

**JUDICIAL COUNCIL MEETING**  
**Minutes of December 2, 1999, Meeting**

The Judicial Council of California meeting began at 8:45 a.m. on Thursday, December 2, 1999, at the Administrative Office of the Courts Judicial Council Conference Center in San Francisco, California, on the call of Chief Justice Ronald M. George, Chair.

**Judicial Council members present:** Chief Justice Ronald M. George; Justices Marvin R. Baxter, Carol A. Corrigan, and Richard D. Huffman; Judges James Allen Bascue, Paul Boland, J. Richard Couzens, Leonard P. Edwards, Donna J. Hitchens, Steven E. Jahr, Melinda A. Johnson, Ana Maria Luna, Ronald B. Robie, and Ronald L. Taylor; Mr. John J. Collins, Ms. Pauline W. Gee, and Mr. Sheldon H. Sloan; and **advisory members:** Judge David J. Danielsen, Commissioner David L. Haet, Mr. Ron Barrow, Mr. Stephen V. Love, Mr. Frederick Ohlrich, and Mr. Arthur Sims.

**Absent:** Justice Richard D. Aldrich, Senator Adam Schiff, Assembly Member Sheila James Kuehl, and Mr. Michael Case.

**Others present included:** Mr. William C. Vickrey; Judge Glenn Mahler; Mr. Arturo Casarez, Ms. Judy Garlow, Ms. Beth Jay, Ms. Paz Perry, Ms. Sheila Gonzalez; **staff:** Ms. Martha Amlin, Ms. Heather Anderson, Mr. Starr Babcock, Ms. Jessica Fiske Bailey, Mr. Patrick Ballard, Mr. Michael Bergeisen, Mr. Roy Blaine, Ms. Deborah Brown, Mr. James Carroll, Ms. Sandy Claire, Ms. Eunice Collins, Ms. Lesley Duncan, Ms. Audrey Evje, Ms. Claudia Fernandes, Ms. Elizabeth Grant, Ms. Terri Harris, Ms. Kate Harrison, Ms. Whitnie Henderson, Ms. Lynn Holton, Ms. Melissa Johnson, Mr. Dennis Jones, Mr. Peter Kiefer, Mr. John Larson, Ms. Kathleen Larson, Mr. Ray LeBov, Ms. Katy Locker, Mr. Ben McClinton, Mr. Ralph McMullan, Mr. Frederick Miller, Ms. Vicki Muzny, Mr. Gaidi Nkruma, Ms. Diane Nunn, Ms. Nini Redway, Mr. Frank Schultz, Mr. Peter Shervanick, Ms. Dale Sipes, Ms. Marlene Smith, Ms. Sonya Smith, Ms. Kim Taylor, Ms. Rochelle Terrell, Ms. Linda Theuriet, Ms. Liz Vazquez-Avila, Ms. Terrie Wilfong, Mr. Anthony Williams, and Mr. Joseph Wong; **media representatives:** Ms. Rinat Fried, *The Recorder*; and Ms. Jean Guccione, *The L.A. 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, 1999, which was sent to members in advance of the meeting.)

### **Council Committee Presentations**

Reports on committee activities were included in the binders of Reports and Recommendations dated December 2, 1999.

#### *Executive and Planning Committee*

Judge Melinda A. Johnson, Vice-chair, reported that the Executive and Planning Committee met three times since the last council meeting.

On November 9, the committee met to review items submitted for this meeting, determine their readiness for council action, and set the agenda.

Pursuant to its responsibility to review the budget to ensure consistency with the council's strategic plan, and its authority to act on behalf of the council in between council meetings, the Executive and Planning Committee approved three budget change proposals for fiscal year 2000–2001:

1. A request by the Supreme Court for \$576,000 for the court-appointed counsel program (CAP-SF) for capital cases.
2. A request by the Courts of Appeal for an increase of \$760,471 to the base funding for the five projects that administer the court-appointed counsel programs for noncapital cases.
3. Requests by the Administrative Presiding Justices for \$2.8 million in additional salary funding for appellate court staff and by the AOC's Administrative Director for \$2.87 million in additional salary funding for AOC staff. Both salary proposals cover funding for merit salary adjustments, reclassifications, newly established positions, market placement adjustments of five percent, and salary changes not funded unless a request is made.

Judge Johnson stated that in August 1999, the Executive and Planning Committee requested that staff prepare a timeline for implementing approved recommendations of the Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System. The committee reviewed a memo and timeline prepared in response and requested that the timeline be shared with Judicial Council members as an attachment to minutes of the November 3, 1999, Executive and Planning Committee meeting in the binder for today's meeting.

Judge Johnson also reported that a recently enacted statute requires the council to establish mediation pilot programs in four superior courts to assess the costs and benefits to litigants and the courts of early mediation of civil cases. All four pilot program courts will be authorized to hold early status conferences to discuss alternative dispute resolution options with the parties. In two of these pilot program courts, the court will have the authority to make mandatory referrals to mediation and must make these services available at no cost to the parties. In the other two courts, referrals to mediation will be made on a voluntary basis. After the completion of a request for proposals (RFP) process, a selection review committee, composed of members of the Civil and Small Claims Advisory Committee, recommended four pilot courts. On Tuesday, November 30, 1999, the Executive and Planning Committee approved, on behalf of the council, the four recommended pilot courts for this mediation program: the voluntary programs will be in the Superior Courts of Contra Costa and Sonoma Counties and the mandatory programs will be in the Superior Courts of San Diego and Fresno Counties.

