construction. The Governor and the Chief Justice agreed that the courts are part of the state's infrastructure along with highways, bridges, schools, and hospitals—giving the Chief Justice cause for optimism that the courts will be part of the Governor's infrastructure proposal. It is likely that the Senate and Assembly also will have infrastructure proposals. The dollar amount for courthouse construction in these infrastructure proposals, however, has not yet been determined. The Chief Justice also reported that he is optimistic there will be funding for new judgeships.

The Chief Justice discussed with the Governor the possible amendments to article VI of the California Constitution to strengthen judicial independence and accountability. The Governor's influence can be significant even though the executive branch does not act on proposals to amend the Constitution. The Governor seemed supportive of the effort to amend article VI.

On November 30, 2005, the Chief Justice met in his chambers with Assembly Member John Laird, chair of the Assembly Budget Committee, and discussed many of the same budgetary topics as had been discussed with the Governor. Also attending were Mr. Vickrey, Mr. Overholt, and Ms. Howard.

The Chief Justice thanked Executive Office Programs Division Director Pat Sweeten for her invaluable service to the Administrative Office of the Courts and the Judicial Council. On the coming Monday morning, December 5, 2005, she will start in her new position as executive officer of the Superior Court of Alameda County.

## CONSENT AGENDA (ITEMS 1A–1E, 2–11)

### *Item 1 Judicial Council–Sponsored Legislation*

#### **Item 1A Change of Name; Improvement of Procedures and Clarification of Underlying Law (Code Civ. Proc., §§ 1276–1279.5)**

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to amend Code of Civil Procedure sections 1276 through 1279.5 to clarify the law and improve the procedures for changing a person's name.

##### ***Council action***

The Judicial Council voted to sponsor legislation to amend Code of Civil Procedure sections 1276 through 1279.5 concerning petitions and applications for the change of a person's name to increase the time for setting the hearing from 8 to 12 weeks and to provide other procedural improvements and clarifications.

#### **Item 1B Establish Consistent Times for Firearms Relinquishment in Civil Harassment and Workplace Violence Cases and for Service of Papers Before a Hearing in Elder and Dependent Adult Abuse Cases (Code Civ. Proc., § 527.9; Welf. & Inst. Code, § 15657.03)**

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend that the Judicial Council sponsor legislation to: (1) amend Code of Civil Procedure section 527.9 to provide the same time for relinquishment of firearms after service of orders in civil harassment, workplace violence, and elder and dependent adult abuse cases as is presently provided under Family Code section 6389(c) after service of orders in domestic violence cases; and (2) amend Welfare and Institutions Code section 15657.03(g) to provide the same time for service of papers before the hearing in elder and dependent adult abuse prevention cases as is provided under Code of Civil Procedure sections 527.6(g) and 527.8(h) for service of papers in civil harassment and workplace violence prevention cases.

##### ***Council action***

The Judicial Council voted to sponsor legislation to:

1. Amend Code of Civil Procedure section 527.9 to provide the same time for relinquishment of firearms after service of orders in criminal domestic violence, civil harassment, workplace violence, and elder and dependent adult abuse cases as provided under Family Code section 6389(c) after service of orders in DVPA cases; and
2. Amend Welfare and Institutions Code section 15657.03(g) to provide the same time for service of papers before the hearing in elder and dependent adult abuse prevention cases as provided under Code of Civil Procedure sections 527.6(g)

and 527.8(h) for service of papers in civil harassment and workplace violence prevention cases.

**Item 1C Judges' Retirement System II: Annuity Option for Early Retirement (Gov. Code, § 75521)**

The Policy Coordination and Liaison Committee and the Judicial Service Advisory Committee recommend that the Judicial Council sponsor legislation to amend Government Code section 75521 so that CalPERS would be authorized to offer any vested JRS II judge who retires early the option of an annuity paid for life that is actuarially equivalent to the lump-sum payout that he or she would otherwise receive, in order to preserve the maximum value of the judge's defined contribution to JRS II.

