

JUDICIAL COUNCIL MEETING
Minutes of February 4, 1998, Meeting

The Judicial Council of California meeting began at 11:10 a.m. on Wednesday, February 4, 1998, at the Hyatt Regency Hotel in Monterey, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Justices Marvin R. Baxter, Roger W. Boren, Carol A. Corrigan, and Richard D. Huffman; Judges Paul Boland, J. Richard Couzens, Albert Dover, Lois Haight, Brenda Harbin-Forte, Melinda A. Johnson, Michael B. Orfield, Eleanor Provost, and Kathryn D. Todd; Mr. Maurice Evans, Ms. Glenda Veasey, and Mr. Brian C. Walsh; and **advisory members:** Judge Dwayne Keyes, Commissioner Nori Anne Walla, Ms. Sheila Gonzalez, Mr. Joseph A. Lane, Mr. Stephen V. Love, and Mr. Ronald Overholt.

Absent: Senator John L. Burton, Assembly Member Martha M. Escutia, and Mr. Sheldon H. Sloan.

Others present included: Mr. William C. Vickrey; Justice M. O. Sabraw (Ret.); Judges John L. Davidson, Frederick P. Horn, Bonnie Lewman, and Wendy Lindley; Ms. Tamara Beard, Ms. Beth Jay, Mr. D. Kent Pedersen, Ms. Jennifer Pedersen, Ms. Joyce Ziegler; **staff:** Ms. Martha Amlin, Ms. Jessica Fiske Bailey, Mr. Paul Baker, Mr. Michael Bergeisen, Ms. Wendi Berkowitz, Ms. June Clark, Ms. Eunice Collins, Ms. Denise Friday, Ms. Katharine Holland, Ms. Lynn Holton, Ms. Kate Howard, Ms. Fea Jacobson, Mr. Dennis Jones, Ms. Fran Jurcso, Mr. Ray LeBov, Mr. Barry Lynch, Ms. Karen Mohrhoff, Mr. Martin Moshier, Ms. Judy Myers, Ms. Taryn Ravazzini, Ms. Nini Redway, Mr. Peter Shrevanick, Ms. Dale Sipes, Ms. Shelley Stump, Ms. Kiri Torre, Mr. Anthony Williams, Mr. Jonathan Wolin, Ms. Kyong Yi; **media representatives:** Mr. Marty Burleson, *Salinas Californian*, Ms. Jean Guccione, *L.A. Daily Journal*, Mr. Robert Lewis, *L.A. Daily Journal*.

Special comment:

Chief Justice Ronald M. George requested a moment of silence to pay respect to fellow member of the Judicial Council, Judge Benjamin Aranda III, who died several days prior to the council meeting.

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 Agenda, Reports, and Recommendations, dated February 4, 1998, which was sent to members in advance of the meeting.)

Minutes of the November 14, 1997, Meeting

Council action:

Commissioner Walla moved that the Judicial Council approve the minutes of the November 14, 1997, meeting.

The motion passed.

Council Committee Presentations

Reports on committee activities were distributed for placement in the binders of Agenda, Reports, and Recommendations, dated February 4, 1998.

COUNCIL ITEMS 1–3 WERE APPROVED AS CONSENT ITEMS, PER THE SUBMITTERS' RECOMMENDATIONS.

ITEM 1 Proposed Resolution Authorizing Joint Annual Award to Recognize Efforts by an Individual Judge to Improve Access to the Judicial System for Poor or Low-Income Persons

The joint State Bar/Judicial Council/California Judges Association Pro Bono Advisory Committee recommended establishing an annual award recognizing and honoring a California judge for efforts to increase access to the courts for indigent or low-income Californians.

Council action:

The Judicial Council adopted the following resolution:

RESOLVED, that the Judicial Council of California authorizes the establishment of the Access to Justice Award, to be given in the name of the State Bar of California, the California Judges Association, and the Judicial Council on an annual basis, honoring a judge who deserves recognition for efforts to improve access to our judicial system for poor or low-income persons; and it is

FURTHER RESOLVED, that the Judicial Council authorizes the Bench-Bar Pro Bono Project Advisory Committee, or its successor entity, in consultation with the chief executive officer of the State Bar, the Judicial Council, and the California Judges Association, to solicit nominations and select the recipient.

ITEM 2 Judicial Council Governance Principles

AOC staff recommended formal adoption of governance principles discussed and approved by the Judicial Council at a special education session led by Dr. John Carver, in November 1997. These policies outline the role of the Judicial Council and relationships between the council, its internal and advisory committees, and AOC staff.

Council action:

The Judicial Council:

1. adopted the Judicial Council Policies and Principles, effective immediately, and
2. directed staff to:
 - a. incorporate these policies and principles into the California Rules of Court where appropriate; and
 - b. periodically recommend changes or additions to these policies and principles as necessary.