Judge Johnson reported that staff updated committee members on budget discussions between the AOC and Department of Finance regarding requests for \$30 million in deficiency funding for negotiated salary increases (NSIs) and approximately \$130 million

in budget change proposals for funding the council's top priorities for fiscal year 2000–2001. The bulk of the \$130 million is to fund NSIs and an 8.5 percent judicial salary increase. The requests are prioritized somewhat differently than they were when approved by the council earlier. The new priorities respond to the critical need to provide relief to courts for nondiscretionary NSIs. The Executive and Planning Committee voted to ratify the reprioritization as presented.

Judge Johnson said the committee learned that on December 1 the Los Angeles trial courts will have called for a unification vote to occur between December 15 and January 15. Under these circumstances the committee unanimously recommends extending the Los Angeles trial courts' coordination plan until the next Judicial Council meeting on January 26, 2000.

#### *Policy Coordination and Liaison Committee*

Justice Marvin R. Baxter, Chair, reported that the Policy Coordination and Liaison Committee had met once by conference call since the last council meeting.

Justice Baxter stated that on November 1, the committee reviewed and adopted recommendations on a second set of proposals for council-sponsored legislation in the year 2000. He reported that legislative proposals addressing oaths, discovery, representation of nonresident drivers in small claims court, alternative dispute resolution, and traffic are on today's consent agenda. Two legislative proposals are on today's discussion agenda: one on alternative dispute resolution and a series of recommendations that address judicial retirement and are intended to enhance the quality of judicial service.

Justice Baxter reported that in 2000, the Judicial Council will host the sixth annual Judicial-Legislative-Executive Forum. The forum is a council-hosted informational event for legislators, the Governor, and executive branch officials. The forum will take place in conjunction with Chief Justice George's "State of the Judiciary" address to the Legislature in February or March. The exact date and location will be announced in the near future.

Justice Baxter said that as part of the council's ongoing effort to foster and enhance relationships with other court-related groups, the Office of Governmental Affairs staff is arranging the annual meetings between the Chief Justice and groups such as the California District Attorneys Association, the California State Association of Counties, and the Consumer Attorneys of California. Justice Baxter noted that he, the Administrative Director, Ray LeBov, and a member of the advocacy staff from the Office of Governmental Affairs participate in the meetings.

#### *Rules and Projects Committee*

Judge Steven E. Jahr, Chair, reported that the Rules and Projects Committee (RUPRO) met once by telephone since the last council meeting. He reported that the committee reviewed the rules on today's agenda.

He also reported that staff had revised RUPRO policies and guidelines to implement a transition to a one-year rule cycle (instead of a six-month rule cycle), and will place these

revised policies on the Serranus Web site and distribute them to courts. He noted that the committee's next meeting would focus on reviewing rules going out for comment in 2000.

**ITEM 1                      JUDICIAL COUNCIL–SPONSORED LEGISLATION**

**Item 1A                      Oaths, Affirmations, and Declarations (Code Civ. Proc., §§ 2094–2097)**

The Policy Coordination and Liaison Committee recommended updating Code of Civil Procedure sections 2094–2097 regarding the court's administration of a traditional oath. This statute was adopted in 1872 and contains wording that is outdated and may be considered offensive by today's standards. The revisions modernize the statute by repealing outdated references to non-Christian religious ceremonies as "peculiar" and adding new provisions modeled on the Federal Rules of Evidence.

*Council action:*

The Judicial Council approved sponsoring legislation to modernize a statute governing the administration of oaths and affirmations by repealing outdated references and adding provisions that are modeled on the Federal Rules of Evidence.

**Item 1B                      Discovery When Time for Completion Falls on a Weekend or Holiday (Code Civ. Proc., § 2024)**

The Policy Coordination and Liaison Committee recommended clarifying Code of Civil Procedure section 2024 (relating to discovery) by specifying what date applies when a cutoff date falls on a weekend or holiday.

*Council action:*

The Judicial Council approved sponsoring legislation to clarify the deadline for completing discovery or hearing motions concerning discovery when the deadline falls on a weekend or holiday.

**Item 1C                      Small Claims Court: Representation of Nonresident Drivers (Code Civ. Proc., § 116.540)**

The Policy Coordination and Liaison Committee recommended permitting an out-of-state defendant driver involved in an in-state car accident to be represented in small claims court without returning to California to make an appearance. This proposal was initially suggested by the Civil and Small Claims Advisory Committee to improve access to California courts.

*Council action:*

The Judicial Council approved sponsoring legislation to permit out-of-state small claims defendants to submit written declarations supporting their defense, or to allow another person to appear on their behalf if that individual serves without compensation.

Judge J. Richard Couzens asked that the Civil and Small Claims Advisory Committee consider expanding the proposal suggested in item 1C to allow the use of declarations if the defendant in a small claims proceeding is a certain number of miles away from the court.