***Council action***

The Judicial Council voted to sponsor legislation to amend section 75521 of the Government Code so that the California Public Employees' Retirement System would be authorized to offer any vested Judges' Retirement System II judge who retires early the option of an annuity paid for life that is actuarially equivalent to the lump-sum payout that he or she would otherwise receive, in order to preserve the maximum value of the judge's defined contribution to JRS II.

**Item 1D Traffic/Nontraffic Citations: Electronic Submission of Notice to Appear Forms (Pen. Code, § 959.1)**

The Policy Coordination and Liaison Committee and the Traffic Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 959.1 to update and clarify the law regarding the standards for electronic submission of notice to appear (NTA) forms, expressly authorizing electronic submission of NTA citations for nonparking Vehicle Code violations, requiring that electronic NTA citations include a digitized signature of the defendant; and exempting electronic NTA citations from existing subscription requirements that apply to the citing officer.

***Council action***

The Judicial Council voted to sponsor legislation to update and clarify the law regarding the standards for electronic submission of notice to appear forms by amending Penal Code section 959.1 to (1) expressly authorize electronic submission of NTA citations for nonparking Vehicle Code violations, (2) require that electronic NTA citations include a digitized signature of the defendant, and (3) exempt electronic NTA citations from existing subscription requirements that apply to the citing officer.

**Item 1E Enhanced Collection of Court-Ordered Fines and Penalties (Pen. Code, § 1463.010)**

The Policy Coordination and Liaison Committee and the Collaborative Court-County Working Group on Enhanced Collections recommend that the Judicial Council sponsor legislation that would, among other things, amend Penal Code 1463.007 to improve collection efforts across the state and provide for a task force to undertake a complete review of the criminal fine structure.

***Council action***

The Judicial Council voted to sponsor legislation to:

1. Establish a task force on criminal court-ordered debt to (a) develop recommendations for simplifying California's criminal court-ordered debt assessment, collection, and distribution system and (b) address issues such as priority of payments, cost recovery practices pursuant to Penal Code section 1463.007, and the expansion of comprehensive collection programs;
2. Reduce the minimum fine required by the Franchise Tax Board (FTB) Court-Ordered Debt Collection Program from \$250 to \$100;
3. Expand the FTB Court-Ordered Debt Collection Program to include collections for registration, pedestrian, and bicycle violations;
4. Allow a bail forfeiture process for courts to accept timely payments through a clerical process, in place of the current requirement that a defendant go to court and plead guilty in order to set up installment payments; and
5. Expand the use of enhanced collection programs, as defined in Penal Code section 1463.007, to allow the programs to collect public defender fees, booking fees, and other criminal justice-related fees.

**Item 2 Traffic/Criminal: 2006 Uniform Bail and Penalty Schedules (revise schedules)**

The Traffic Advisory Committee recommends that the Judicial Council, effective January 1, 2006, adopt revised 2006 Uniform Bail and Penalty Schedules. Vehicle Code section 40310 provides that the Judicial Council must annually adopt a uniform traffic penalty schedule for all nonparking Vehicle Code infractions. Trial courts use the schedules, pursuant to rule 4.102 of the California Rules of Court, in performing their duty under Penal Code section 1269b to revise and adopt annually a schedule of bail and penalties for misdemeanor and infraction offenses.

***Council action***

The Judicial Council, effective January 1, 2006, adopted the proposed revised 2006 Uniform Bail and Penalty Schedules.

### Item 3 Equal Access Fund: Distribution of Funds for Partnership Grants

AOC staff recommends that the Judicial Council approve the allocation of \$950,000 in Equal Access Fund partnership grants to the State Bar Legal Services Trust Fund Commission for distribution to legal services providers for programs that are conducted jointly with the courts and that provide legal assistance to self-represented litigants. The Budget Act authorizing the Equal Access Fund requires Judicial Council approval of the commission's recommendations if the council determines that the awards comply with statutory and other relevant guidelines. The report demonstrates that the commission has complied with those guidelines.

