

Bench-Bar Coalition Fall Meeting

at the Annual Meeting of the
California Lawyers
Association

FRIDAY, OCTOBER 11, 2019

PORTOLA HOTEL MONTEREY



JUDICIAL COUNCIL
OF CALIFORNIA

GOVERNMENTAL AFFAIRS



BENCH-BAR COALITION ANNUAL FALL MEETING

Friday, October 11, 2019

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BENCH-BAR COALITION 2019 FALL MEETING

AGENDA

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|---|-------------------------|
| I. Welcome and Introduction
Hon. Pelayo Llamas & Mr. James Heiting,
Cochairs, Bench-Bar Coalition | 10:00–10:05 a.m. |
| II. Opening Remarks
Hon. Tani G. Cantil-Sakauye, Chief Justice, California Supreme Court and
Chair of the Judicial Council of California | 10:05–10:15 a.m. |
| III. Recognition of Outgoing and Installation of Incoming
BBC Executive Committee Members
Chief Justice Tani G. Cantil-Sakauye and BBC Leadership | 10:15–10:30 a.m. |
| IV. Recognition and Update from the California Judges Association
Hon. Paul Bacigalupo, President
Hon. Tam Nomoto Schumann, President-Elect
Ms. Nicole Virga Bautista, Executive Director | 10:30–10:40 a.m. |
| V. Update from the State Bar of California
Ms. Leah Wilson, Executive Director | 10:40–10:50 a.m. |
| VI. Update from the California Lawyers Association
Ms. Heather Rosing, President
Mr. Saul Bercovitch, Director of Governmental Affairs | 10:50–11:00 a.m. |
| VII. Update from the Conference of California Bar Associations
Ms. Jennifer Kim, Chair
Mr. Jeffrey Lac, Chair-Elect | 11:00–11:10 a.m. |
| VIII. Update from the California Commission on Access to Justice
Hon. Mark A. Juhas, Chair | 11:10–11:20 a.m. |
| IX. Update from the American Bar Association
Ms. Ruthe Ashley, California Bench-Bar Coalition Liaison | 11:20–11:30 a.m. |
| X. Update from the Judicial Council of California
Mr. Martin Hoshino, Administrative Director
Mr. Cory Jaspersen, Director of Governmental Affairs | 11:30–11:45 a.m. |
| XI. BBC Activities and Announcements
Hon. Dennis Hayashi & Mr. James Heiting, Cochairs, Bench-Bar Coalition | 11:45–11:55 a.m. |
| XII. Closing Remarks and Adjournment
Hon. Dennis Hayashi & Mr. James Heiting, Cochairs, Bench-Bar Coalition | 11:55–12:00 p.m. |

Chief Justice Tani G. Cantil-Sakauye



During her nine years in office, Chief Justice Tani G. Cantil-Sakauye has emerged as one of the country's leading advocates for equal access to justice, civic education, civility, and reform of court funding models and procedures that unfairly impact the poor.

When she was sworn into office in January 2011 as the 28th Chief Justice of California, she was the first Asian-Filipina American and the second woman to serve as the state's chief justice.

In recent years, Chief Justice Cantil-Sakauye has raised awareness of the unfair financial impact of fines, fees, and the bail system on the poor. She is a leading national advocate calling for bail system reform by addressing concerns about fairness and public safety. In California, she has convened two workgroups to identify ways to make pretrial release decisions that will treat people fairly, protect the public, ensure court appearances, and evaluate pretrial detention programs. In addition, she has asked federal authorities to protect the integrity of the state court system by not arresting undocumented residents at courthouses.

As leader of California's judicial branch and chair of the Judicial Council, Chief Justice Cantil-Sakauye has led the judicial branch out of the state's worst fiscal crisis since the Great Depression. She has improved the branch's efficiency, accountability, and transparency in how it conducts business, sets policy, and discloses information. When she became Chief Justice, she opened meetings of the Judicial Council and its advisory bodies that were once closed to the public and has made public comment more accessible. Judicial Council meetings are now webcast, as are state Supreme Court oral arguments. She expedited court rules that required disclosure of any settlement agreements involving judicial officers for which public funds were spent. She also appointed a committee to recommend how judicial branch entities can prevent and address harassment, discrimination, retaliation, and inappropriate conduct at their workplaces.

She has been recognized for her early work on domestic violence issues, support for minority bar associations, and for advancing the role of women and minorities in the legal profession. The Chief Justice is a leader in revitalizing civic learning through her Power of Democracy initiative. She, along with other state leaders, fulfilled one of the initiative's goals in July 2016 when the state Board of Education unanimously approved an instructional framework that encourages civic learning. In 2019, she was honored with the Sandra Day O'Connor Award by the National Center for State Courts for her work inspiring, promoting, and improving civics education.

The Chief Justice has also convened leaders to address such issues as implicit bias, human trafficking, and truancy. All the Chief Justice's initiatives support her vision for a judicial branch that provides physical access through safe and secure courthouses, remote access through technology initiatives, and equal access to all Californians.

MARTIN HOSHINO
ADMINISTRATIVE DIRECTOR
JUDICIAL COUNCIL OF CALIFORNIA



Martin Hoshino has served as Administrative Director of the Judicial Council (the policymaking body for California's state courts) since 2014. He has more than 20 years of executive leadership experience in California state government, and more than three decades in public service. Between 2003 and 2014, he served in various leadership capacities at the California Department of Corrections and Rehabilitation (CDCR) by appointment of three different Governors, including Undersecretary of Operations, leading one of the CDCR's two principal divisions, and overseeing a \$10 billion budget, 60,000 employees, and 34 prisons. He played a central role in Public Safety Realignment reforms to close the revolving door of low-level inmates cycling in and out of state prisons. Also by gubernatorial appointment, he served on the joint executive California Trial Court Funding Workgroup, established by the Governor and the Chief Justice to conduct a comprehensive evaluation of the state's progress in achieving the goals of the state Trial Court Funding Act of 1997. In 2019, he was appointed to the Board of Directors of the national Conference of State Court Administrators (COSCA). He currently serves on the National Task Force on Fines, Fees, and Bail Practices, convened by the Conference of Chief Justices and COSCA. He earned a master's degree in public administration and political science at the University of California at Davis.

CORY T. JASPERSON
DIRECTOR, GOVERNMENTAL AFFAIRS
JUDICIAL COUNCIL OF CALIFORNIA



Cory T. Jaspersen was chosen to lead the Judicial Council’s legislative and executive advocacy efforts in December 2012. Mr. Jaspersen worked in the State Capitol for the last twelve years, serving in senior staff positions in both the Assembly and Senate with a key policy focus on education, budget, insurance, pensions, and privacy. He was instrumental in the drafting and passage of well-known legislation to increase California’s minimum wage; make human trafficking a felony; limit the use of “gay panic” strategies by criminal defendants; equalize revenue limit funding for school districts; change the kindergarten entry-age and create California’s first new grade-level since 1891; and establish the San Francisco Bay Restoration Authority.

Former chief of staff to California State Senator Joe Simitian (Palo Alto), Cory’s key policy focus was education, budget, and privacy. He also served as the principal consultant to the Senate Select Committee on Privacy. As former chief of staff to Assembly Speaker pro Tempore Sally Lieber (Mountain View), he was responsible for managing and coordinating all aspects of the Speaker pro Tem’s legislative agenda.

Prior to his legislative service, he worked at the Santa Clara County Board of Supervisors, Office of the Dean of Graduate Policy & Research at Stanford University, Federal Bureau of Investigation (Hmong linguistic consultant), and at the Greenlining Institute—a statewide multi-ethnic public policy and advocacy center in Berkeley, where he was the recipient of the Greenlining Institute’s *2007 Big Foot Award* for exceptional leadership in stepping forward to pioneer new trails to empower California’s underserved communities.

Born in Afton, Wyoming, he has lived in California since 1989. Cory received his bachelor’s degree in international relations with an emphasis in world politics and China/Asia/Pacific Rim, and a minor in linguistics from the University of California, Davis.

Mr. James Otto Heiting
Cochair, Bench-Bar Coalition Executive Committee
Southern Region



The managing partner of Heiting and Irwin, Mr. Heiting has been practicing law since receiving his doctorate degree in law in 1976. He is admitted to practice law before all courts of the state, federal courts, the United States Court of Federal Claims, and the California and United States Supreme Courts, and has been an invited speaker, lecturer and panelist for lawyer and trial practice organizations and for the State Bar and a variety of legal and community organizations across the country.

Peers, judges and clients rate him “Superb” (AVVO) and “Preeminent, highest possible rating in legal ability and ethics” (Martindale-Hubbell). He is a member of his law school’s Hall of Fame, “One of the top 100 trial attorneys in the nation” (National Trial Lawyers), “an exceptional lawyer, best of the best” (Inland Empire Magazine). He is also a past President of the State Bar of California (2005-2006).

He is or has been a member of multiple federal and state litigation, ethics, and trial associations; a Commissioner, overseeing eight western states of the Commission on Lawyers Assistance Programs; president of the Riverside County Bar Association; co-founder of the Leo A. Deegan Inn of Court; and president of The Other Bar.

Even with this very active professional life, Mr. Heiting dedicates an extensive amount of time to service on boards of several non-profit organizations, and is the recipient of the highest honors bestowed in two regional bar associations: the James H. Krieger Meritorious Service Award (Riverside County Bar Association), and the Florentino Garza Fortitude Award (San Bernardino County Bar Association), acknowledging significant community service and outstanding civic achievement. He also has received awards for his work encouraging diversity in the State Bar and in our courts. Mr. Heiting is deeply committed to service and to access to, and delivery of, justice.

Hon. Dennis Hayashi
Cochair-Elect, Bench-Bar Coalition Executive Committee
Northern/Central Region



Dennis Hayashi was elected in November 2008 to serve as Judge of the Superior Court for Alameda County. In addition to fulfilling his duties on the bench, Dennis has served as a member and Presiding Judge of the Alameda County Superior Court Appellate Panel from 2013-2016, and as a member of the Court's Executive Committee. Dennis has also served on several California Judicial Council committees, including the Access and Fairness Advisory Committee, the Joint Working Group for California's Language Access Plan, the California Judicial Council Language Access Plan Implementation Task Force, and the Bench Bar Coalition. In 2011 and 2016, Dennis served on the working group convening summits on Diversity in the Judiciary, held in conjunction with the California Judges Association.

Throughout his career, Dennis has worked to ensure fairness and the delivery of justice under the law. Appointed by President Clinton in 1993, Dennis served as the Director of the Office for Civil Rights in the U.S. Department of Health and Human Services, where he was responsible for ensuring that programs and activities receiving funds from the Department were in compliance with all civil rights laws. Overseeing its headquarters in Washington, DC, as well as 10 regional Civil Rights Offices, Dennis ensured the enforcement of laws such as the Age Discrimination Act, Americans with Disabilities Act, and Title VI of the Civil Rights Act.

For five years, Dennis also served as the Director of the California Department of Fair Employment and Housing, the largest state civil rights agency in the country. There he led the Department's efforts to protect and safeguard the civil rights of all Californians, enforcing the Fair Employment and Housing Act, the Unruh Act, and the Ralph Act, which addresses acts of hate violence. In 2005, Dennis was elected to the Board of AC Transit, the third largest bus system in the country, where he worked to ensure affordable transportation to all residents of Alameda County.