**Item 1D**                      **1999 Mediation Pilot Program: Statement of Nonagreement and Definition of General Civil Case (Code Civ. Proc., §§ 11731 and 1738)**

The Policy Coordination and Liaison Committee recommended clarifying statutes governing four mediation pilot programs administered through the Judicial Council. These statutes do not make clear that any reference to a statement of nonagreement between parties constitutes an irregularity at a subsequent trial. These statutes also contain an outdated definition of a general civil case.

*Council action:*

The Judicial Council approved sponsoring legislation to clarify the definition of a general civil case and the legislative intent of the mediation pilot program.

**Item 1E**                      This item was deleted from the council's agenda.

**Item 1F**                      **Alternative Dispute Resolution: General Civil Case Mediation Referrals (Code Civ. Proc., § 1760 et seq.)**

The Policy Coordination and Liaison Committee recommended no action on a proposal suggested by the Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System, to authorize trial courts to refer general civil cases to mediation, and to permit a party to opt out of participating in such a process.

*Council action:*

The Judicial Council recommended *not* including in the council-sponsored legislation package for 2000 a proposal authorizing trial courts to refer general civil cases to mediation. Instead, the council recommended that staff study the issue further.

**Item 1G                      Additional Accrual of Retirement Benefits for Judges With 20 Years of Service**

The Policy Coordination and Liaison Committee recommended no action on a proposal suggested by the Task Force on the Quality of Justice, Subcommittee on the Quality of Judicial Service, to allow judges with more than 20 years of service to accrue additional retirement benefits if they elect to continue to make the 8 percent contribution into the Judges' Retirement System.

*Council action:*

The Judicial Council recommended *not* including in the council-sponsored legislation package for 2000 a proposal allowing judges with 20 years of service to continue to pay the current 8 percent contribution to the Judges' Retirement System in return for an additional retirement benefit of up to 2 percent of retirement compensation for each additional year of service.

**Item 1H                      Traffic Trials by Written Declaration: Trial de Novo and Witness Statements ( Veh. Code, §§ 40508 and 40902)**

The Traffic Advisory Committee and the Policy Coordination and Liaison Committee proposed eliminating trial de novo following a trial by written declaration. The committees believe this would reduce the amount of time a court needs to rehear a case, thereby improving and streamlining the administration of traffic matters.

*Council action:*

The Judicial Council approved sponsoring legislation to amend Vehicle Code section 40508 to allow a defendant to submit as evidence a sworn declaration of any witness in support of his or her defense, and to amend Vehicle Code section 40902 to eliminate a defendant's right to a trial de novo.

**Item 1J<sup>1</sup>                      Failure to Appear—Trials in Absentia (Veh. Code, § 40903)**

The Traffic Advisory Committee proposed amending Vehicle Code section 40903 to provide that when a defendant fails to appear in a traffic matter, the court deems that he or she has elected a trial in absentia (rather than a trial by written declaration) and the case can be closed.

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<sup>1</sup> There is no item 1I.

*Council action:*

The Judicial Council approved sponsoring legislation to amend Vehicle Code section 40903 to provide that when a defendant fails to appear on a traffic infraction citation, he or she has elected to have a trial in absentia.

**Item 2                      Family Law Support Actions: Family Law Rules and Forms Implementing Recent Legislation on Trial Court Acceptance of Credit Cards and on Wage and Earnings Assignments (adopt rule 6.703; revise Forms 1285.70 and OMB 0970-0154; and revoke Forms 1296.77, 1296.78, and 1299.25)**

Legislation recently signed by the Governor changed the rules for trial courts' acceptance of credit cards, imposed a requirement that a federal form be used for wage and earnings assignments in child support actions, and rendered erroneous two recently adopted forms used in setting aside voluntary declarations of paternity. The proposed changes to rules and forms conform to the legislation.

*Council action:*

The Judicial Council, effective January 1, 2000:

1. Adopted rule 6.703, which (1) recognizes existing county approvals allowing acceptance of credit cards by trial courts for court fees; (2) delegates to the Administrative Director the authority to approve new applications to accept credit cards; and (3) sets standards for the Director's approval;
2. Adopted, with California modifications, the *Order/Notice to Withhold Income for Child Support* (OMB 0970-0154);
3. Revised the *Wage and Earnings Assignment Order (Family Law—Domestic Violence Prevention—Uniform Parentage)* (Form 1285.70) so that it refers only to spousal support;
4. Revoked the *Notice of Wage and Earnings Assignment (Governmental)* (Form 1299.25);
5. Revoked the *Request for Hearing and Application to Set Aside Voluntary Declaration of Paternity Order (Family Law—Uniform Parentage—Governmental)* (Form 1296.77); and
6. Revoked the *Responsive Declaration to Application to Set Aside Voluntary Declaration of Paternity (Family Law—Uniform Parentage—Governmental)* (Form 1296.78).