#### ***Council action***

The Judicial Council, effective December 2, 2005, approved the allocation of \$950,000 in Equal Access Fund partnership grants to the State Bar Legal Services Trust Fund Commission for distribution to legal services providers for programs conducted jointly with the courts to provide legal assistance to self-represented litigants, as follows:

Bay Area Legal Aid—San Mateo County	
Domestic Violence Emergency Orders Clinic	\$60,000
California Rural Legal Assistance—San Joaquin	
Landlord/Tenant and Small Claims Pro Per Assistance Project	58,000
Central California Legal Services, Inc.	
Domestic Violence Rural Access Partnership	50,000
East Bay Community Law Center	
Alameda County Clean Slate Clinic	50,000
Greater Bakersfield Legal Assistance, Inc.	
Pro Se Guardianship Project	50,000
Inland Counties Legal Services	
Banning Civil Legal Access Project—Riverside County	50,000
Proyecto Ayuda Legal—San Bernardino County	60,000
Law Center for Families	
Alameda County Family Law Cooperative	40,000
Legal Aid Foundation of Los Angeles	
Inglewood Self-Help Legal Access Center	55,000
Legal Aid Foundation of Santa Barbara County	
Self-Represented Litigant Resource Center	60,000

Legal Aid of the North Bay Legal Self-Help Center of Marin	35,000
Legal Aid Society of Orange County Compton Self-Help Center	70,000
Legal Aid Society of San Diego Conservatorship Clinic at the Probate Court	25,000
Unlawful Detainer Assistance Program	50,000
Legal Services of Northern California Shasta Pro Per Project	40,000
Unlawful Detainer Mediation Project	17,000
Los Angeles Center for Law and Justice Default Judgment Assistance Project	65,000
Neighborhood Legal Services of Los Angeles County Domestic Abuse Self-Help Project	70,000
San Diego Volunteer Lawyer Program Domestic Violence Prevention Project	45,000
	TOTAL \$950,000

**Item 4 Jury Instructions: Approve Publication of Revisions and Additions to Civil Instructions (Cal. Rules of Court, rule 855(d))**

The Advisory Committee on Civil Jury Instructions recommends approval of the publication of revisions to the *California Civil Jury Instructions (CACI)* that were first published in September 2003 and last amended in June 2005. The instructions would be added or revised to improve clarity and accuracy.

***Council action***

The Judicial Council, effective December 2, 2005, approved for publication under rule 855(d) of the California Rules of Court the civil jury instructions prepared by the committee. The revisions will be officially published in the new 2006 edition of *CACI*.

**Item 5 Conflict of Interest Codes for Administrative Office of the Courts and Habeas Corpus Resource Center**

AOC staff recommends that the council amend the Conflict of Interest Codes for the AOC and Habeas Corpus Resource Center by adding certain job classifications to the

codes, deleting others, and updating the titles of other classifications. This will ensure compliance with the Political Reform Act by requiring employees whose financial interests could be materially affected by decisions they make to file statements of economic interests.

***Council action***

The Judicial Council, effective December 2, 2005, adopted:

1. The proposed revision of the AOC Conflict of Interest Code, which added five new job classifications, moved one classification to a new division, renamed several classifications, deleted several classifications that no longer exist, and removed the Trial Court Budget Working Group members from the code; and
2. The proposed revision of the Habeas Corpus Resource Center (HCRC) Conflict of Interest Code, which added two new classifications.

**Item 6      Family Law: Notice of Activation of Military Service and Deployment and Request to Modify a Support Order (adopt form FL-398)**

The Family and Juvenile Law Advisory Committee recommends that the council adopt a new mandatory form to implement changes to the Family Code made by Senate Bill 1082 (Stats. 2005, ch. 154; Morrow). This urgency legislation requires the Judicial Council to develop forms within 90 days of its effective date (August 30, 2005) that permit military service members activated to duty and deployed out of state to file and serve a notice of activation and request modification of support.

***Council action***

The Judicial Council, effective December 2, 2005, adopted form FL-398, *Notice of Activation of Military Service and Deployment and Request to Modify a Support Order*.