ITEM 3 Three Strikes Relief Team Program—Fiscal Year 1996–97 Report

AOC staff recommended approval of the fiscal year 1996–97 report on the Three Strikes Relief Team Program and directed staff to submit the report to the Legislature. The report is required by Senate Bill 1393 (Stats. 1996, ch. 162), which provided \$3.5 million for the 1996–97 program to ensure that second- and third-strike cases will not be dismissed due to lack of judicial resources. The legislation states that teams will be specifically created by the Judicial Council to adjudicate second- and third-strike cases in courts where an excessive backlog of those cases exists, as determined by the Judicial Council.

Council action:

The Judicial Council approved the *Three Strikes Relief Team Program (TSRTP)—Fiscal Year 1996–97 Report* and directed staff to submit it to the Legislature.

ITEM 4 Telephone Appearances Rule (Cal. Rules of Court, rule 298)

Action on this item was postponed to the February 27, 1998, meeting of the Judicial Council.

ITEM 5 Trial Court Coordination Plans for Fiscal Year 1997–98 and 1998–99 and Criteria for Granting Pay Parity Pursuant to AB 233

Hon. Bonnie Lewman, member of the Trial Court Coordination Advisory Committee (TCCAC), presented the item, assisted by Ms. Fran Jurcso of AOC staff. Judge Lewman stated that, pursuant to Government Code section 68112 and section 29 of the California Standards of Judicial Administration, trial courts in each county are required to submit a countywide trial court coordination plan to the council every two years. These plans reflect the current and planned implementation activities of the trial courts in a county or region, consistent with the mandates set forth in the Trial Court Realignment and Efficiency Act of 1991. She noted that the council has approved 40 plans to date and provisionally approved plans submitted by Los Angeles and Orange Counties.

Judge Lewman noted that the TCCAC recommends approval of an additional 11 plans. She stated that the five remaining counties are submitting additional information in response to TCCAC inquiries about their plans. The committee intends to recommend to the council either approval or rejection of these five plans at the council meeting on February 27, 1998.

Judge Lewman stated that the Executive and Planning Committee at its meeting in December approved the TCCAC's use of three categories and related characteristics to distinguish a county's level of progress implementing coordination. The three coordination categories are "fully implemented coordination," "coordination implementation consistent with California Rules of Court, rule 991 deadlines," and "coordination implementation in progress." The TCCAC recommended that the council approve a certification process that grants pay parity to all municipal court judges in counties that meet the following criteria:

1. an approved plan; and
2. (a) in the elements of judicial coordination, a final assessment of either the category of “fully implemented coordination” or “coordination implementation consistent with CRC rule 991 deadlines,” which means cases are heard without regard to jurisdictional limits; or

(b) for those counties with approved plans and with their level of judicial coordination assessed at the level of “coordination implementation in progress” (seven counties), the TCCAC will consider additional information to be submitted by those counties to determine their level of progress. If they have made significant progress, the committee might recommend pay parity. If not, the committee would most likely not recommend pay parity.

Judge Lewman clarified that all counties seeking pay parity under this provision would need to submit a pay parity certification form on a monthly basis.

Judge Couzens asked if there was any on-site review of compliance with coordination mandates or just a declaration of compliance by the court’s executive officer or presiding judge. Judge Lewman stated that the committee has been able to obtain sufficient information without site visits but would not rule out future site visits. Ms. Jurcsó clarified that certification of information for pay parity is similar to certification for a judge’s request for pay differential. The form will state that, under penalty of perjury, the signatory is certifying that the information noted is truthful. Ms. Jurcsó commented that the TCCAC will reassess plan progress every six months.

Justice Boren asked whether *all* municipal court judges in a county that is certified would receive pay parity or only judges participating in coordination. Judge Lewman stated that if the TCCAC determines that a county is fully coordinated, coordinated consistent with rule 991 deadlines, or far along in implementing coordination, pay parity would be granted to *all* the municipal court judges in that county.

Judge Orfield expressed concern that seven counties with council-approved plans may now be told their plans do not comply with rule 991. Judge Lewman clarified that counties are being assessed on *implementing* their approved plan. She noted that a county might have an approved plan that is not being implemented.

Judge Orfield questioned whether a county that is assigning cases as stated in its approved plan would be in compliance with rule 991. Judge Lewman said yes. Ms. Jurcso noted that if a plan states that a county will implement a required element of rule 991 in September 1998, for example, the county will be eligible for pay parity in September 1998.