*Council action:*

The Judicial Council, effective January 1, 2000:

1. Amended the heading of division III of title five of the California Rules of Court, added chapter headings to this division, and amended rule 1600.1 within this division to clarify the application of the rules within division III; and
2. Adopted rules 1640–1640.8 of the California Rules of Court in order to establish (a) exemptions from the mediation pilot programs, (b) mediator selection and compensation requirements, and (c) other procedures for the mediation pilot programs.

**Item 6 Administration of the Litigation Fund and the Excess Liability Fund**

Pursuant to a recommendation by the Trial Court Budget Commission, the Judicial Council established at its October meeting a Litigation Fund and an Excess Liability Fund to be used to pay expenses incurred in claims and litigation relating to the trial courts. AOC staff proposed policies that will govern the key aspects of the funds' administration. These policies will reduce litigation costs and improve risk management systemwide; establish uniform, accountable litigation and risk management procedures; and address the needs and requirements of the groups affected by the program.

*Council action:*

The Judicial Council adopted the following policies governing the administration of the Litigation Fund and the Excess Liability Fund:

1. Cases and Claims Covered. The moneys in the funds can be used to pay for attorney fees, experts' fees, costs of litigation, settlement obligations, and judgments incurred on or after January 1, 2000, in all cases or claims (a) arising out of trial court operations as defined in rule 810 or out of conduct covered by Recommended Policy 4 (below), occurring on or after July 1, 1997; and (b) pending on or after January 1, 2000.
2. Management of Cases and Claims. Cases covered by the funds will be managed under the following general procedures: The trial court and the Administrative Office of the Courts (AOC), through its Office of the General Counsel (OGC), will jointly approve strategic and settlement decisions. The Judicial Council Litigation Committee will approve any settlement requiring a payment of \$50,000 or more. The OGC will serve as in-house counsel to the trial courts in these cases, providing case management and coordination services. These services will include providing legal advice to the courts, and providing guidance and direction to attorneys handling the cases.
3. Participation. Courts may, but are not required to, participate in the case management program which includes access to the funds.
4. Defense and Indemnification of Judicial Officers. As part of this program, judges and subordinate judicial officers will be defended and indemnified against lawsuits under

the statutes that govern state employees.

5. Purchase of Individual Liability Insurance. Trial courts shall not purchase liability insurance for judges and subordinate judicial officers, and the Trial Court Budget Commission shall not approve budget requests for this purpose.<sup>2</sup>
6. Reimbursement of Payments to Counties. Through the end of the first fiscal year of the program (June 30, 2000), dollars from the funds may be used for payments to a county risk management pool or to county counsel through an overhead or similar administrative charge, subject to the policies and procedures of this program. Reimbursement shall be provided only for expenses incurred from January 1 through June 30, 2000. Thereafter, the Administrative Director of the Courts shall determine whether allowing such use of the funds is cost-effective. Dollars from the funds may not be used to reimburse trial courts for their purchase of insurance, but may be used by the AOC to purchase insurance for a group of, or all, trial courts.

### **Item 7                                      Equal Access Fund—Distribution of Funds for IOLTA-Formula Grants and Partnership Grants**

Ms. Judy Garlow, Director of the Legal Services Trust Fund Program, and Mr. Ben McClinton, AOC staff attorney, presented the report. Ms. Garlow reported that the Budget Act of 1999 created the Equal Access Fund to allocate \$10 million to the Judicial Council for grants to legal services providers. The budget control language requires these funds to be distributed *by* the Judicial Council to legal services providers *through* the Legal Services Trust Fund Commission.

Ms. Garlow stated that the Legal Services Trust Fund Commission proposed grant allocations of the portion of the Equal Access Fund designated for Interest on Lawyer Trust Accounts (IOLTA)-Formula Grants (90 percent). To enable the timely distribution of funds, the commission and AOC staff recommended authorizing the council's Executive and Planning Committee, which may act between meetings of the council, to approve allocations of the remaining funds (Partnership Grants).

Mr. McClinton reported that the commission has followed the statutory requirements and has followed—or will follow—the criteria proposed in the council report for the August 1999 meeting in making the grant allocations.

Ms. Garlow said that should the council approve the recommendations, the commission will begin to write and mail checks to support programs working to prevent domestic violence, elder abuse, and home equity fraud.

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<sup>2</sup> This prohibition does not apply to the purchase of insurance for conduct occurring prior to July 1, 1997.

*Council action:*

Judge Ronald L. Taylor moved that the Judicial Council, under the authority of the Budget Act of 1999, which establishes the Equal Access Fund:

1. Approve the payment of \$8.55 million in four equal sums to the Legal Services Trust Fund Commission for distribution to legal services providers according to the formula established by Business and Professions Code section 6216 (IOLTA-Formula Grants) as proposed by the State Bar Legal Services Trust Fund Commission in its report; and
2. Delegate to the Executive and Planning Committee authority to:
  - a. Approve payments for awards proposed by the Legal Services Trust Fund Commission to legal services providers for joint programs by courts and these providers that assist pro per litigants (Partnership Grants) following criteria approved by the Executive and Planning Committee; and
  - b. Approve distribution of funds for the costs of administering the Equal Access Fund to the Legal Services Trust Fund Commission and the AOC, subject to the 5 percent cap in the Budget Act.