His legal expertise was built upon a foundation of defending the rights of the underserved and underrepresented. While an attorney for more than ten years with the Asian Law Caucus, the oldest public interest legal organization in the country serving the Asian American community, Dennis litigated numerous cases on behalf of low-income residents who faced discrimination or harassment on the job, as well as threats to their civil liberties. During this time, he served as co-counsel in the famed case that successfully challenged and overturned Fred Korematsu's World War II conviction for refusing to report to a Japanese American internment camp. He also served as lead counsel in *Henning v. Industrial Welfare Commission*, which challenged the imposition of a subminimum wage for tipped employees in California. The case was decided by the California Supreme Court, and was ranked as one of the 10 most important Supreme Court decisions that year by the California State Bar Association.

Dennis is a graduate of Occidental College and received his JD from Hastings College of Law. Dennis lives in Hayward with his wife Mary Hayashi.

Hon. Paul A. Bacigalupo
Outgoing President, California Judges Association
Member at Large, Bench-Bar Coalition Executive Committee
Southern Region



Judge Paul A. Bacigalupo is an elected Member-at-Large of the Bench-Bar Coalition. He's the elected President of the California Judges Association (CJA), the nation's largest voluntary judicial association with 2300 members who are active and retired justices and bench officers. Judge Bacigalupo is the founding co-chair of CJA's Judicial Fairness Coalition (JFC). The JFC responds to unfair attacks and false claims against judges and the judiciary and engages in community outreach and civic education to promote judicial independence. He's a founding member of CJA's Task Force on Gender, Racial and Ethnic Fairness in the Courts and co-founded a CJA Mindfulness and Wellness Committee to promote well-being and resiliency for judges in their professional and personal lives.

Judge Bacigalupo has been a Judge of the Los Angeles Superior Court since 2003 and was a Judge of the State Bar Court for two years. He's a member of the Judicial Council of California, a Special Master with the Commission on Judicial Performance, former Chair of the Judicial Branch Ethics, Access and Fairness Curriculum Committee, a member of the California Latino Judges Association and a frequent presenter and faculty member on judicial ethics, fairness and access to justice issues.

Ms. Beti Tsai Bergman

***Member at Large, Bench-Bar Coalition Executive Committee
Southern Region***



Beti Tsai Bergman is the principal shareholder of the law firm, Peninsula Law, A Professional Law Corporation. Her firm specializes in probate, trusts, estates, conservatorships, and financial elder abuse. Ms. Bergman has extensive experience in representing conservators, trustees, and executors, as well as, heirs and beneficiaries in uncontested and contested trust and estate matters. Before specializing in probate, Ms. Bergman was a Deputy City Attorney for City of Los Angeles and was a business litigator in private practice.

Ms. Bergman is certified by the California Board of Legal Specialization in estate planning, trust and probate law and has earned a Master Advocate Designation from the National Institute of Trial Advocacy, where she returns as a faculty instructor for their annual Building Trial Skills Program at Loyola Law School. Ms. Bergman has also been named as a Southern California Super Lawyer, listed among the Super Lawyers Top Women in Southern California, named as a Top Attorney by Los Angeles Magazine, as a 10 Best Estate Planning Attorney by the American Institute of Legal Counsel, a Top 3 estate planning lawyer in Torrance by ThreeBestRated, awarded the Best of Torrance Award in 2018 the Local Business Category in 2018 and 2019, and is named in the Torrance Business Hall of Fame. She is also a frequent public speaker and presents seminars in areas of probate law and trial advocacy.

Ms. Bergman is actively involved in the community and sits on the boards of the LACBA Trust & Estates Executive Committee, the Torrance Memorial Hospital Professional Advisory Council, sits as a Judge Pro Tem, and is the past presidents of Asian Pacific Women Lawyers' Alliance and the Southern California Chinese Lawyers Association. She also serves on the Los Angeles Superior Court Probate Court-Appointed Counsel Panel and is a member of the South Bay Inn of Court.

Ms. Bergman earned a J.D. at UC Davis School of Law, where she was a member of the UC Davis Law Review, an M.S. in Applied Mathematics with Concentrations in Probability and Statistics and Partial Differential Equations at California State University Long Beach, where she graduated with Departmental Distinction, and a B.S. Applied Mathematics at UCLA.

Hon. Marlo Nisperos

***Member at Large-Elect, Bench-Bar Coalition Executive Committee
Northern/Central Region***



Marlo Nisperos is a Special Education Administrative Law Judge for the State of California. Prior to becoming an ALJ, she had her own successful practice focusing on criminal defense, immigration and family law. She was a Deputy District Attorney for ten years in Solano County where she prosecuted over 75 cases to trial. A 2005 graduate of Loyola Law School, she was on the Dean's Honor List for three years. Her undergraduate degree from Mills College is in Biochemistry and Molecular Biology. She currently sits on the board of the Solano County Bar Association. The inaugural President of the Asian Pacific American Bar of Solano County, she was a Regional Governor for the National Asian Pacific American Bar Association and serves as Chair of the Mentoring Program at Jesse Bethel High School Law Academy in Vallejo, California.

Mr. Michael Johnson

***Member at Large-Elect, Bench-Bar Coalition Executive Committee
Northern/Central Region***



Mr. Johnson has 28 years of litigation and transactional legal experience. He spent the first 10 years of his law practice as a trial attorney for large and medium-sized law firms in the San Francisco Bay Area before joining AT&T's Legal Department in 2001 where he currently serves as Assistant Vice-President, Senior Legal Counsel for AT&T's Enterprise business and medical business customer segments. He also serves as a Pro Tem judge in Alameda County Superior Court.

At AT&T, Mr. Johnson is responsible for providing advice and counsel, litigation strategy recommendations and evaluation of legal risk to AT&T's corporate officers and senior business leadership regarding compliance with applicable federal and state commercial sales regulations; HIPAA; COPPA; GDPR; CCPA; FCPA; CPNI; advertising; privacy; data protection; intellectual property and licensing as well as supervision and hands-on management of outside litigation counsel.

Mr. Johnson's professional and community organization memberships are extensive and include the following: Alameda County Bar Association, Immediate Past President; and current Board of Directors

- Alameda County Bar Association, Access Legal, Past President, Board of Directors
- American Bar Association, Member
- Association of Corporate Counsel, Member
- Big Brothers/Big Sisters of the East Bay, Board of Directors (1999-2002)
- Charles Houston Bar Association, Member
- Charles Houston Bar Association, Board of Directors (1992-1993)
- Committee of Bar Examiners, State Bar of California, Committee Member (1999-2003)
- DeAnza Law Project, Student Coach
- Ethnic Minority Relations Committee, State Bar of California, Chairman (1998-1999)
- International Association of Privacy Professionals, Member
- Judicial Nominees Evaluation Committee, State Bar of California, Commissioner (2009-2012)
- Review Committee, Judicial Nominees Eval. Comm., State Bar of California, Chairman (2104-2015)
- Subcommittee for Moral Character Determinations, Committee of Bar Examiners, State Bar of California, Chairman (2001-2002)
- Bay Area Street Law Project, Student Coach (2012-2013)

Hon. Pelayo A. Llamas, Jr.
Outgoing Cochair, Bench-Bar Coalition Executive Committee
Northern/Central Region



Hon. Pelayo A. Llamas, Jr. is the outgoing 2017-2019 BBC Executive Committee Co-Chair. Has been a BBC participant since 2013 as the Alameda County representative, and served as an at-large representative for Northern/Central California for 2015-2017. He has been active in many legal organizations such as the Earl Warren American Inn of Court, the Alameda County Bar Association, and the Filipino Bar Association of Northern California. He graduated from UC Berkeley and Santa Clara University School of Law. Pelayo practiced civil litigation and municipal law for 26 years until being appointed as a Commissioner of Alameda County Superior Court earlier in 2019.

Mr. Russell Roeca

Outgoing Member at Large, Bench-Bar Coalition Executive Committee Northern/Central Region



Russ Roeca is a founding partner of boutique AV rated Roeca Haas Montes De Oca LLP, an active trial lawyer and certified mediator. He has tried dozens of cases to jury verdict, court trials, State Bar court trials, and arbitrations. Russ is certified by the State Bar of California as a specialist in Legal Malpractice Law. He represents both plaintiffs and defendants in the professional liability arena.

In addition to his active trial practice, Russ is active in the community. He served as 2009 President of the Bar Association of San Francisco and served as a member of the Board of Governors of the State Bar of California from 2001 to 2004. Russ was also a member of the State Bar Committee on Professional Liability Insurance and served as co-chair from 2010 through 2012. He served on the State Bar Insurance Disclosure Task Force and on the State Bar's Council on Access & Fairness as a founding member chairing its Judicial Committee. Russ is also active in the ABA. He represents the Bar Association of San Francisco by appointment as its Delegate to the ABA's House of Delegates. He is a member of the ABA Center for Professional Responsibility and chairs its diversity committee.

Russ has been active with the Bench Bar Coalition for many years and received the BBC's 2011 Award as Bar Leader of the Year.



Background on the Bench-Bar Coalition

The statewide Bench-Bar Coalition (BBC) was formed in 1993 under the leadership of the California Association of Local Bars (CALB), the State Bar of California, and the Judicial Council to enhance communication and coordinate activities with the state, local, and specialty bar associations on issues of common interest to the judicial branch—particularly in the legislative arena. Securing adequate, dependable, and stable funding for the trial courts has been a primary focus for the BBC. BBC membership is open to members of the bench and bar including judges and the presidents, past-presidents, presidents-elect, executive directors, or other person(s) designated by the president, of state, local, minority or specialty bar associations; legal services organizations; or statewide organizations dedicated to improving the justice system.

The BBC is currently cochaired by Hon. Pelayo Llamas, Commissioner, Superior Court of California, Alameda and Mr. James Heiting, Attorney, Riverside. Commissioner Llamas represents the Northern/Central California region and Mr. Heiting represents the Southern Region. Members of the BBC's Executive Committee support the cochaairs in carrying out leadership responsibilities on quarterly conference calls, meetings, working groups, and related coalition activities.

In addition to its quarterly conference calls, the Bench-Bar Coalition holds meetings in conjunction with the State Bar of California and the judicial branch. The statewide BBC also participates in Day in Sacramento, in which groups of judges and bar leaders meet with their legislators to discuss issues of mutual interest, with emphasis on the judicial branch budget. Judicial Council members and leaders of special commissions and task forces also are invited to participate in this event, which is held annually in conjunction with the State of the Judiciary address by the Chief Justice of California.

The BBC has been successful in the development of strong working relationships and increased communication between the judiciary and members of the bar, as well as enhanced advocacy efforts with the legislative and executive branches. Subject areas of joint interest include the judicial branch budget and the need for stable, adequate funding; access to justice; court technology; new judgeships; and courthouse construction.

For more information about the BBC, please contact Cory Jasperson, the Judicial Council's liaison to the BBC, at (916) 323-3121 phone, (916) 323-4347 fax, or email to cory.jasperson@jud.ca.gov.