**Item 7      Electronic Court Records: Remote Public Access in Extraordinary Criminal Cases: Procedure Manual to Implement Rule 2073(e)**

The Court Technology Advisory Committee recommends that the council approve a new procedure manual to help courts implement rule 2073(3), which allows remote public access to electronic court records in extraordinary criminal cases.

***Council action***

The Judicial Council approved the procedure manual *Electronic Court Records: Remote Public Access in Extraordinary Criminal Cases: Procedure Manual to Implement Rule 2073(e)* for distribution to the trial courts on the Serranus Web site.

**Item 8     Miscellaneous Technical Changes to Rules of Court and Judicial Council Forms (amend Cal. Rules of Court, rules 4.300, 4.406, 4.411, 4.435, 4.453, 4.480, and 1522; revise form CR-120)**

AOC staff recommends miscellaneous technical changes to California Rules of Court and Judicial Council forms. These changes are needed because of errors in rules and forms that have resulted from prior rule amendments, renumbering, and inadvertent omissions and because of changes in the names of parts of the state correctional system.

***Council action***

The Judicial Council, effective January 1, 2006:

1. Amended rules 4.406, 4.411, 4.435, and 4.480 and advisory committee comments to rules 4.300 and 4.453 to reflect name changes in the state correctional system;
2. Amended rule 1522 to specify that papers in opposition to a coordination petition are to be submitted and served on each party at least nine calendar days before the hearing; and
3. Revised *Notice of Appeal—Felony (Defendant) (Criminal)* (form CR-120) to properly cite rule 30.

**Item 9     Criminal Procedure: Rules Governing Jurisdiction in Habeas Corpus Petitions in Trial and Appellate Courts (amend Cal. Rules of Court, rules 60 and 4.552)**

The Criminal Law Advisory Committee, in consultation with the Appellate Advisory Committee, recommends that the Judicial Council, effective January 1, 2006, amend rules 60 and 4.552 of the California Rules of Court to clarify the appropriate court to hear a petition for writ of habeas corpus challenging the denial of parole. This amendment will conform trial and appellate rules of court to the recent Supreme Court decision *In re Roberts* (2005) 36 Cal.4th 575.

***Council action***

The Judicial Council, effective January 1, 2006, amended rules 60 and 4.552 of the California Rules of Court to clarify the appropriate court to hear a petition for writ of habeas corpus challenging the denial of parole or suitability for parole.

**Item 10    Court Interpreter Employee Classifications: Regional Court Interpreter Employment Relations Committees (amend Cal. Rules of Court, rule 6.661)**

AOC staff recommends nonsubstantive, technical amendments to rule 6.661 of the California Rules of Court so that its language reflects the current classifications of court interpreter employees used in determining the membership and voting rights of each

superior court representative on the four regional court interpreter employment relations committees established by this rule and statutes. The amendments will conform the rule to the governing statutes.

***Council action***

The Judicial Council, effective January 1, 2006, amended rule 6.661 of the California Rules of Court to:

1. Delete existing subdivisions (b)(1) and (d)(1), which described membership and voting rights, respectively, before September 15, 2003, in regional court interpreter employment relations committees based on court interpreters “pro tempore,” due to the obsolescence of these subdivisions’ wording; and
2. Amend the description of membership and voting rights in the regional court interpreter employment relations committees in the existing subdivisions (b)(2), (d)(2), and (d)(3), respectively, to eliminate the outdated references to court interpreter “pro tempore” and to substitute court interpreters described in Government Code section 71806 and not excluded by Government Code section 71828(d).

**Item 11 Domestic Violence: Newly Formed Task Force—Project Plan and Status Report**

The Judicial Council’s Domestic Violence Practice and Procedure Task Force recommends that the council accept this initial plan and status report and direct staff to provide additional reports and recommendations as appropriate. This report summarizes the task force’s projects in the next two years for the improvement of the administration of justice in domestic violence cases.

***Council action***

The Judicial Council accepted this project plan and status report and directed staff to provide further updates and recommendations as needed during the two-year tenure of the task force.

**DISCUSSION AGENDA (ITEMS 12–16)**

**Item 12 Trial Court Facilities: Approval of Senate Bill 1732 Transfer Implementation Procedures**

Ms. Kim K. Davis, Director of the Office of Court Construction and Management, presented this item.