Ms. Pauline W. Gee recused herself from the vote since she works for a legal services provider. The motion passed.

**Item 8                      Ralph N. Kleps Awards for 1999**

Ms. Sheila Gonzalez, Chair of the California Judicial Administration Conference (CJAC) Planning Committee, presented the report, assisted by Ms. Sandy Claire and Ms. Claudia Fernandes, AOC staff. Ms. Gonzalez read the winners in four of the five categories, which range from courts with 1 to more than 100 judicial position equivalents (JPEs) to court programs involving cross-county collaboration. She reported that no applications were received for category 1 (courts with 0 to 7.9 JPEs). She noted that the awards will be presented at the CJAC conference in January 2000.

Ms. Claire noted that the Kleps Awards were started in 1991 in honor of Ralph N. Kleps, the first administrative director of the California courts. Since 1996, the CJAC Planning Committee has been the jury for the awards. She stated the purpose of the awards is to recognize and honor the contributions made by individual California courts to the administration of justice. The criteria for the award include improvements in the administration of the courts that reflect innovation, the intent of at least one goal of the Judicial Council's Long-Range Strategic Plan, and the ability to transfer the activity or project to other courts.

Ms. Fernandes stated that cross-county collaboration was a new category approved by the committee this year. In total, 39 applications were received and 29 site visits were conducted to evaluate the applying programs.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council:

1. Approve the following programs as winners of the Ralph N. Kleps Award for 1999:
  - a. *Category 1 (courts with 0 to 7.9 judicial position equivalents or JPEs)*  
None
  - b. *Category 2 (courts with 8 to 23.9 JPEs)*
    - H.O.P.E. (Helping Organize Parents Effectively) Court—Superior Court of California, County of Butte
    - Watsonville Juvenile Community Court—Superior Court of California, County of Santa Cruz
    - Yolo County Unified Family Court—Superior Court of California, County of Yolo
  - c. *Category 3 (courts with 24 to 99.9 JPEs)*
    - BEST (Benefits of Educating a Service-Oriented Team)—Superior Court of California, County of Riverside
    - Annual Conference on Multi-Cultural Family Violence Prevention—Superior Court of California, County of Sacramento
    - JNET (Juvenile Court Integrated Case Management System)—Superior Court of California, County of San Bernardino
    - Field Study in Criminal Case Processing—Superior Court of California, County of Ventura
  - d. *Category 4 (courts with more than 100 JPEs)*
    - Domestic Violence Services Project—Superior Court of California, County of Orange
    - Task Force for ADA Compliance—Superior Court of California, County of Orange
    - Dependency Court Recovery Project—Superior Court of California, County of San Diego
  - e. *Category 5 (cross-county projects)*
    - Oral Argument via Teleconferencing—Court of Appeal, Fourth Appellate District, Division Three
    - Automated Family Law Statistical Data Project (SCANTRON Project)—Superior Court of California, County of Stanislaus
2. Direct staff to disseminate the summaries of each project nominated for the Ralph N. Kleps Award, including the contact person in the court, to all courts before December 31, 1999.

The motion passed.

**Item 9****1999 Distinguished Service Awards**

Justice Huffman announced the winners of the 1999 Distinguished Service Awards who are recognized for significant and positive contributions to court administration in California. The chairs of the three internal committees of the council were the jury for the awards. The awards will be presented at the California Judicial Administration Conference in January 2000.

*Council action:*

Justice Huffman moved that the Judicial Council approve the following winners of the 1999 Distinguished Service Awards:

1. Jurist of the Year Award
  - Hon. James A. Ardaiz, Presiding Justice of the Court of Appeal, Fifth Appellate District
  - Hon. Kathleen E. O’Leary, Presiding Judge of the Superior Court of California, County of Orange
2. Judicial Administration Award
  - Mr. Frederick “Fritz” Ohlrich, Court Administrator of the Los Angeles Municipal Court
  - Ms. Kiri Torre, Assistant Executive Officer of the Superior Court of California, County of Santa Clara
3. Bernard E. Witkin Amicus Curiae Award
  - Hon. Elwood Lui (Ret.), Jones, Day, Reavis & Pogue

The motion passed.

**ITEM 10****JUDICIAL COUNCIL–SPONSORED LEGISLATION****Item 10A****Alternative Dispute Resolution: Changes to Court’s Reference Authority (Code Civ. Proc., § 638 et seq.)**

Ms. Nini Redway, AOC Legislative Advocate, presented the report. She said that the Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System recommended amending Code of Civil Procedure section 638 et seq. to make changes in reference procedures. The revisions would allow discovery referrals only when required by the exceptional circumstances of the case. The Policy Coordination and Liaison Committee recommended including this proposal in the council’s sponsored legislation program for 2000. Ms. Redway indicated that the fiscal impact of the proposal was thought to be minimal and absorbable since there would be only a few references that would meet the standard.