BENCH-BAR COALITION

SUMMARY OF ACCOMPLISHMENTS 2019-2020 LEGISLATIVE SESSION

1. The Bench-Bar Coalition held its 2018 fall meeting at the Marriott Marquis in San Diego on Friday, September 14, 2018 during the Annual Meeting of the Conference of California Bar Associations. Over 80 BBC members and judicial branch stakeholders attended. Chief Justice Tani G. Cantil-Sakauye extended welcoming remarks and joined Administrative Director Martin Hoshino and BBC leadership in recognizing the outgoing presidents of the State Bar of California and the California Judges Association for their support of the BBC. Mr. James Heiting, Managing Partner, Heiting & Irwin, was installed as the BBC Southern Region cochair. Judge Paul Bacigalupo, Superior Court of California, County of Los Angeles, and Ms. Beti Tsai Bergman of Los Angeles, were installed to the Executive Committee as Southern Region members at large. The fall meeting agenda included two presentations on Advocacy and the Judicial Branch and Technology and the Courts. Mr. Martin Hoshino and Mr. Cory Jasperson presented information Advocacy and the Judicial Branch. Mr. Robert Oyung, also from the Judicial Council presented information about Technology and the Courts.
2. The BBC held its final quarterly membership conference call of 2018 on Monday, October 22, 2018. Cory Jasperson, the Judicial Council’s Director of Governmental Affairs, provided BBC members with the status of several court-related legislative reports and the budget priorities for 2019 as well as information about upcoming advocacy plans. The meeting adjourned after updates from the legal community, including from the State Bar, the California Judges Association, legal services and California Commission on Access to Justice, and the American Bar Association.
3. The BBC held its first quarterly membership conference call of 2019 on Monday, January 28, 2019. Martin Hoshino provided an overview of the Governor’s proposed budget for Fiscal Year 2019-2020. Cory Jasperson briefed BBC members on Judicial Branch legislative and budget priorities in 2019.
4. The BBC held a special conference call on March 12, 2019 in preparation for the March “Day in Sacramento” legislative visits. Discussion topics included a walkthrough of the itinerary, a status of legislative appointments confirmed to-date, and current political and policy issues.
5. Chief Justice’s State of the Judiciary Address and Bench-Bar Coalition Day in Sacramento Legislative Visits: On March 19, 2019. 38 representatives from the Bench-Bar Coalition traveled to the State Capitol to participate in the Bench-Bar Coalition Day in Sacramento (DIS) activities. That morning, participants convened in the Senate Chambers to hear Chief Justice Tani G. Cantil-

Sakauye deliver her State of the Judiciary Address to a joint session of the California Legislature. In the afternoon, members of the BBC teams met with over 55 Senators, Assembly Members, and legislative staff to deliver key messages about judicial branch budget and legislative priorities. The day's activities culminated in a well-attended reception in the foyer of the Stanley Mosk Library & Courts Building.

6. On April 22, 2019 the BBC held their second quarterly membership conference call of 2019. Cochairs Hon. Pelayo Llamas and Mr. James Heiting thanked members for their participation in the BBC Day in Sacramento and noted that it was a successful event and encouraged future participation from the membership. Mr. Cory Jasperson discussed the process for the upcoming Northern/Central region nominations for the executive committee, noting that three positions would be open. The meeting adjourned after updates from the legal community.
7. The BBC held its third quarterly membership conference call of 2019 on Monday, July 22, 2019. Cory Jasperson discussed the nominations for the Northern/Central California Region noting that nominations closed on July 12, 2019. Cory also reminded the membership that registration for the BBC Fall Meeting in Monterey on October 11, 2019 was open and encouraged members to attend. The meeting adjourned after updates from the legal community.
8. A special conference call was held on Wednesday, August 7, 2019, during which Hon. Dennis Hayashi of Alameda, was ratified as the next BBC Northern/Central Region cochair. He succeeds Commissioner Pelayo Llamas, Superior Court of California, County of Alameda, who will continue his service as immediate past cochair. Ms. Marlo Nisperos of Vallejo and Mr. Michael Johnson of San Ramon, were ratified as incoming Northern/Central Region members at large. All new members of the executive committee will be installed at the BBC's 2019 Fall Meeting in Monterey on October 11, 2019.



BENCH-BAR COALITION

GOALS AND OBJECTIVES: 2019-2020 LEGISLATIVE SESSION

- 1. Support funding priorities for the Judicial Branch.** The Judicial Council will continue to support investment in the courts to improve access to justice for all Californians.
- 2. Support efforts to address the shortage of judgeships statewide.** The judicial branch is significantly impacted by the statewide need for additional judgeships to meet the courts' workload demands and to improve access to justice in the trial courts, especially in those courts with the greatest need. BBC members can be instrumental in educating legislators about the ongoing need for judgeships throughout California.
- 3. Educate the community, the public, legislators, and the Governor on the contributions of the judicial branch to our government.** Too often the public is unaware of the judicial branch's role and function as a separate branch of government and does not understand its contributions to our democracy. By meeting with community and business leaders and obtaining firsthand accounts of how reduced access to the courts has affected them, BBC members can not only educate and inform stakeholders, but also gain support from an additional constituency.



BENCH-BAR COALITION

2019-2020 Calendar

Monday, October 21, 2019		BBC Quarterly Membership Conference Call
January 6, 2019		2020-2021 Legislative Session begins
Monday January 27, 2020		BBC Quarterly Membership Conference Call
February / March 2020 (Tentative)		2020 Day in Sacramento
Monday April 27, 2020		BBC Quarterly Membership Conference Call
Monday July 27, 2020		BBC Quarterly Membership Conference Call
September/October 2020 (Tentative)		2020 BBC Annual Fall Meeting
Monday October 26, 2020		BBC Quarterly Membership Conference Call



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

June 28, 2019

Action Requested

For Your Information

To

Judicial Officers, Court Administrators, and
Employees of the California Judicial Branch

Deadline

N/A

From

Martin Hoshino, Administrative Director
Judicial Council

Contact

Zlatko Theodorovic
Budget Services Director
916-263-1397 phone
zlatko.theodorovic@jud.ca.gov

Subject

Fiscal Year 2019–20 Judicial Branch Budget

The Budget Act of 2019, signed into law by Governor Newsom yesterday, provides a total budget of \$4.26 billion for the judicial branch, including \$4.22 billion in operational funds. New funding of \$430.1 million is provided for operational costs and \$38.3 million for existing capital construction projects. The judicial branch represents 1.5 percent of the state General Fund. This memo details fiscal year (FY) 2019–20 funding for the judicial branch. Additional new monies support trial and appellate courts, technology, facilities, and pretrial pilot projects. The budget also increases the amount of funds trial courts may hold in reserve from 1 percent to 3 percent.

Judicial Branch Funding for FY 2019–20

Judicial Branch Entity	Total Funding (\$ in millions)
Supreme Court	51.5 m
Courts of Appeal	252.1 m
Trial Courts	3,288.4 m
Judicial Council	173.3 m
Judicial Branch Facility Program	503.5 m
Habeas Corpus Resource Center	16.8 m
Subtotal, Operational Budget	\$4,285.6 m
Offset from Local Property Tax Revenue	-\$62.7 m
Adjusted Operational Budget	\$4,222.9 m
Less Nonstate Funds ¹	-\$129.1 m
Adjusted Operational Budget, State Funds	\$4,093.8 m
Court Construction Projects ²	\$38.3 m
Total Funding³	\$4,261.2 m

¹ Nonstate funds include federal funds and reimbursements.

² Includes additional funding for current projects.

³ Includes General Fund; special, bond, federal, and nongovernmental cost funds; and reimbursements.

Note: Some totals will not be exact due to rounding.

The table below provides a breakdown of the \$468.4 million in new funding for the branch, by program area:

Judicial Branch Programs	Amount (\$ in millions)
Supreme Court	\$0.8 m
Courts of Appeal	\$8.2 m
Trial Courts	\$355.3 m
Judicial Council	\$65.6 m
Habeas Corpus Resource Center	\$0.2 m
Subtotal, Judicial Branch Funding	\$430.1 m
Court Construction Projects	\$38.3 m
Total New Funding to Support Judicial Branch	\$468.4 m

FY 2019–20 Budget Highlights

The FY 2019–20 Budget provides new operational funding of \$430.1 million from the General Fund and federal funds to support new judgeships, trial court programs, facilities, and operations.

Pretrial Pilot Projects: \$75 million General Fund to be allocated over a two-year period by the Judicial Council to fund the implementation, operation, or evaluation of programs or efforts in at least 10 courts related to pretrial decision-making. The Governor noted the importance of continuing and replicating the work of the courts related to the Recidivism Reduction Fund and local probation department efforts to conduct risk assessments.

Funding for Previously Approved but Unfunded Judgeships: \$30.4 million in 2019–20 (10 months of funding), and \$36.5 million ongoing, to fund 25 new trial court judgeships. There remains a critical judicial shortage in trial courts with the greatest need. Additional judgeships are required to address essential services in those counties.

Adjustment of Trial Court Reserves Cap: Trailer bill language to increase the cap on trial court reserves from the current 1 percent to 3 percent. Increasing the reserve cap enables courts to retain funding to cover immediate unanticipated costs and adjust to midyear cost increases. Raising the cap also enables courts to better maintain public service levels when economic downturns occur.

Revenue Backfill: \$41.8 million General Fund to address anticipated revenue shortfalls in the Trial Court Trust Fund due to lower filing fee and criminal assessment revenues.

Trial Court Case Management System Replacements: \$23.1 million General Fund in 2019–20 (a total of \$33.7 million over 5 years) to replace various outdated legacy case management systems used by 10 trial courts (Amador, Colusa, Contra Costa, Lassen, Marin, Mariposa, Mono, Nevada, Shasta, and Solano) with a new, commercial, off-the-shelf case management system.

Employee Costs: \$22.5 million General Fund to support the increase in trial court employee retirement and health benefit costs, and an additional \$25 million set aside to begin providing current-year adjustments in 2019–20 to address cost increases.

\$3.3 million General Fund to support retirement and health benefit cost adjustments for employees of the Supreme Court (\$0.26 million), Courts of Appeal (\$1.8 million), Judicial Council (\$1.2 million), and Habeas Corpus Resource Center (\$0.08 million).

In a separate budget item, a 3.5 percent general salary increase for state-level judiciary employees (Supreme Court, Courts of Appeal, Judicial Council, and Habeas Corpus Resource Center).

Judicial Compensation Adjustments: \$39.2 million General Fund for the *Mallano v. Chiang* judgment.

Separately, \$14 million General Fund for previously approved judicial officer salary and benefit cost increases. Judicial salaries are set by statute (Gov. Code, § 68200 et seq.) and are tied to state employee salaries. This amount reflects the average salary increase for the current fiscal year for state employees based on Government Code section 68203(a).

Trial Court Facility Operation and Maintenance: \$20.2 million General Fund for underfunded trial court facility operations and maintenance costs. This funding would extend the useful life of trial court facilities and avoid adverse impacts on court operations.

Trial Court Security Systems and Equipment: \$6 million General Fund to refresh, maintain, and replace security equipment and systems, including video surveillance, electronic access control, duress alarms, and specialized systems used to control access within court holding areas.