Mr. Vickrey clarified that compliance with rule 991 does not guarantee meeting statutory criteria for pay parity. He noted that AB 233, which passed in September and became effective on January 1, 1998, was not in existence when prior plans were being approved. In addition to attaining plan approval, courts, in order to achieve pay parity, must be able to show that they are assigning cases in the county or region by a system that maximizes utilization of all judges.

Judge Orfield requested that in the future the council discuss whether pay parity will be granted to counties implementing their plan regionally as opposed to countywide.

In response to a question about what will come before the council on February 27, Ms. Jurcso stated that the committee will submit to the council at the end of February its assessment of the implementation progress of the 5 outstanding counties, details on the 51 approved plans and their level of coordination, and statements from counties whose plans have been denied or which are not being recommended for pay parity.

Justice Huffman requested that, at the February 27 meeting, staff provide the council with a workable summary of the coordination requirements of AB 233 and information on the budget implications of pay parity. He emphasized that the council should know the relevant fiscal considerations when determining whether to increase the salaries of all municipal court judges in 49 counties potentially. Justice Huffman clarified that Orange and Los Angeles Counties will not be considered for pay parity at the council's meeting on February 27, 1998.

Judge Dover noted that Los Angeles and Orange Counties are in the plan *approval* process and are not part of the current discussion on pay parity. Judge Dover agreed with Judge Orfield that the council—not the TCCAC—should discuss and determine its policy on regional versus countywide coordination. The TCCAC can make a recommendation to the council, which examines the pros, cons, and implications of the council's taking a countywide versus a regional approach to coordination.

Mr. Vickrey expressed concern that category three (implementation in progress) in the criteria proposed by TCCAC does not comply with statutory requirements for

granting pay parity. He stated that this issue was very significant in negotiations with the Governor, and with the sponsors of AB 233, and in committee hearings. He stated that the council needs to make sure it is following the statutory requirements faithfully and not honoring or recognizing good intent or mere effort.

Judge Couzens requested further clarification on whether courts with a judge *not* participating in judicial coordination efforts would be eligible for pay parity. Mr. Vickrey pointed out that there was a slight difference between the wording in the proposed TCCAC criteria and in the statute. The requirements of AB 233 are that the Chief Justice has issued a cross-assignment order, that there is an approved coordination plan, that cases are assigned pursuant to a process, and that the council has certified that the cases in the court's jurisdiction are assigned pursuant to a uniform countywide or regional system for assignment of cases among superior and municipal courts that maximizes utilization of **all** judicial officers in that county or region. He emphasized that the wording specifically say *all* judges and not some or most judges.

Mr. Vickrey reported that judges not eligible for pay parity are still eligible to receive a per diem payment, subject to various limitations, when a significant portion of their workload on a given day is superior court work.

Judge Johnson commented that the TCCAC should not concentrate its efforts on deciding whether a county is in the high end of progress or the low end of progress since neither one is enough for the council to certify a recommendation of pay parity.

Mr. Overholt stated that larger counties are making the transition from separate, independent courts to a consolidated or coordinated system. He said that particularly in large courts there is not really a bright line between "not coordinated" and "fully coordinated." He commented that TCCAC's recommendation recognizes the difficulties encountered in moving a large system through this process and that it acknowledges substantial and significant progress toward achieving the agreed-upon goal of trial court coordination.

Council action:

Judge Couzens moved that the Judicial Council:

1. Adopt the Trial Court Coordination Advisory Committee recommendations to approve the trial court coordination plans and summaries for fiscal years 1997–98 through 1998–99 submitted by Amador, Lake, Madera, Merced, Monterey, San Benito, Santa Clara, Trinity, Tulare, Tuolumne, and Yuba Counties.
2. Approve the proposed policy and certification process regarding pay parity, granting pay parity to all municipal court judges in counties that meet the following criteria:
 - a. an approved plan; and
 - b. in the elements relative to judicial coordination:
 - (1) a final assessment of either “fully implemented coordination” or “coordination implementation consistent with California Rules of Court, rule 991 deadlines;” or
 - (2) a final assessment of “coordination implementation in progress.” The TCCAC will make specific recommendations to the Judicial Council based on level of achievement within this category. The TCCAC will provide to the Judicial Council further clarification that describes to what degree the cases in the courts’ jurisdiction are currently assigned pursuant to a uniform countywide or regional system for assignment of cases among superior and municipal courts that maximizes the utilization of all judicial officers in that county or region.
3. Direct the TCCAC to provide its final assessments of progress in coordination implementation and recommendation for pay parity by county or region, based upon the above criteria, to the Judicial Council at its February 27, 1998, meeting.
4. Direct staff to provide a legal opinion at the next Judicial Council meeting of whether 2b(2) above is in compliance with rule 991.

The motion passed.

Chief Justice George directed the committee to resolve any legal questions on this issue with AOC legal staff before presenting its report at the next council meeting.