*Council action:*

Judge Paul Boland moved that the Judicial Council sponsor legislation to amend Code of Civil Procedure section 638 et seq. revising the court's authority to make discovery and other references to:

1. Clarify that discovery references should only be made when exceptional circumstances of the case require such a reference;
2. Require that a court make a specified finding about the parties' ability to pay the referee's fees and prohibit a court from making a nonconsensual reference if the court cannot make such a finding;
3. Clarify that courts may not consider counsel's ability to pay the referee's fees when determining whether the parties are able to pay these fees;
4. Require that the court's reference order include the maximum hourly rate the referee may charge and, if requested by a party, the estimated maximum number of hours for which the referee may charge;
5. Require that the referee's report include information about the total hours spent and total fees charged by the referee;
6. Require courts to appoint the referee agreed upon by the parties and create a procedure for the selection of a referee when the parties have not agreed;
7. Require the courts to forward copies of all discovery reference orders to the office of the presiding judge; and
8. Require the Judicial Council, by rule, to collect information on the use of discovery references and the fee charged to the parties and to report to the Legislature on these issues.

The motion passed.

**Item 10B                      Alternative Dispute Resolution: Los Angeles Early Mediation Pilot Project (Code Civ. Proc., § 1780 et seq.)**

Ms. Nini Redway, AOC Legislative Advocate, presented the report. She said that the Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System recommended amending Code of Civil Procedure section 1780 et seq. to create an early mediation pilot project in the Los Angeles Superior Court. The Policy Coordination and Liaison Committee recommended including this proposal in the council's sponsored legislation package for 2000. The council sponsored a similar proposal two years ago.

Ms. Redway indicated that the program could cost \$70,000 to \$100,000, which might not be absorbable.

*Council action:*

Justice Huffman moved that the Judicial Council sponsor legislation to amend the Code of Civil Procedure as necessary to establish an early mediation pilot project in Los Angeles.

The motion passed.

**Item 10C                      Judicial Retirement Proposals**

Ms. Rochelle Terrell, Director of the AOC Human Resources Bureau, and Mr. Anthony Williams, AOC Legislative Advocate, presented the report. Mr. Williams stated that the Task Force on the Quality of Justice, Subcommittee on the Quality of Judicial Service submitted a report to the council in April. Included in the report were a number of proposals related to judicial retirement designed to create a financial incentive for judges to remain on the bench beyond retirement eligibility. Four are being presented today.

**a. Delayed Retirement Option Program (DROP)**

Mr. Williams stated that should the council approve the recommendation, the AOC's Office of Governmental Affairs would work to create a Delayed Retirement Option Program that is cost-neutral. This program would allow judges who have been on the bench more than 20 years and wish to remain on the bench for a preselected period of time to receive a lump-sum benefit at the end of the agreed-upon period.

**b. Supplemental Contributions Program**

Mr. Williams stated that this program would allow judges to participate in a supplemental savings program similar to that offered to other state employees. The employer would not provide any contributions, and the program would therefore be cost-neutral. Participants would cover administrative costs of participating in the program.

**c. Eliminate Judges' Contribution to Judges' Retirement System After 20 Years of Service**

Mr. Williams stated that currently a judge must continue to contribute 8 percent of his or her salary to the Judges' Retirement System after 20 years of service. This imposes a monetary penalty on judges who elect to remain on the bench over 20 years, after accruing the maximum retirement benefit. The proposal would eliminate the 8 percent contribution once a judge achieves 20 years of service whether or not the judge is age-eligible to retire.

#### **d. Judges' Retirement System II: Reciprocity Equity**

Mr. Williams stated that currently judges in the Judges' Retirement System II are omitted from the retirement reciprocity provision provided to other state employees. This creates a disincentive for qualified attorneys who have contributed to the California Public Employees' Retirement System (CalPERS) to pursue careers on the bench. The proposal would establish reciprocity equity. It would involve no additional cost to the judges' retirement fund; the minimal costs would be borne by affected judges' CalPERS-covered employers.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Inform PERS that the council supports a Delayed Retirement Option Program (DROP) in principle and would like to be kept informed of what PERS is doing for other branches.
2. Sponsor legislation to allow judges to participate in the supplemental savings program offered to other state employees.
3. Sponsor legislation to eliminate the requirement that judges continue to contribute 8 percent of their salaries when they are able to retire or after completing 20 years of service and to require participating judges to commit to at least two additional years of service to reimburse the Judges' Retirement System (JRS) for the contributions that would have been made during that period of service. Judges who take a disability retirement would not be required to reimburse the JRS.
4. Sponsor legislation in the 2000 legislative session to allow judges in the Judges' Retirement System (JRS) II the same reciprocity rights as those provided by the JRS.

The motion passed.

#### **Item 11                      Applications for Exemption From One-Day/One-Trial Rule (rule 861 of the California Rules of Court)**

Ms. Kate Harrison, Acting Director of the Trial Court Services Division, and Ms. Kim Taylor, AOC staff analyst, presented the report. Ms. Taylor reported that rule 861 (one-day/one-trial) provides a broad umbrella under which 51 of the 58 counties indicate they can operate. The AOC received seven official applications for exemptions from the rule. (Five additional courts did not seek exemptions after receiving technical assistance from Mr. G. Thomas Munsterman of the National Center for State Courts.)