Data Analytics and Futures Commission Information Technology (IT) Directives: \$7.8 million General Fund with a two-year expenditure period to advance (1) three IT pilot projects recommended by the Futures Commission (video remote hearings, intelligent chat, and natural language voice-to-text translation); and (2) an IT project to establish and support the foundation of a business intelligence, data analytics, and identity and access management program.

Implementation of Phoenix Roadmap: \$7.7 million General Fund to maintain the Phoenix enterprise resource management system and deploy the requisite upgrade of the system's software and infrastructure. This addresses the most critical needs of the program to modernize and support the trial courts and provides some savings to the branch as the cost of equipment maintenance and refresh will be avoided. This appropriation provides \$3.2 million in relief for the State Trial Court Improvement and Modernization Fund to help keep the fund solvent.

Digitizing Court Records: \$5.6 million General Fund to conduct phase one of a multiphase program for digitizing mandatory court records for trial and appellate courts, and to develop best practices for future statewide implementation.

Dependency Counsel: \$33.9 million federal funds for court-appointed dependency counsel, passed through the California Department of Social Services; and a further \$1.5 million General Fund for 7.5 positions for the Judicial Council to help maintain trial court eligibility and collect the federal reimbursements for courts. The budget also includes \$20 million General Fund to decrease the average attorney caseload of clients.

Legal Aid: \$20 million in one-time funding for the Equal Access Fund to provide legal aid for renters in landlord-tenant disputes.

Shriver Act Civil Counsel: \$2.5 million one-time for the Equal Access Fund for expansion of existing programs that represent low-income families.

Language Access Funding: \$9.6 million General Fund to enable continuation of the expansion of interpreter services in civil matters, and to address increased costs in criminal cases; and \$4 million ongoing to make prior-year, one-time funding permanent.

Chapter 993, Statutes of 2018 (Assem. Bill 1793 [Bonta].)—Cannabis Convictions—Resentencing: \$13.9 million General Fund in 2019–20 and \$2.9 million in 2020–21 to support costs associated with increased workload for the trial courts as a result of the enactment of chapter 993, Statutes of 2018 (Assem. Bill 1793). This legislation requires sentence modification of past cannabis conviction cases pursuant to the Control, Regulate, and Tax Adult Use of Marijuana Act.

Courts of Appeal Workload: \$5.0 million to address general operation cost increases, workload growth due to more complex litigation, new case duties related to recent law changes seeking retroactive decisions, and voter-approved initiatives requiring appellate review.

Litigation Management Program: \$5.6 million General Fund to support the defense and indemnity (as permitted) of all judicial branch entities, including the Supreme Court, Courts of Appeal, the trial courts, and the Judicial Council. This appropriation provides the State Trial Court Improvement and Modernization Fund \$5.2 million in relief to keep the fund solvent.

Fi\$Cal Staffing: \$952,000 General Fund to provide support and administer the newly deployed Financial Information System for California (Fi\$Cal). This funding would be used to effectively manage use of the system and ensure the accuracy and integrity of financial information provided by the Judicial Council in support of judicial branch entities.

Rent Costs: \$1.5 million for rent increases in buildings occupied by the Supreme Court, Courts of Appeal, and Habeas Corpus Resource Center.

Judicial Branch Facilities

The Judicial Branch Capital Outlay budget appears as a separate line item in the Budget Act.

Court Construction: \$38.3 million in new funding for two existing courthouse projects (see below); and authorization for reappropriation and extension of the liquidation period for the San Diego Courthouse and the new Yuba City Courthouse.

	Project	Amount	Phase(s)
1	Imperial County: New El Centro Courthouse	\$17,152,000	Construction
2	Riverside County: New Indio Juvenile and Family Courthouse	\$21,130,000	Working Drawings, Construction
	Total	\$38,282,000	

Deferred Maintenance: \$15 million General Fund in one-time operational funds for deferred maintenance in the courts as prioritized by the Judicial Council.

The enacted budget for the new fiscal year beginning on July 1 will help advance key priorities for the state's court system. The Chief Justice and the Judicial Council appreciate the support of local court leadership and justice system partners and the collaboration with our sister branches of government to serve the needs of Californians.

For Reference

Below are links to budget and trailer bill language and to the Department of Finance's budget website:

- [Budget Act of 2019](#) (AB 74)
- [Courts Trailer Bill](#) (AB 95)
- www.ebudget.ca.gov (final budget post pending)

MH/sm



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HON. TANI CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

MARTIN HOSHINO
Administrative Director

FACT SHEET

October 2019

Governmental Affairs Contacts

The mission of the Judicial Council of California's Governmental Affairs office is to promote and maintain effective relations with the legislative and executive branches and to present the council's recommendations on legislative matters pursuant to constitutional mandate. (Cal. Const., art. VI, § 6). An overview of the office's activities can be found at www.courts.ca.gov/policyadmin-oga.htm.

For information or questions regarding specific program areas, staff may be contacted as follows:

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Access to Justice/Self-represented Litigants	Andi Liebenbaum
Appellate Law	Nichole Rocha
Bench-Bar Coalition	Nichole Rocha
Budget	Cory Jasperson
Child Welfare	Andi Liebenbaum
Civil Procedure	Nichole Rocha
Communications Liaison	Cory Jasperson
Court Closures/Service Reduction	Cory Jasperson
Court Facilities	Cory Jasperson
Court Interpreters	Andi Liebenbaum
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Judicial Conduct	Nichole Rocha
Judicial Education	Nichole Rocha
Judicial Elections	Nichole Rocha
Judicial Service	Nichole Rocha
Jury Issues	Sharon Reilly
Juvenile Justice	Andi Liebenbaum
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Probate and Mental Health	Nichole Rocha
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JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
October 4, 2019	For Your Information
To	Deadline
Hon. Tani Cantil-Sakauye Members of the Policy Coordination and Liaison Committee Mr. Martin Hoshino Ms. Millicent Tidwell Mr. John Wordlaw Mr. Robert Oyung	N/A
From	Contact
Cory T. Jasperson, Director	Cory Jasperson, 916-323-3121 cory.jasperson@jud.ca.gov
Subject	
Status of 2019 Legislation considered by the Policy Coordination and Liaison Committee	

Following is the updated status report on 2019 legislation considered by the Judicial Council’s Policy Coordination and Liaison Committee (PCLC) during the 2019–2020 legislative session. The bills¹ are listed in numerical order by house (Assembly and Senate) and are indexed by subject matter. The second column, “description” summarizes the relevant portions of the bill—and the version of the bill—on which the PCLC position is based. The description column also includes an updated summary to reflect the most current version of the bill. The “Judicial Council position” column tracks the council’s initial position and any subsequent change to that position.

The text of all versions of a bill, committee analyses, vote information, history, and bill status can be found on the Legislature’s website at: <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>. Position letters on legislation as well as fiscal impact statements for those bills that would have a substantial fiscal impact on the judicial branch are published on the Judicial Council’s Governmental Affairs Website at: www.courts.ca.gov/position-letters.htm.

¹ Newly added bills are indicated by an asterisk * since the previous status report update.

JUDICIAL COUNCIL OF CALIFORNIA
Policy Coordination and Liaison Committee Action on 2019 Legislation
and Status of Bills

Judicial Council-sponsored Legislation (See Appendix)

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 AB 490 (Salas) – California Environmental Quality Act: development projects: streamlining 2
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JUDICIAL COUNCIL OF CALIFORNIA
Policy Coordination and Liaison Committee Action on 2019 Legislation
and Status of Bills

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
AB 242 (Cory Jaspersen)	<u>AB 242 (Kamlager-Dove) – Courts: attorneys: implicit bias: training</u> As amended September 6, 2019 Allows the Judicial Council to develop training on implicit bias, requires any training developed to include the components listed in the bill, and requires court staff (who interact with the public on matters before the court) to complete 2 hours of implicit bias training every 2 years as of January 1, 2022.	Support	Author	Signed into law (Stats. 2019, ch. 418)
AB 253 (Andi Liebenbaum)	<u>AB 253 (Stone) – Remote court reporting</u> As amended September 3, 2019 Authorizes, until December 31, 2020, the Santa Clara Superior Court to conduct a pilot project to study the potential use of remote court reporting to make the verbatim record of certain court proceedings. Requires, if the court elects to conduct the pilot project, the remote court reporting to be performed only by official reporters of the Santa Clara Superior Court who have at least 5 years of courtroom experience and only in certain types of cases, including child support and misdemeanor cases. Requires the presiding judge of the Santa Clara Superior Court to appoint a committee to prepare a report to the Legislature on the results of the pilot project and would require the committee’s report to be presented to the Legislature within 6 months of the conclusion of the pilot project. Prohibits all other courts from utilizing remote reporters.	Support, if amended to make the proposed remote court reporting pilot broader, more inclusive and more substantive, and to eliminate the prohibition on other courts utilizing remote reporters.	Service Employees International Union	Signed into law (Stats. 2019, ch. 419)
AB 281 (Cory Jaspersen)	<u>AB 281 (Frazier) – Transmission and distribution lines: undergrounding and fire hardening: CEQA: administrative and judicial streamlining</u> As amended March 21, 2019 Requires CEQA actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. <i>UPDATE: As amended April 22, 2019</i> <i>Removed above expedited judicial review provisions that formed the basis for the council’s opposition.</i>	Oppose UPDATE: <i>As amended April 22, 2019</i> <i>No position</i>	Author	Assembly Utilities and Energy Committee Two-year bill
AB 310 (Sharon Reilly)	<u>AB 310 (Santiago) – Trial Jury Selection and Management Act</u> As amended May 16, 2019 Prohibits the selection of designated probation officers for voir dire in criminal matters. Sunsets these exemptions on January 1, 2024. Directs the Judicial Council to submit a report to the Legislature by January 1, 2023 on the impact of categorical exemptions to jury service, including the impacts to court administration, jury pool diversity, and overall access to justice caused by delays in scheduling.	Oppose categorical exemption; no position on remaining provisions.	Chief Probation Officers of California and State Coalition of Probation Organizations	Senate Public Safety Committee Two-year bill