The Interim Court Facilities Panel and AOC staff recommend that the council approve new procedures for implementing the transfer of trial court facilities from the counties to the state under Senate Bill 1732. These procedures were developed by the AOC, the California State Association of Counties, and the state Department of Finance.

***Council action***

The Judicial Council approved the *Procedures for Implementing the Transfer of Trial Court Facilities From the Counties to the State of California Pursuant to the Trial Court Facilities Act of 2002—SB 1732 (Escutia)* (“*Implementation Procedures*”) for use in the transfer of trial court facilities from the counties to the state.

**Item 13 Court Facilities Planning: Facilities Modifications Prioritization Methodology**

Ms. Kim K. Davis, Director of the Office of Court Construction and Management, Mr. Ronald G. Overholt, Chief Deputy Director, and Ms. Kelly Quinn Popejoy, Manager in the Office of Court Construction and Management, presented this item.

AOC staff recommends adoption of a policy on facility modifications, including small alterations, minor renovations, and repairs to appellate and trial court facilities. The policy establishes prioritization criteria and methodology, budget categories, and funding sources for facility modifications. The AOC will report to the Judicial Council on the effectiveness of the first year of implementation of these policies.

***Council action***

The Judicial Council:

1. Adopted the *Prioritization Methodology for Modifications to Court Facilities*.
2. Directed AOC staff to recommend an annual funding allocation to three groups of approved facility modifications for both trial and appellate courts: priority 1; planned priorities 2–6; and unforeseen or out-of-cycle priorities 2–6.
3. Directed AOC staff to request state General Fund money for implementation of priorities 1–6 facility modifications for appellate court facilities.
4. Directed AOC staff to use available funds to implement trial court facility modifications as follows: Apply, as funds are available, money from either the State Court Facilities Construction Fund or the Court Facilities Trust Fund to implement priorities 1 and 2 facility modifications for a limited term. AOC staff is directed to use the Construction Fund to implement priorities 3–6 facility modifications.
5. Directed the AOC to create two working groups on facility modifications, one for trial courts and one for appellate courts, and direct each group to meet annually and develop an annual report, including a preliminary prioritized list of planned priorities 2–6 facility modifications for the next fiscal year.
6. Authorized and directed the two working groups to reprioritize planned priorities 2–6 facility modifications, as necessary during the fiscal year, and to reallocate funds among the three groups of approved facility modification budgets, as necessary.

7. Authorized and directed the Interim Panel to review the reports of each working group and annually approve the statewide trial courts prioritized list and the statewide appellate courts list of planned priorities 2–6 facility modifications, to use funds annually authorized by the Judicial Council, and directed the AOC to implement the lists of facility modifications approved by the Interim Panel.
8. Directed the AOC to report to the Judicial Council on the effectiveness of the above policy recommendations in their first 12 months of implementation.

**Item 14 Temporary Judges: Rules on Quality Assurance, Training, Ethics, and Administration (adopt Cal. Rules of Court, rules 243.10–243.17, 243.19–243.21, 243.30, 243.32–243.34, 6.740–6.746; amend rule 244 and renumber it as rule 243.31; amend rules 1726 and 6.603; amend rule 1727 and renumber it as rule 243.18; repeal rule 880; amend Cal. Stds. Jud. Admin., § 16.5; and recommend disclosure and disqualification requirements for temporary judges to be included in the Code of Judicial Ethics)**

Justice James R. Lambden, chair of the Access and Fairness Advisory Committee, Judge Robert B. Freedman, co-chair of the Temporary Judges Working Group, Mr. James Otto Heiting, President of the State Bar of California, Mr. Robert Lowney, Senior Manager in the Education Division/Center for Judicial Education and Research, and Mr. Patrick O'Donnell, Senior Attorney in the Office of the General Counsel, presented this item.