Ms. Taylor noted that a "good cause" exemption may be granted by the Judicial Council for a trial court system that demonstrates barriers to implementing the rule because of cost or population constraints. She reported that the Alpine, Colusa, Lassen, and Tehema County trial courts have requested exemptions due to population constraints. The Yolo County trial court had originally requested an exemption due to prohibitive costs of

implementing the rule. The Kern County trial courts have requested an exemption due to population and cost constraints. Staff recommends:

- Denying Colusa's, Tehama's, and Lassen's requests;
- Granting Alpine's request with a stipulation that the court work with G. Thomas Munsterman of the National Center for State Courts to determine the feasibility of implementing one-day/one-trial in the county and, if it is feasible, to develop an implementation plan; and
- Granting a one-year good cause exemption for the Kern trial courts contingent upon an assessment by Mr. Munsterman that the increased costs projected by Kern Courts are reasonable.

Ms. Harrison noted that the Los Angeles County trial courts have requested a time extension for one-day/one-trial implementation. Staff supports this request since the court system has absorbed the costs of implementing the rule in a number of sites, lowered the estimation of the cost of implementing the rule, and reduced their implementation time frames from five to three years.

Ms. Harrison noted that exemptions related to population were more difficult to assess. The requesting counties stated that their eligible pool of potential jurors is not adequate to supply jurors for the number of trials conducted in the respective counties. Additionally, they argued that people in their counties widely accept the existing practices. Ms. Harrison reported that the requesting counties use a two-step summons process. Staff believes that using a one-step summons process would increase juror yield (the ratio of those summoned to those appearing).

Ms. Harrison stated that the Kern County trial courts indicate they need \$175,000 to implement the rule. They have requested money for fiscal year 2000–2001 that will enable them to achieve compliance with one-day/one-trial. The Kern County trial courts have requested an exemption based on population as well. They call jurors once every three years as opposed to the more frequent norm.

Alpine County has the smallest court system in the state. They have a ratio of 5:1 (five people available for every sworn juror). Staff recommends approving their request for an exemption based on population constraints.

Chief Justice Ronald M. George referred council members to a letter received from the Los Angeles District Attorney, Mr. Gil Garcetti, regarding Los Angeles County trial courts' request for an exemption. The Chief also mentioned a response written by Mr. John A. Clarke, Executive Officer of the Los Angeles Superior Court.

Judge Jahr asked whether a cost analysis had been done to assess the claims by the two courts requesting exemptions based on cost factors. Ms. Harrison replied that they had not been done. Judge Jahr also expressed concern about voting on such a lengthy extension for Los Angeles (two years) without a cost analysis.

Judge James A. Bascue said that the prohibitive costs in Los Angeles are staff driven and are unrelated to juror compliance. One-day/one-trial is occurring in three districts in Los Angeles that are larger than most courts. He noted that with the resources Los Angeles would implement the rule.

Mr. Arthur Sims stated that 51 of 58 counties had implemented the rule. All of the courts had the same challenges as the Los Angeles County trial courts in terms of cost, resources, and population. He expressed concern about the message the council would send to the 51 compliant counties if it granted the exemption based on a request for more money. The other counties found the money to implement the mandated program.

Judge Taylor asked why it would take two years to implement the rule in Los Angeles. Judge Bascue replied that the Los Angeles trial courts are not unified and therefore are unable to receive funding from several sources. Additionally, the Los Angeles trial court system is the largest and most complex in the state.

Chief Justice George asked Judge Bascue if the rule could be implemented in one year if Los Angeles were unified. Judge Bascue replied no.

Mr. Vickrey stated that he reviewed the Los Angeles trial courts' request with Mr. Munsterman, Mr. Clarke, Mr. Ohlrich, and others. He expressed his support for the exemption, noting that the courts had significantly reduced their time frame for implementing the rule and that their circumstances were unique and required different treatment.

Judge Ronald B. Robie expressed concern with the request for exemption from Kern County. He stated that there should be consequences for failing to unify.

Ms. Harrison noted that Kern County did not accept offers of technical assistance to implement the rule.

*Council action:*

Judge Couzens moved that the Judicial Council:

1. Deny the requests of the Colusa, Lassen, and Tehema trial courts for exemptions from rule 861 of the California Rules of Court implementing one-day/one-trial.
2. Approve a one-year good cause exemption for the Alpine trial courts, with a stipulation that the courts agree to allow Mr. G. Thomas Munsterman of the National Center for State Courts to evaluate the feasibility of implementing one-day/one-trial, and if found feasible, develop an implementation plan.

The motion passed.

*Council action:*

Judge Couzens moved that the Judicial Council disapprove a one-year good cause exemption from rule 861 of the California Rules of Court implementing one-day/one-trial for the Kern County trial courts.

The motion passed.

*Council action:*

Judge Couzens moved that the Judicial Council:

1. Approve a two-year good cause exemption from rule 861 of the California Rules of Court implementing one-day/one-trial for the Los Angeles County trial courts contingent upon an assessment by Mr. G. Thomas Munsterman that the increased costs projected by Los Angeles are reasonable.
2. Direct staff to provide Mr. Munsterman's assessment to the council within six months. The council may reevaluate the exemption at that time.

Judge Bascue recused himself from the vote. The motion passed.