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
AB 465 (Andi Liebenbaum)	<p>AB 465 (Eggman) – Juveniles: dual status youth</p> <p>As amended May 29, 2019 Defines various terms for purposes of tracking the involvement of youth in both the child welfare and juvenile justice systems. States the intent of the Legislature to replace the term “delinquency” with “juvenile justice” in all parts of the code that address child welfare and juvenile justice. Seeks to codify the “identifying terms” and “terms necessary for tracking outcomes” within the “Recommendations regarding terms and definitions” presented in the Dual Status Youth Data Standards (AB 1911): 2017 Report to the Legislature submitted by the Judicial Council to the California Legislature in November 2017.</p> <p>UPDATE: As amended August 28, 2019 <i>Creates statutory provisions to codify California Rules of Court, rule 4.700 and rule 5.495 regarding judicial oversight of the relinquishment of firearms by parties subject to domestic violence restraining orders. Seeks to align the standards and timelines for setting review hearings when the court finds that the restrained person likely possesses a firearm in the two rules (one of which applies to the Family Code and the other to the Penal Code). Creates new notice, service of process, and other court procedures related to the relinquishment of firearms by restrained persons, including a provision allowing a restrained person to be noticed about a firearms review hearing via e-mail.</i></p>	<p>Support</p> <p>UPDATE: <i>As amended August 28, 2019</i> Oppose</p>	<p>Children’s Advocacy Institute, University of San Diego School of Law</p> <p>California Partnership to End Domestic Violence, Giffords Law Center to Prevent Gun Violence, and WEAVE Sacramento</p>	<p>Inactive file</p> <p>Two-year bill</p>
AB 490 (Cory Jaspersen)	<p>AB 490 (Salas) – California Environmental Quality Act: development projects: streamlining</p> <p>As amended April 11, 2019 Requires CEQA actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. Prohibits a court from staying or enjoining the construction or operation of these projects as specified.</p>	<p>Oppose</p>	<p>Author</p>	<p>Assembly Natural Resources Committee</p> <p>Two-year bill</p>
AB 581 (Sharon Reilly)	<p>AB 581 (Levine) – Sentencing: members of military: trauma</p> <p>As introduced Allows a defendant who is currently serving a felony sentence who is or was a member of the United States military who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of the defendant’s military service, to petition for resentencing, to consider that circumstance as a factor in mitigation if those criteria were not considered at the time of sentencing without regard to whether the defendant was sentenced prior to January 1, 2015. Clarifies that this relief is available whether or not there was argument or evidence about the defendant’s condition at trial.</p>	<p>Support</p>	<p>Author</p>	<p>Senate Appropriations Committee—suspense file.</p> <p>Two-year bill</p>
AB 597 (Sharon Reilly)	<p>AB 597 (Levine) – Probation and mandatory supervision: flash incarceration</p> <p>As amended March 21, 2019 Extends the authority of a court to authorize the use of flash incarceration to detain a person in county jail for not more than 10 days for a violation of the conditions of that person’s probation or mandatory supervision until January 1, 2023.</p>	<p>Support</p>	<p>Chief Probation Officers of California</p>	<p>Signed into law (Stats. 2019, ch. 44)</p>

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
AB 607 (Sharon Reilly)	<u>AB 607 (Carrillo) – Probation: eligibility: crimes relating to controlled substances</u> As amended April 3, 2019 Deletes various crimes relating to controlled substances from the prohibitions against granting probation or a suspended sentence. Authorizes the remaining prohibitions on probation to be waived by a court in the interests of justice. Requires the court to both specify on the record and enter into the minutes the circumstances supporting the findings when probation is granted under those provisions.	Oppose unless amended	California Public Defender’s Association and the Drug Policy Alliance	Senate Appropriations Committee—suspense file. 2-year bill
AB 686 (Andi Liebenbaum)	<u>AB 686 (Waldron) – Indian Children: remote access by tribal counsel</u> As amended September 4, 2019 Among other things, requires the Judicial Council, by July 1, 2021, to adopt rules of court to allow for telephonic or other remote appearance options by an Indian child’s tribe in proceedings where ICWA may apply. Prohibits the imposition of a user fee for telephonic or other computerized remote access for court appearances. Adds to the body of state legislation that brings California into compliance with the federal Indian Child Welfare Act (25 U.S.C. 1901 et seq.; 25 C.F.R. Part 23.).	Support	California Tribal Families Coalition; Alliance for Children’s Rights (Co-Sponsor); and, California Indian Legal Services (Co-Sponsor)	Signed into law (Stats. 2019, ch. 434)
AB 800 (Andi Liebenbaum)	<u>AB 800 (Chu) – Civil actions: confidentiality</u> As amended June 28, 2019 Permits an individual who is a participant in the address confidentiality Safe at Home program pursuant to Chapter 3.1 (commencing with section 6205) of Division 7 of Title 1 of the Government Code to file a civil proceeding using a pseudonym and to exclude or redact other identifying characteristics of the plaintiff from all pleadings and documents filed with the court. Requires the Judicial Council to coordinate with the Secretary of State to adopt or revise rules and forms to implement the provisions of the bill on or before July 1, 2020. Permits, if the protected person is a minor dependent or minor ward of the state, the minor’s parent, guardian, or attorney to notify the minor’s social worker or probation officer of the minor’s participation in the action, and requires the social worker or probation officer to keep information related to the action confidential.	Oppose, due to concerns related to service of process, notice, and enforcement of judgement.	California Protective Parents Association	Signed into law (Stats. 2019, ch. 439)
AB 859 (Andi Liebenbaum)	<u>AB 859 (Maienschein) – Juvenile: dependency: judicial caseloads</u> As amended July 10, 2019 Requires the Judicial Council to study and identify the appropriate caseload standards for judges who adjudicate juvenile dependency proceedings. Requires the Judicial Council to submit a report to the Legislature with the results of the study no later than January 1, 2021. Requires the Department of Social Services, in conjunction with the Judicial Council, to address efficiencies and methods to reduce the workload of dependency judges. UPDATE: As amended September 6, 2019 Removed above adjudication of child welfare provisions that formed the basis for the council’s opposition.	Oppose, inappropriately interferes with court management and the allocation of judicial resources within a court. UPDATE: As amended September 6, 2019 Neutral	Children’s Advocacy Institute	To the Governor

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
AB 1076 (Sharon Reilly)	<u>AB 1076 (Ting) – Criminal records: automatic relief</u> As amended August 30, 2019 Among other things, commencing January 1, 2021, requires the Department of Justice (DOJ), on a monthly basis, to review the state summary criminal history repository to find individuals with felony, misdemeanor and infraction convictions that may be eligible, except in limited circumstances, to have their case records withheld from public disclosure. Requires DOJ to notify courts of eligible case on a monthly basis. Allows prosecuting attorneys to file a motion to prohibit the DOJ from requesting that the court withhold the case from public release no later than 90 calendar days before the date of a person’s eligibility for relief. If the court grants that motion, the case remains available to the public, but the person continues to be eligible to petition to have their case withheld through existing statutes. Requires a court, at the time of sentencing, to advise each defendant of their right to conviction relief under the bill. Makes the operation of some, but not all, provision subject to an appropriation in the annual Budget Act.	Oppose, unless funded	Californians for Safety and Justice and San Francisco District Attorney’s Office	To the Governor
AB 1244 (Cory Jaspersen)	<u>AB 1244 (Fong) – Environmental quality: judicial review: housing projects</u> As introduced Prohibits, as specified, a court in a judicial action or proceeding under the California Environmental Quality Act from staying or enjoining a housing project for which an environmental impact report has been certified.	Oppose	Author	Assembly Natural Resources Committee Two-year bill
AB 1331 (Sharon Reilly)	<u>AB 1331 (Bonta) – Criminal justice data</u> As amended July 11, 2019 Beginning January 1, 2021, requires various entities, including local and state law enforcement agencies and courts, to report specified information to the Department of Justice on a weekly basis. UPDATE: As amended September 6, 2019 <i>Requires courts to, in addition to case disposition information that existing law requires courts to report to the Department of Justice, to report the Criminal Information and Identification (CII) number and court docket number on a monthly basis. Requires a criminal justice agency, when filing a case with the court, to include the CII number in the filing and provides for a delayed operative date of July 1, 2020.</i>	Oppose unless amended, to specify realistic delayed implementation date, and funded. UPDATE: <i>As amended September 6, 2019</i> <i>Neutral</i>	Californians for Safety and Justice	To the Governor
AB 1636 (Sharon Reilly)	<u>AB 1636 (Bonta) – Criminal procedure: determination of probable cause</u> As amended April 4, 2019 Authorizes a person charged by complaint with a felony to, at the time of arraignment, make a motion for a determination of probable cause on each count charged, which shall be made by the court immediately on the basis of the complaint, warrant, police reports, or other documents of similar reliability, or may be continued for not more than 3 days for good cause. Requires the court to dismiss any count charged for which the court does not make a finding of probable cause. Provides that any charge dismissed pursuant to such a motion is allowed to be refiled. Clarifies that a finding of probable cause pursuant to such a motion is not binding on the court in any later hearing for determining probable cause.	Oppose	Alameda County Public Defender and San Francisco Public Defender	Assembly Appropriations Committee—suspense file. Two-year bill

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
AB 1648 (Cory Jasperson)	<p>AB 1648 (Levine) – California Environmental Quality Act: local educational agencies: affordable housing projects: administrative and judicial streamlining</p> <p>As amended March 27, 2019 Requires CEQA actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.</p> <p>UPDATE: As amended April 11, 2019 <i>Removed expedited judicial review provisions that formed the basis for the council’s opposition.</i></p>	Oppose	Author	Assembly Housing and Community Development Committee Two-year bill
AB 1667 (Andi Liebenbaum)	<p>AB 1667 (Santiago) – Wills: electronic wills</p> <p>As amended June 28, 2019 Seeks to authorize the creation and execution of an electronic will as an additional type of will that is a writing created, generated, sent, communicated, received, or stored by electronic means and signed electronically, if it meets specified requirements, including, among others, the requirement to be witnessed.</p>	Oppose, due to conflicts of law and policy between standard written wills and proposed e-wills; fails to provide court authority to protect testators’ interests.	LegalZoom.com	Senate Judiciary Committee Two-year bill
AB 1737 (Cory Jasperson)	<p>AB 1737 (Oberholte) – Courts: unexpended funds</p> <p>As amended April 24, 2019 Repeals the 1 percent limitation on trial courts carrying over unexpended funds, and, instead, allows the Judicial Council to authorize a trial court to carry unexpended funds over from one fiscal year to the next.</p>	Support	Author	Senate Appropriations Committee—suspense file. Two-year bill
AB 1818 (Andi Liebenbaum)	<p>AB 1818 (Committee on Judiciary) – State government: timing of audits and reports</p> <p>As amended August 21, 2019 Among other things, aligns the submission and data collection requirements of two mandatory Judicial Council reports to the Legislature regarding the collection of court-ordered debt.</p>	Support	Author	To the Governor
SB 16 (Cory Jasperson)	<p>SB 16 (Roth) – Courts: judgeships</p> <p>As amended April 4, 2019 Appropriates \$36.5 million from the General Fund to support 25 superior court judgeships that have been authorized by current statute since the passage of AB 159 (Stats. 2007, ch. 722). Requires allocation of those judgeships, pursuant to uniform criteria approved outlined in Government Code section 69614(b) to courts with the greatest need.</p>	Support and Sponsor	Judicial Council	Senate Appropriations Committee—suspense file. Held under submission.