ITEM 6 Court Profiles Project Report

Ms. Kiri Torre, Director of the Trial Court Services Division, presented the item. She noted that at its November 1996 meeting, the council approved the request of the Court Profiles Advisory Committee (CPAC) for a 24-month extension of the simulation model development project, contingent on the validation of the criminal model portion of the project by May 1997.

Ms. Torre noted that in May 1997, the council reaffirmed its commitment to the simulation model, authorized the committee to proceed, and extended the project timeline to November 1998. In addition, the council directed that there be an independent assessment of the project to measure the value of using computer simulation as a tool for evaluating judicial need in the trial courts and to determine alternative approaches to simulation.

In November 1997, a CPAC subcommittee determined that the sample size of the data used to develop the criminal simulation model was statistically insignificant compared to total filings statewide. This situation, coupled with logistical problems associated with data collection and processing, resulted in reconsideration of the project and timeline. Ultimately, AOC staff determined, and CPAC concurred, that simulation model development should be postponed until the independent assessment was completed.

Council action:

Justice Huffman moved that the Judicial Council postpone further work on simulation model development, pending the outcome of the independent assessment in April 1998 and further direction from the Judicial Council.

The motion passed.

ITEM 7 Trial Court Improvement Fund Allocation

Mr. Vickrey presented the item. He stated that AB 233 requires the Judicial Council to set aside in the Trial Court Improvement Fund a one percent reserve of the annual appropriation to the trial courts, to be allocated as follows:

1. At least one-half of the amount is to be set aside in a reserve, not to be allocated before March 15, except to address the urgent needs of a court or courts;

2. Up to one-quarter of the amount may be allocated to trial courts that have fully coordinated and have met any additional criteria established by the council;
and
3. Up to one-quarter may be allocated for statewide projects for the benefit of the trial courts.

Mr. Vickrey reported that the Judicial Council–approved fiscal year 1997–98 allocation to the trial courts was made based on actual expenditures in fiscal year 1996–97, adjusted for the funding allocated to those courts receiving the 21 new judgeships established pursuant to AB 1818. He said that the legislation, which was implemented mid-year, has created a number of financial problems in this transition year. Of necessity, the allocation did not take into account cost-of-living-adjustments (COLAs) authorized by the counties for court staff and bailiffs (estimated to be least \$15 million statewide), or conversion costs for courts related to the need to replace electronic monitoring in superior courts with court reporters (estimated to be least \$7 million statewide). In addition, the AOC had received information from a variety of trial courts statewide regarding additional urgent needs for fiscal year 1997–98.

Mr. Vickrey stated that in order to maximize the amount of funding available for trial court needs in the current fiscal year, staff recommended that the council approve a one-time shift within the reserve that would redirect funding from the one-quarter percent discretionary amount currently earmarked for statewide projects to augment those funds earmarked to address the urgent needs of the trial courts. He said that this one-time shift would make available a total of \$6 million to address the urgent needs of the courts.

Mr. Vickrey also recommended allocating funding earmarked for coordinated trial courts to those courts that have coordinated to the maximum extent allowable by law, based on the TCCAC recommendation and approved by the council.

Council action:

Justice Huffman moved that the Judicial Council direct the following with regard to available funding for fiscal year 1997–98:

1. The one-quarter percent set aside (approximately \$2 million) earmarked for statewide projects for the benefit of the trial courts be shifted to the portion of the reserve earmarked to address the urgent needs of the trial courts. This will provide approximately \$6 million to trial courts' urgent needs in the current fiscal year.

2. The one-quarter percent set aside earmarked for trial courts that have coordinated be allocated to those trial courts deemed “fully coordinated,” pursuant to the coordination progress assessment conducted by the TCCAC and approved by the Judicial Council. This will reward those courts that have accelerated their coordination efforts in advance of the deadlines set forth in statutes and rules of court.
3. That AOC staff be directed to prepare options and recommendations for the allocation of the identified funding in the Trial Court Improvement Fund for fiscal year 1997–98 for consideration by the Trial Court Budget Commission at its meeting on March 12, 1998, for subsequent recommendation to the council

The motion passed.

CIRCULATING ORDERS APPROVED SINCE LAST BUSINESS MEETING

- Circulating Order CO 98-01a, b, and c: Recommendation on Pending Trial Court Coordination Plans
- Circulating Order CO 98-02a and b: Recommendation on Judgeship Needs Request

For information only; no action required.

JUDICIAL COUNCIL APPOINTMENT ORDERS SINCE LAST BUSINESS MEETING

For information only; no action required.

The meeting was adjourned at 1:45 p.m.

Respectfully submitted,

William C. Vickrey
Secretary