## **Item 12                      Court Interpreter Compensation**

Mr. Joseph Wong, AOC staff analyst, presented the report. He said that at its July 1999 business meeting the Judicial Council adopted uniform policies for many areas of court interpreter compensation and directed staff to analyze whether several additional policies would change the contracting relationship between court interpreters and the courts.

Mr. Wong reported that the AOC's Office of the General Counsel and the law firm of Morrison and Foerster believe that adopting the remaining policies presented today would not cause a change in the contractor status of interpreters.

Judge Johnson asked how travel time would be defined in the policy allowing negotiations between the court and interpreter for reimbursement for travel time. Mr. Wong stated that the definition would cover flight time for an interpreter traveling to California from another state. Mr. Wong stated that it is common for counties to pay full-day rates for travel time and short duty in outlying rural areas. Mr. Vickrey responded that those costs are paid for by the state from a central line and not by an individual county.

Mr. Vickrey expressed concern that the proposed policies seemed to give interpreters the power to say they will not work unless they are paid travel time for driving between their place of business and the court.

Judge Couzens suggested revising the proposed language regarding mileage reimbursement to allow the court to pay for extraordinary travel costs such as airfare only with advance approval of the court executive officer.

Justice Carol A. Corrigan and Judge Taylor expressed concern that the lack of specificity in the language would not provide adequate guidance to the trial courts.

Chief Justice George asked that staff continue drafting appropriate language for policies on travel time and excess pay for approval by the council at a later date. Justice Huffman suggested that the language be brought to the Executive and Planning Committee for review and approval and be sent for a full council vote via circulating order.

Mr. Sims asked for clarification of a half day. Mr. Wong responded that the time frame was specified as any consecutive four-hour period beginning between 8:00 a.m. and 8:15 a.m. and ending between 12:00 p.m. and 12:15 p.m., or beginning between 1:00 p.m. or 1:15 p.m. and ending between 5:00 p.m. and 5:15 p.m. He noted that the term was defined narrowly to prevent courts from establishing a half day to be between 10:00 a.m. and 2:00 p.m., thereby preventing an interpreter from getting another half-day assignment the same day.

Justice Corrigan asked whether an interpreter could decline to stay for an assignment that was anticipated to last less than four hours but ran longer. Mr. Wong replied that it was possible. In that situation an interpreter could call a colleague to cover the other assignment for him or her.

*Council action:*

Judge Couzens moved that the Judicial Council, effective January 1, 2000, adopt the following compensation policies for contract court interpreters:

1. Mileage and other costs. Mileage would be provided as follows:
  - a. The interpreter travels 60 miles or more and travels outside of the county of his or her place of business.
  - b. The rate of reimbursement is linked to the state rate, currently \$0.31 per mile.
  - c. Higher rates may be paid by those trial courts in unique circumstances when they have limited or no interpreter resources living within the county or the county is of large geographical size.
  - d. Extraordinary travel costs such as airfare will be reimbursed only with advance approval of the court executive officer.
2. Definitions of the full- and half-day session. A full and half day of interpreting services would be defined as determined by court as follows:
  - a. A half-day session is any portion of a consecutive four-hour period beginning between 8:00 a.m. and 8:15 a.m. and ending between 12:00 p.m. and 12:15 p.m., or beginning between 1:00 p.m. or 1:15 p.m. and ending between 5:00 p.m. and 5:15 p.m.
  - b. The full-day session is two half-day sessions, as defined above, within the same day.
3. Cancellation policy. A cancellation fee will be paid under the following conditions:
  - a. A contract is completed with the interpreter more than 24 hours or one business day in advance of the assignment; and

- b. An assignment is cancelled without 24-hour notice or one business day's notice, for assignments beginning on the first business day of the workweek.
- c. In the case that an interpreter receives another assignment from a state trial court system or federal court, the canceling state trial court is entitled to an offset amount, up to the cancellation fee. The interpreter is to be compensated for the assignment up to a maximum of one full day.
- d. An exception is to be made for those trial courts in unique circumstances when they have limited or no interpreter resources living within the county or the county is of large geographical size, in which case higher cancellation fees may be paid.

The motion passed.

### **Item 13                      Trial Court Coordination: Los Angeles County's Plan**

Ms. Kate Harrison, Acting Director of the Trial Court Services Division, presented the report. Ms. Harrison stated that on December 1, 1999, the presiding judges of the Los Angeles Superior and Municipal Courts announced that judges will take a vote on trial court unification beginning December 15, 1999, and ending January 14, 2000. Under these circumstances, the Executive and Planning Committee voted to recommend that the full council extend Los Angeles trial courts' coordination plan until the next Judicial Council meeting on January 26, 2000.

*Council action:*

Justice Huffman moved that, pending the resolution of the Los Angeles trial courts unification vote, the Judicial Council:

1. Extend the fiscal year 1997–1999 coordination plan through January 26, 2000;
2. Hold fiscal year 1998–1999 carry-forward funds; and
3. Extend pay parity for municipal court judges.

The motion passed.

The meeting was adjourned at 11:45 a.m.

Respectfully submitted,

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William C. Vickrey  
Secretary