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
SB 17 (Andi Liebenbaum)	<p>SB 17 (Umberg) – Civil discovery: sanctions</p> <p>As amended September 3, 2019 Upon order of the court following stipulation by all parties in a civil action other than unlawful detainer actions and those in small claims, requires a party to, within 45 days of the court order, provide to the other parties an initial disclosure that includes certain information related to discoverable information, as specified. Would, except as specified, also require a court, after notice to any party, person, or attorney, and after opportunity for a hearing, to impose a \$250 sanction against a party, person, or attorney upon specified findings. Authorizes the court to require an attorney to report the sanction in writing to the State Bar within 30 days of the imposition of the sanction. The bill also authorizes the court to excuse the imposition of the sanction if the court makes written findings that the person subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. Establishes a rebuttable presumption that a natural person acted in good faith if that person was not represented by an attorney in the action at the time the conduct that is sanctionable occurred. The presumption may only be overcome by clear and convincing evidence.</p>	<p>Oppose, based on increased sanctions litigation and departure from civil courts' increasing flexibility in addressing civil litigation; focuses on increasing acrimony between/among parties rather than providing parties greater opportunities to arrive at mutually agreeable terms.</p>	<p>Author</p>	<p>To the Governor</p>
SB 25 (Cory Jaspersen)	<p>SB 25 (Caballero) – California Environmental Quality Act: projects funded by qualified opportunity zone funds or other public funds</p> <p>As amended April 11, 2019 Among other things, requires the Judicial Council, on or before September 1, 2020, to amend certain rules of court to establish procedures applicable to actions or proceedings brought pursuant to the California Environmental Quality Act (CEQA) seeking judicial review of the environmental review and approvals granted for an undefined number of projects throughout the state that are funded by qualified opportunity zone funds or other specified public funds. Requires these actions or proceedings, including any potential appeals therefrom, be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. Requires a party seeking to file a CEQA action or proceeding against a project covered by this bill to provide the lead agency and the real party in interest a notice of intent to sue within 10 days of the posting of a specified notice. (See proposed Public Resources Code section 21168.6.9, subdivision (g)(1).) Sunsets the bill's provisions on January 1, 2025.</p> <p><i>UPDATE: As amended April 30, 2019 Removed the limits on injunctive relief provision described above, added 5-year sunset, and made various other changes.</i></p>	<p>Oppose</p>	<p>Author</p>	<p>Assembly Natural Resources Committee</p> <p>Two-year bill</p>

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
SB 36 (Sharon Reilly)	<p>SB 36 (Hertzberg) – Pretrial release: risk assessment tools</p> <p>As amended September 6, 2019 Requires each pretrial services agency that uses a pretrial risk assessment tool to validate the tool by January 1, 2021, and on a regular basis thereafter, but no less frequently than once every 3 years, and to make specified information regarding the tool, including validation studies, publicly available.</p> <p>Requires the Judicial Council to maintain a list of pretrial services agencies that have satisfied those validation requirements and complied with those transparency requirements.</p> <p>Requires the Judicial Council, beginning on December 31, 2020, and on or before December 31 of each year thereafter, to publish a report on its internet website with data related to outcomes and potential biases in pretrial release. Requires pretrial services agencies, the Department of Justice, courts, and local governments that elect to use risk assessment tools to work with the Judicial Council to provide the data necessary for this report. Protects the use of the data by restricting the Judicial Council from sharing any individual level data unless the council has entered into a contract for research purposes.</p> <p>To ensure that there is sufficient funding for the data collection, analysis and reporting requirements, those provisions of SB 36 solely apply to agencies receiving funding, as follows:</p> <ul style="list-style-type: none"> • Pretrial services agencies that have a contractual agreement with one of the Pretrial Pilot Program courts (funded with the Budget Act of 2019 appropriation of \$75 million for the pilots). • Agencies otherwise funded by the state to perform risk assessments. For example, if SB 10 goes into effect or the state chooses to expand or continue the pilot projects. • Other agencies that perform risk assessments only if sufficient funding is provided to the Judicial Council, the superior courts, and pretrial services agencies to ensure their ability to meet the data reporting requirements and standards as set forth by the Judicial Council. <p>Requires the Judicial Council, on or before July 1, 2022, to provide a report to the courts and the Legislature containing recommendations to mitigate bias and disparate effect in pretrial decisionmaking.</p>	Support	Author	To the Governor

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
SB 303 (Andi Liebenbaum)	<p><u>SB 303 (Wieckowski) – Guardians and conservators: compensation: residence of conservatee</u></p> <p>As amended July 11, 2019 Provides the presumption that the personal residence of the conservatee is the least restrictive appropriate residence for the conservatee, and that, in any hearing to determine if removal of the conservatee from their personal residence is appropriate, may be overcome by clear and convincing evidence. Requires a conservator to notify the court of the proposed sale of a present or former residence before the conservator commits any significant resources to the proposed sale, except as specified, and would further require the conservator to provide the court with additional information about the projected effect of the sale on the conservatee’s capital gains income, tax liability, and eligibility for public benefits. Substantially limits the court’s discretion to grant a conservator authority to sell a conservatee’s personal residence without court confirmation of the sale. In addition, requires the conservator to demonstrate to the court, by clear and convincing evidence, a compelling need to sell the residence for the benefit of the conservatee, and the bill would delete the authority of a court to waive certain requirements for a sale, including the requirement for a conservator to obtain an appraisal. Prohibits compensation to a guardian, conservator, or attorney with any government benefits program moneys designated for the conservatee, unless specifically authorized pursuant to other provisions of law.</p>	<p>Oppose, inappropriately limits judicial discretion and interferes with judicial oversight over conservatees.</p>	<p>CEDAR (Coalition for Elder and Disability Rights)</p>	<p>To the Governor</p>
SB 384 (Cory Jaspersen)	<p><u>SB 384 (Morrell) – Housing</u></p> <p>As amended March 25, 2019 Requires CEQA actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. Prohibits a court from staying or enjoining the siting, construction or operation of these housing projects as specified.</p>	<p>Oppose</p>	<p>Author</p>	<p>Senate Environmental Quality Committee—failed passage.</p> <p>Two-year bill</p>
SB 389 (Sharon Reilly)	<p><u>SB 389 (Hertzberg) – Mental Health Services Act</u></p> <p>As introduced Authorizes counties to use Mental Health Services Act moneys to provide services to persons who are participating in a presentencing or postsentencing diversion program or who are on parole, probation, postrelease community supervision, or mandatory supervision.</p>	<p>Support</p>	<p>Los Angeles County District Attorney</p>	<p>Signed into law (Stats. 2019, ch. 209).</p>

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
SB 435 (Andi Liebenbaum)	<p>SB 435 (Moorlach) – Family law: evidence</p> <p>As amended April 11, 2019 Seeks to do two things: (1) address admissibility of hearsay in family law cases, and (2) direct the Judicial Council to promulgate standards and develop training. As to the former, the bill adds Family Code section 2670 which would allow a party in a proceeding for dissolution of marriage or for legal separation to rely on hearsay evidence in establishing the character and value of separate and community property in certain circumstances. It also amends Family Code section 3117 to permit hearsay in reports by Child Custody Recommending Counselors if the hearsay statement is relied upon by an expert in forming the expert’s opinion if the hearsay statement is of the type routinely relied upon by the expert and the statement has been evaluated by the expert and determined to be trustworthy. As to the latter, requires the Judicial Council, by January 1, 2021, to draft standards for recommendations made by private child custody recommending counsel (CCRC) professionals who make recommendations relating to child custody and visitation rights. Under the bill, a report based on a court-connected evaluation, private CCRC recommendation, investigation, or assessment prepared in compliance with those standards and any hearsay evidence contained in the report, would be admissible in court and constitute competent evidence if the report is provided to the court and to all parties or their counsel at least 10 days prior to the custody hearing. Requires the Judicial Council, on or before January 1, 2021, to promulgate a statewide rule of court requiring a person conducting an evaluation, investigation, or assessment in a child custody case to make and maintain a detailed record of all interviews conducted during the evaluation, investigation, or assessment process and to maintain the interview records until the case is resolved by final order. Requires the Judicial Council to establish judicial training programs for individuals who conduct court evaluations, investigations, and assessments in child custody cases, as specified. The April 11, 2019, amendments eliminates the provision that requires the parties to stipulate before otherwise inadmissible hearsay in the form of reports is admitted as competent evidence.</p>	Oppose	Association of Certified Family Law Specialists	Senate Judiciary Committee— failed deadline. Two-year bill
SB 471 (Sharon Reilly)	<p>SB 471 (Stern) – Subpoenas: form and service</p> <p>As amended July 1, 2019 Authorizes a subpoena in a criminal matter to be delivered by electronic mail or facsimile transmission. Requires each subpoena issued to contain a unique numeric or alphanumeric identification code, known as a “subpoena number.” Requires, for service to be effected, that the witness identify the subpoena by reference to its unique subpoena number and requires the sender to make a written notation of the fact that the witness made that identification. Deletes the provision in existing law stating that a warrant of arrest or a body attachment may not be issued based on a failure to appear after being subpoenaed pursuant to these provisions.</p> <p>UPDATE: As amended September 6, 2019 <i>Removes the requirement for subpoenas to have a unique number and makes conforming changes.</i></p>	<p>Support if the provisions authorizing the use of electronic subpoenas are amended to either remove the requirement that the electronic subpoena use in a unique subpoena number or make the use of a unique subpoena number optional.</p> <p>UPDATE: <i>As amended September 6, 2019</i> Support</p>	California District Attorneys Association	To the Governor

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Judicial Council Position	Sponsor	Status as of October 4, 2019
SB 516 (Sharon Reilly)	<u>SB 516 (Skinner) – Evidence of participation in a criminal street gang</u> As amended March 25, 2019 Requires a case in which a person is charged with actively participating in a criminal street gang and other criminal charges to be tried in phases that separate the trier of fact’s determination of the person’s guilt of participation with the criminal street gang and guilt of the other criminal charges.	Oppose	Youth Justice Coalition Alliance for Boys and Men of Color	Senate Appropriations Committee— suspense file. Two-year bill
SB 557 (Sharon Reilly)	<u>SB 557 (Jones) – Criminal proceedings: mental competence: expert reports</u> As amended July 11, 2019 Makes all documents submitted to a court pursuant to proceedings on competency to stand trial, including examinations, evaluations, recommendations, reports or certificates of restoration presumptively confidential, except as otherwise provided by law. Requires those documents to be retained in the confidential portion of the court’s file and that counsel for the defendant and the prosecution maintain the report as confidential. Provides that the defendant, counsel for the defendant, and the prosecution may inspect the documents and that the court may consider a motion, application, or petition to unseal the documents, in whole or in part, pursuant to subdivision (h) of rule 2.551 of the California Rules of Court.	Support	California Judges Association	Signed into law (Stats. 2019, ch. 251)
SB 580 (Sharon Reilly)	<u>SB 580 (Wilk) – Animal abuse: probation: treatment</u> As amended May 22, 2019 Requires the court to order a psychological or psychiatric evaluation when a defendant is granted probation for: sexually assaulting an animal; poisoning an animal; improperly caring for an animal; injuring a police dog; maliciously and intentionally injuring an animal; or, overworking an animal.	Oppose	Animal Legal Defense Fund	Assembly Public Safety Committee Two-year bill
SB 621 (Cory Jaspersen)	<u>SB 621 (Glazer) – California Environmental Quality Act: court actions or proceedings: affordable housing projects</u> As amended June 17, 2019 Requires CEQA actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court.	Oppose	Author	Assembly Natural Resources Committee Two-year bill
SB 744 (Cory Jaspersen)	<u>SB 744 (Caballero) – Planning and zoning: California Environmental Quality Act: permanent supportive housing: No Place Like Home Program</u> As amended April 29, 2019 Requires CEQA actions or proceedings, including any appeals therefrom, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court. UPDATE: As amended July 11, 2019 <i>The provision requiring expedited 270-day judicial review was removed from the bill, which was the basis of Judicial Council opposition.</i>	Oppose UPDATE: <i>As amended July 11 2019</i> <i>No position</i>	Author	Signed into law (Stats. 2019, ch. 346)

Appendix
Status of 2019 Judicial Council-Sponsored Legislation

Bill No. (Advocate)	Bill No. (Author) Description and Updates	Sponsor	Status as of October 4, 2019
SB 16 (Cory Jaspersen)	<p>SB 16 (Roth) – Courts: judgeships</p> <p>As amended April 4, 2019 Appropriates \$36.5 million from the General Fund to support 25 superior court judgeships that have been authorized by current statute since the passage of AB 159 (Stats. 2007, ch. 722). Requires allocation of those judgeships, pursuant to uniform criteria approved outlined in Government Code section 69614(b) to courts with the greatest need.</p>	Judicial Council	<p>Senate Appropriations Committee—suspense file.</p> <p>Held under submission.</p>



JUDICIAL COUNCIL OF CALIFORNIA

GOVERNMENTAL AFFAIRS

LEGISLATIVE UPDATE

September 30, 2019

CEQA

[AB 1197](#) (Santiago) California Environmental Quality Act: exemption: City of Los Angeles: supportive housing and emergency shelters

Previously was a bill that applied CEQA exemptions to all emergency housing and emergency shelters. Now it applies only to Los Angeles emergency housing and emergency shelters.