The Civil and Small Claims Advisory Committee and the Traffic Advisory Committee, after considering proposals developed by the Temporary Judges Working Group, recommend the adoption of a comprehensive set of rules governing the selection, training, appointment, and supervision of court-appointed temporary judges. The rules would be adopted effective July 1, 2006, but would have an operative date of January 1, 2007, except in small claims cases, to allow attorneys to satisfy the qualification and training requirements. This delayed implementation would give courts sufficient time to implement the new rules. For small claims cases, rule 1726 would be amended effective January 1, 2006, providing an interim rule to assist courts in implementing recent legislation that requires attorneys serving as temporary judges in small claims cases to complete certain training by July 1, 2006. The new and amended rules are intended to ensure and improve the quality of court-appointed temporary judges serving in all types of cases.

***Council action***

The Judicial Council, effective July 1, 2006:

1. Adopted rule 243.10 of the California Rules of Court, which provides a definition of “temporary judge”;
2. Adopted rules 243.11–243.15, which specify the requirements for appointment for court-appointed temporary judges, including minimum experience and training requirements;

3. Did not adopt rule 243.16, which specifies the permitted and prohibited use by attorneys of their service as court-appointed temporary judges (the council referred it to the Supreme Court Advisory Committee on the Code of Judicial Ethics);
4. Adopted rule 243.17, which prescribes the continuing education that is required for court-appointed temporary judges;
5. Amended rule 1727 and renumbered it as rule 243.18, to specify more clearly the procedures for stipulations to temporary judges who have been appointed by the court;
6. Adopted rule 243.19 on the disclosures required to be made by temporary judges;
7. Adopted rule 243.20 on disqualifications and limitations on temporary judges serving in proceedings;
8. Adopted rule 243.21 to provide that a temporary judge has a continuing duty to make the disclosures under rule 243.19 and to disqualify himself or herself under rule 243.20;
9. Adopted rules 243.30 and 243.32–243.34, and amended rule 244 and renumbered it as rule 243.31, to clarify the rules governing temporary judges who are requested by the parties and designated by the court to serve as temporary judges (including privately compensated temporary judges);
10. Repealed rule 880 because the definitions in that rule will no longer be necessary after rule 243.10 is adopted;
11. Amended rule 6.603 to include a cross-reference to the new rules on court appointed temporary judges; and
12. Adopted rules 6.740–6.746 to clarify and provide direction to presiding judges and the courts on the administration of court-appointed temporary judges.

*The rule changes described above are effective July 1, 2006; however, the operative date for rules 243.11–243.14 (which primarily concern qualifications and training) will be January 1, 2007, to provide more time for their implementation.*

*In addition, rule 1726 (on temporary judges in small claims cases) is amended effective January 1, 2006, to implement the new legislation concerning small claims cases that take effect on that date.*

13. Amended rule 1726 of the California Rules of Court to assist courts in implementing the recent legislation during 2006 and to provide that the rule is repealed effective January 1, 2007, when the new rules on the training of temporary judges become operative; and
14. Amended section 16.5 of the Standards of Judicial Administration to provide that the section is repealed effective January 1, 2007, when the new rules become operative.

*Based on newly received recommendations of the Supreme Court Advisory Committee on the Code of Judicial Ethics, the Judicial Council referred to the*

*Supreme Court for its consideration proposed rules 243.19, 243.20, and 243.31(d)–(e), with a recommendation that these rules be included in the California Code of Judicial Ethics on or before July 1, 2006.*

15. The Judicial Council directed that the Temporary Judges Working Group review the following matters and provide information and recommendations to present to the Judicial Council at its April 2006 meeting:
  - a. The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics of the question as to whether rules pertaining to disclosures and disqualifications of temporary judges should be addressed in the Code of Judicial Ethics;
  - b. The status of the referral to the Supreme Court Advisory Committee on the Code of Judicial Ethics as to whether the Supreme Court has or will address in the Code of Judicial Ethics the provisions contained in rule 243.16. That rule specifies the circumstances when an attorney may and may not describe his or her service as a temporary judge in résumés, ballot designations, advertisements, and other situations;
  - c. Whether new rule 6.741(b) of the California Rules of Court on duties and authority of the presiding judge should be amended to add the phrase “from the court-appointed list” after the words “The presiding judge has the discretion to remove a court-appointed temporary judge. . . .” This presents the general question of whether the presiding judge has authority to remove a temporary judge at any time or whether the removal authority is limited to future appointments. It presents an additional question as to whether there should be any reference in the rules to an official “list” of court-approved temporary judges;
  - d. Whether rule 6.741, rule 6.743(b)(3), or any other rule should be amended to include broad diversity considerations in the recruitment and selection of temporary judges; and
  - e. Whether training should be required of retired judges who serve as temporary judges after retirement and, if so, at what interval after retirement the training should be required.