Until January 1, 2025, exempts certain activities approved or carried out by the City of Los Angeles related to supportive housing and emergency shelters from CEQA.

Status of AB 1197: Signed by the Governor, (Ch. 340, Stats. 2019).

[SB 744](#) (Caballero) Planning and zoning: California Environmental Quality Act: permanent supportive housing

Among other things, shortens statutes of limitation, Attorney General filing requirements/limits on attorney's fees, and 270 days CEQA expedited judicial review requirements for "No Place Like Home" supported housing projects, or other similar housing projects.

Comment: The council has a standing oppose position to attempts to mandate specified timelines of judicial review or prohibit injunctive relief under CEQA.

Update: The bill has been amended to remove the expedited judicial review that was the basis for the council's opposition.

Status of SB 744: Signed by the Governor, (Ch. 346, Stats. 2019).

Fines, Fees, Penalties, and Assessments

[AB 330](#) (Gabriel) Appointed legal counsel in civil cases

Expands the [Sargent Shriver Civil Counsel Act](#) program by adding a \$15 fee to a number of court fees including, among others, issuing an abstract of judgment, issuing an order of sale, etc... Further, requires the increased funding to be used by the Judicial Council for the Shriver program.

Status of AB 330: Signed by the Governor, (Ch. 217, Stats. 2019).

AB 927 (Jones-Sawyer) Crimes: fines and fees: defendant’s ability to pay

Requires ability to pay determinations for all adult and juvenile misdemeanor and felony proceedings.

Update: The bill was amended to include specific factors for which a defendant is presumed to not have the ability to pay including if a defendant is homeless, lives in a shelter, or lives in a transitional living facility, receives need-based public assistance, is very low income, or is sentenced to state prison for an indeterminate term or a term of life without the possibility of parole. August 30, 2019 floor amendments clarify that ability to pay findings can be stipulated by counsel or based on information contained in the probation report. These amendments address court workload concerns about the prior version of the bill (as [analyzed](#) for the Senate Appropriations Committee) that would have added an ability to pay component to all misdemeanor and felony sentencing hearings.

Fiscal Impact: Significant revenue impact as it is reasonable to assume that a portion of defendants will have some or all of their criminal fines and fees reduced as a result of an ability to pay determination at sentencing.

Status of AB 927: Enrolled, pending on Governor’s desk.

AB 1076 (Ting) Criminal records: automatic relief

Requires the Department of Justice to review its criminal justice databases monthly to identify persons who are eligible for relief and to notify the courts to withhold eligible conviction records from disclosure to the public.

Requires that defendants be “released from all penalties and disabilities” resulting from the conviction.

Update: While we appreciate the August 30, 2019 amendments to make the bill prospective and make some, but not all, provisions contingent on funding in the annual Budget Act, we continue to have significant concerns about the fiscal impact AB 1076 will have on courts. Based on current filing trends, we estimate ongoing workload costs between \$456,000 and \$884,000; one-time implementation costs between \$700,000 and \$1.6 million; and ongoing revenue losses of more than \$12 million.

Status of AB 1076: Enrolled, pending on Governor’s desk.

AB 1394 (Daly) Juveniles: sealing of records

Prohibits a superior court or probation department from charging an applicant a fee for filing a petition to seal juvenile records.

Update: Repeals the provision which made a person who is 26 years of age or older, unless indigent, liable for the cost to the county and court for an investigation related to the sealing of juvenile court or arrest records pertaining to that person

Status of AB 1394: Enrolled, pending on the Governor’s desk.

AB 1421 (Bauer-Kahan) Supervised release: revocation

Prohibits the revocation of supervision for failure to pay fines, fees, or assessments, unless the court determines that the defendant has willfully failed to pay and has the ability to pay.

Status of AB 1421: Signed by the Governor, (Ch. 111, Stats. 2019).

SB 164 (McGuire) Infractions: community service

Allows individuals that are performing community service because paying the fine resulting from an infraction is demonstrated to be an economic hardship, to perform that community service in either the county in which the infraction violation occurred, or in the county of the person’s residence.

Update: Staff has provided technical assistance to the author’s office.

Status of SB 164: Signed by the Governor, (Ch. 138, Stats. 2019).

SB 485 (Beall) Driving privilege: suspension: suspension or delay

Prohibits, to the extent permitted by federal law and federal funding is not jeopardized, the court and the DMV from suspending or delaying a person’s driving privilege based on that person’s conviction of a criminal offense not involving a violation of the Vehicle Code, unless the offense involved the use, or the attempted use, of a vehicle and the suspension or delay is otherwise authorized or required by law.

Repeals the authority to suspend or delay the person’s driving privilege for the above-described offenses relating to vandalism, prostitution, lewd or dissolute conduct, controlled substance or alcohol use, or firearm use.

Removes the authority of the DMV and the court to suspend or restrict a driver’s license based on the lists relating to tax delinquencies.

States that its provisions are not intended to affect any order or determination made by the court or the department before January 1, 2020, to suspend, delay, or otherwise restrict the driving privilege of a person.

Update: The bill has been clarified to specify which criminal offenses not involving a violation of the Vehicle Code, the court and the DMV will no longer have the ability to suspend at individual’s driver’s license.

Status of SB 485: Enrolled, pending on Governor’s Desk.

Safe Parking Programs

AB 891 (Burke) Public property: safe parking program

Requires a city or a county with a population greater than 330,000 to establish a safe parking program that provides safe parking locations and options for individuals and families living in their vehicles. The bill would require a safe parking program to provide a bathroom facility and onsite security, among other requirements.

Requires the safe parking programs be developed and implemented by June 1, 2022.

Cities and counties are encouraged to review the Department of General Services' internet website for the availability of surplus state property and the Department of Transportation's internet website for the availability of excess land that could be used for a safe parking program.

Status of AB 891: Enrolled, pending on Governor's Desk.

Resentencing/Court Records

AB 1076 (Ting) Criminal records: automatic relief

Requires the Department of Justice to review its criminal justice databases monthly to identify persons who are eligible for relief and to notify the courts to withhold eligible conviction records from disclosure to the public.

Requires that defendants be "released from all penalties and disabilities" resulting from the conviction.

Update: While we appreciate the August 30, 2019 amendments to make the bill prospective and make some, but not all, provisions contingent on funding in the annual Budget Act, we continue to have significant concerns about the fiscal impact AB 1076 will have on courts. Based on current filing trends, we estimate ongoing workload costs between \$456,000 and \$884,000; one-time implementation costs between \$700,000 and \$1.6 million; and ongoing revenue losses of more than \$12 million.

Status of AB 1076: Enrolled, pending on Governor's desk.

AB 1202 (Chau) Privacy: data brokers

Requires data brokers to register with, and provide certain information to the Attorney General. Data broker are defined as a business that knowingly collects and sells to 3rd parties the personal information of a consumer with whom the business does not have a direct relationship.

Requires the Attorney General to make the information provided by data brokers accessible on its internet website. Data brokers that fail to register subject to injunction and liability for civil penalties, fees, and costs in an action brought by the Attorney General, with any recovery to be deposited in the Consumer Privacy Fund.

Status of AB 1202: Enrolled, pending on Governor's desk.

AB 1331 (Bonta) Criminal justice data

Requires criminal justice agencies to report that records and data using person-level and case-level identifiers.

Requires various entities, including courts, to report specified information to the DOJ on a weekly basis.

Update: The council has taken an oppose unless amended and funded position.

Status of AB 1331: Enrolled, pending on Governor's desk.

SB 557 (Jones) Criminal proceedings: mental competence: expert reports

All documents submitted to a court after January 1, 2020, pursuant to this process presumptively confidential, except as otherwise provided by law. Requires the documents to be retained in the confidential portion of the court's file, and would require counsel for the defendant and the prosecution to maintain the documents as confidential.

Authorizes counsel for the defendant and the prosecution to inspect, copy, or utilize the documents, and any information contained in the documents, without an order from the court for specified purposes, including the safety of the public. Requires a motion, application, or petition to inspect or copy the documents to be decided according to specified court rules. The bill would authorize a court to deem documents submitted prior to January 1, 2020, confidential and would authorize the prosecution, defendant, or defendant's counsel to request

Status of SB 557: Signed by the Governor, (Ch. 251, Stats. of 2019).

Judges

SB 184 (Moorlach) Judges' Retirement System II: deferred retirement

Reintroduction of SB 656, which was vetoed by Governor Brown last year.

Authorizes a judge who has attained 60 years of age with a minimum of 5 years of service, or who has accrued 20 or more years of service, to retire and to elect to receive a monthly pension that would be deferred until the judge reaches the specified retirement age. Prohibits a judge who elects to retire in this manner from receiving benefits until he or she reaches the specified retirement age and prescribes procedures to apply if the judge fails to elect within 30 days of separation.

Fiscal Impact: (Senate Appropriations analysis)

- This bill would result in increased annual benefit payouts to retired judges beyond what would occur under current law. CalPERS estimates that the present value of these payments, for all future fiscal years aggregated, is \$22 million (JRS II Fund). The cost in present value for any individual year would be considerably less.
- Additionally, this bill would result in increased annual state contributions to JRS II to fund the increase in accrued liability that would occur as a result of the bill. CalPERS estimates this cost to be \$2.1 million in 2019-20. Costs in the ensuing years would likely be in the low millions of dollars annually thereafter (General Fund).

Status of SB 184: Enrolled, pending on Governor's desk.

Immigration

AB 668 (Gonzalez) Courthouses: Privilege from civil arrest

Reintroduction of [SB 349](#), which was a gut and amend of SB 183, from the 2017-2018 session and was ultimately vetoed by Governor Brown. There is an identical senate bill, [SB 31](#), from the current, 2019-2020, session.