*Finally, to ensure that the new rules are effectively implemented, the Judicial Council, effective January 1, 2006:*

16. Directed the Education Division of the Administrative Office of the Courts (AOC) to assist the courts in the training and education of temporary judges in cooperation with the Department of Consumer Affairs; and
17. Directed the Office of Court Research of the AOC’s Executive Office Programs Division to assist the courts in reporting information about temporary judges and assist the council by analyzing this information to better determine judicial needs and improve the quality of temporary judging.

**Item 15 Allocation of Revenue from the Trial Court Improvement Fund in Accordance With Rule 6.105 of the California Rules of Court and Government Code Section 77205(a)**

Mr. Ruben Gomez, Manager of Fiscal Administration and Technical Support Services in the Finance Division, presented this item.

AOC staff recommends approval of the one-time allocation of 50/50 Excess Fines Split Revenue for distribution in January 2006.

***Council action***

The Judicial Council approved:

1. The specific amounts to be allocated for FY 2004–2005, including 20 percent (\$1,698,468) to be distributed to the trial courts located in counties that contributed to the 50/50 Excess Fines Split Revenue; 30 percent (\$2,547,702) to be distributed to the Trial Court Trust Fund; and 30 percent (\$2,547,702) to be retained in the Improvement Fund; and
2. Delegated authority to the Administrative Director of the Courts to make any needed corrections if adjustments are made by the State Controller’s Office to the 50/50 Excess Fines Split Revenue deposited in the Improvement Fund prior to distribution.

**Item 16 Judicial Council–Sponsored Legislation: Proposal to Amend the Judicial Article of the California Constitution (Cal. Const., article VI)**

Mr. William C. Vickrey, Administrative Director of the Courts, and Mr. Michael Fischer, Senior Attorney in the Office of the General Counsel, presented this item.

The Policy Coordination and Liaison Committee recommends that the Judicial Council sponsor legislation to amend article VI, the judicial article of the state Constitution, to promote access to justice, ensure the neutrality and independence of the judicial branch, and create appropriate accountability within the branch for the fair and effective administration of justice. The Administrative Director recommends that the council, on the condition that the proposed constitutional amendment is passed, agree to repeal and readopt rule 6.4 of the California Rules of Court to provide for the superior court presiding judges’ nomination of four of the superior court members of the council.

***Council action***

The Judicial Council voted to sponsor a legislative constitutional amendment to article VI of the California Constitution that would promote and protect access to justice, ensure neutrality and independence of the judicial branch, and create appropriate accountability of the branch for the fair and effective administration of justice. The council adopted, conditionally on passage of the proposed constitutional amendment, repeal and reenactment of rule 6.4 of the California Rules of Court to

provide for nomination by the superior court presiding judges of four of the superior court members of the council.

The council also added Justice Marvin R. Baxter to the article VI working group and delegated to that group the authority to approve final technical changes to the language of the amendments.

### **Circulating Orders**

There were no circulating orders since the last Judicial Council meeting.

### **Appointment Orders**

Copies of appointment orders are for information only; no action was necessary.

There being no further public business, the meeting was adjourned at 11:40 a.m. in the memory of Kathleen Akao, Presiding Judge of the Superior Court of Santa Cruz County. Judge Akao, who passed away on November 27, 2005, after a brief illness, had been the presiding judge of the juvenile court for many years and was known for being a champion of families and children.

Respectfully submitted,

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William C. Vickrey  
Administrative Director of the Courts and  
Secretary of the Judicial Council