Provides that no person shall be subject to civil arrest in a courthouse while attending a court proceeding or having legal business in the courthouse. Also clarifies the power of judicial officers to prohibit activities that threaten access to courthouses, including protecting the privilege from arrest at a courthouse.

Intent is to address the issue of ICE arrests in courthouses.

Status of AB 668: Enrolled, pending on Governor's desk.

AB 917 (Reyes) Victims of crime: nonimmigrant status

Requires a certifying official from a certifying entity to certify “victim helpfulness” or “victim cooperation,” when requested by a licensed attorney representing the victim or a representative accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings.

Requires the certifying entity to process the Form I-918 Supplement B certification those forms within 30 days of the request, or within 7 days of the request if the noncitizen is in removal proceedings.

Requires a state or local law enforcement agency with whom a victim had filed a police report to provide a copy of that report upon request of the victim, victim’s family member, licensed attorney representing the victim, or a representative accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings.

Status of AB 917: Enrolled, pending on Governor's desk.

Criminal/Traffic

SB 389 (Hertzberg) Mental Health Services Act

Amends MHSA to authorize the counties to use MHSA moneys to provide services to persons who are participating in a presentencing or postsentencing diversion program or who are on parole, probation, postrelease community supervision, or mandatory supervision.

Update: The council has taken a support position.

Status of SB 389: Signed by the Governor, (Ch. 209, Stats. 2019).

SB 394 (Skinner) Criminal procedure: diversion for primary caregivers of minor children

Creates a pretrial diversion program for defendants who are primary caregivers of a minor child and who are charged with a misdemeanor or a nonserious, nonviolent felony. Requires the defendant to participate in classes

relating to subjects including parenting, anger management, and financial literacy, and to receive services relating to housing, employment, and drug, alcohol, and mental health treatment.

Status of SB 394: Enrolled, pending on Governor's desk.

Civil

[AB 327](#) (Maienschein) Estates and trusts: at-death transfers

Exempts at-death transfers between spouses by will, revocable trust, beneficiary form, or other instrument from the provisions regarding general rules governing fiduciary relationships, which are the same rights and duties governing nonmarital business partners, and any presumptions of undue influence arising from those provisions.

Status of AB 327: Signed by the Governor (Ch. 43, Stats. 2019).

[AB 328](#) (Maienschein) Estates and trusts: undue influence

A gift has an expressed presumption of fraud if made to a care custodian who commenced a marriage, cohabitation, or domestic partnership with a transferor who is a dependent adult while providing services to that dependent adult, or within 90 days after those services were last provided to the dependent adult, if the donative transfer occurred, or the instrument was executed, less than 6 months after the marriage, cohabitation, or domestic partnership commenced.

Prohibits a surviving spouse from receiving a share of the decedent's estate if the spouse was a care custodian of the decedent who was a dependent adult and the marriage commenced while the care custodian provided services to the decedent, or within 90 days after those services were last provided to the decedent, and the decedent died less than 6 months after the marriage commenced, unless the spouse can prove by clear and convincing evidence that the marriage was not the product of fraud or undue influence.

Status of AB 328: Signed by the Governor (Ch. 10, Stats. 2019).

[SB 17](#) (Umberg) Civil discovery: sanctions

Upon order of the court following stipulation by all parties in a civil action, require a party within 45 days of the court order, to provide to the other parties an initial disclosure that includes certain information related to information.

Also requires a court, after notice and after opportunity for a hearing, to impose a \$1,000 sanction against a party, person, or attorney upon findings that the they

- failed to respond in good faith to a document request
- produced the requested documents within 7 days of a motion to compel that is filed by the requesting party as a result of the other party, person, or attorney's failure to respond in good faith
- failed to meet and confer in person, by telephone, or by letter to resolve any dispute regarding the request

Authorizes the court to require an attorney to report the sanction in writing to the State Bar within 30 days of the imposition of the sanction. Also authorizes the court to excuse the imposition of the sanction if the court makes written findings that the person subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Status of SB 17: Enrolled, pending on Governor's desk.

Administrative

AB 5 (Gonzalez) Worker status: employees and independent contractors.

States the intent of the Legislature to codify the decision in the Dynamex case and clarify its application. Provides that for purposes of the provisions of the Labor Code, the Unemployment Insurance Code, and the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that the person is free from the control and direction of the hiring entity in connection with the performance of the work, the person performs work that is outside the usual course of the hiring entity's business, and the person is customarily engaged in an independently established trade, occupation, or business.

The bill, notwithstanding this provision, provides that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 (Borello).

Also exempts specified occupations from the application of Dynamex, and instead provides that these occupations are governed by Borello. These exempt occupations include, among others, licensed insurance agents, certain licensed health care professionals, registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, commercial fishermen, workers providing licensed barber or cosmetology services, and others performing work under a contract for professional services, with another business entity, or pursuant to a subcontract in the construction industry.

Status of AB 5: Signed by Governor, (Ch. 296, Stats. 2019).

AB 242 (Kamlager-Dove) Implicit bias

Allows the Judicial Council to develop training on implicit bias (implicit bias training has been a component of the Judicial Council's Qualifying Ethics (QE) core course for judicial officers beginning with QE5, January 1, 2013, and continuing through QE7, which launched on January 1, 2019);

Requires any training developed to include the components listed in the bill; and

Requires court staff (who interact with the public on matters before the court) to complete 2 hours of implicit bias training every 2-years as of January 1, 2022 (included in the existing 8-hours required (12-hours for managers/supervisors) by rule 10.474).

The bill does not require implicit bias training for judges and subordinate judicial officers. This training would continue as is currently constituted under rule 10.462(d)(1). “Each judge is expected to and each subordinate judicial officer must complete 30 hours of continuing judicial education every three years...”

Also requires the State Bar to adopt regulations for mandatory continuing legal education (MCLE) curriculum include training on implicit bias and the promotion of bias-reducing strategies, as specified.

Update: The author adopted technical amendments to align training for judicial officers with the existing 3-year cycle, remove bailiffs from the bill (they would be covered under the author’s AB 243 that mandates implicit bias training for law enforcement), and place training requirements in a separate section under the State Bar.

Update: The council has taken a support position.

Status of AB 242: Enrolled, pending on Governor’s desk.

AB 314 (Bonta) Public employment: labor relations: release time

Requires public employers to grant a reasonable number of employee representatives of the exclusive representative reasonable time off without loss of compensation or other benefits for specified activities, including: activities to investigate and process grievances or otherwise enforce a collective bargaining agreement or memorandum of understanding; to meet and confer with the public employer on matters within the scope of representation, including preparation for the activities specified in these provisions; to testify or appear as the designated representative of the exclusive representative in conferences, hearings, or other proceedings before the Public Employment Relations Board or similar bodies, as specified; to testify or appear as the designated representative of the exclusive representative before the governing body of the public employer, or a personnel, civil service, or merit commission, among others, and to serve as a representative of the exclusive representative for new employee orientations.

Status of AB 314: Enrolled, pending on Governor’s desk.

AB 859 (Maienschein) Juveniles: dependency: judicial caseloads

Requires the Judicial Council to study and identify the appropriate caseload standards for judges who adjudicate juvenile dependency proceedings and, by January 1, 2021, submit a report to the Legislature with the results of that study.

Status of AB 859: Enrolled, pending on Governor’s desk.

SB 471 (Stern) Subpoenas: form and service

Requires a subpoena issued pursuant to [Penal Code section 1326](#) by the court, the prosecution, or the court to contain a unique numeric or alphanumeric identification code, known as a “subpoena number.”

Additionally, authorizes delivery of a subpoena by electronic mail or facsimile transmission. Requires, for service to be effected, that the witness identify the subpoena by reference to its unique subpoena number and requires the sender to make a written notation of the fact that the witness made that identification. Removes the

prohibition on a warrant of arrest or a body attachment for failure to comply with a subpoena by mail or messenger.

Update: The council has taken an support if amended position.

Status of SB 471: Enrolled, pending on Governor's desk.

Response to Sexual Harassment

AB 51 (Gonzalez) Employment discrimination: enforcement.

Prohibits a from requiring any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (FEHA) or other specific statutes governing employment as a condition of employment, continued employment, or the receipt of any employment-related benefit.

Prohibits an employer from threatening, retaliating or discriminating against, or terminating any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of specific statutes governing employment.

Status of AB 51: Enrolled, pending on Governor's desk.

AB 170 (Gonzalez) Employment: sexual harassment: liability

Requires employers to share with a contractor all civil legal responsibility and civil liability for harassment for all workers supplied by that labor contractor.

Status of AB 170: Enrolled, pending on Governor's desk.

AB 171 (Gonzalez) Employment: sexual harassment

Expands the scope of these provisions by defining “employer” for purposes of these provisions to mean any person employing another under any appointment or contract of hire and to include the state, political subdivisions of the state, and municipalities.

Prohibits an employer from discharging, discriminating, or retaliating against an employee because of the employee’s status as a victim of sexual harassment. In addition, it creates a rebuttable presumption of unlawful retaliation based on the employee’s status as a victim of domestic violence, sexual assault, sexual harassment, or stalking if an employer takes specific actions within 90 days following the date that the victim provides notice to the employer or the employer has actual knowledge of the status.

Status of AB 171: Enrolled, pending on Governor's desk.

SB 778 (Committee on Labor, Public Employment and Retirement) Employers: sexual harassment training: requirements

Extends the deadline for complying with new anti-harassment training requirements from January 1, 2020 to January 1, 2021.

Allows employers who have provided anti-harassment training comparable to the new requirements in 2019 to wait 2 full years before providing refresher training to those trained employees.

This is a clean up fix to last year's bill that requires an employer with 5 or more employees to provide sexual harassment training and education by January 1, 2021, and thereafter once every 2-years.

Note: An urgency clause has been amended into the bill, so AB 778 will take effect immediately once signed by the Governor.

Status of SB 778: Signed by Governor, (Ch. 215, Stats. 2019).

Juries

SB 310 (Skinner) Jury selection

Adds the list of state tax filers within the area served by the court as an appropriate list for the selection of jurors, and when substantially purged of duplicate names, would require this list, together with the list of registered voters and the list of licensed drivers and identification cardholders, to be considered inclusive of a representative cross section of the population for the purposes of jury selection.

Allows felons to serve on jury trials, retains prohibition for those serving in jail.

Status of SB 310: Enrolled, pending on Governor's desk.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date

October 27, 2014

Action Requested

For Your Information Only

To

Cory Jaspersen, Director
Laura Speed, Assistant Director
Governmental Affairs

Deadline

N/A

From

Deborah C. Brown, Chief Counsel
Mark Jacobson, Senior Attorney *MJ*
Legal Services

Contact

Mark Jacobson
415-865-7898 phone
415-865-7664 fax
mark.jacobson@jud.ca.gov

Subject

Ethical Principles Applicable to Judges
Engaged in Legislative Activities

You have asked Legal Services to provide an information sheet setting forth the ethical principles that pertain to judicial officers who participate in legislative activities that can be distributed to judicial officers who engage in Bench-Bar Coalition legislative outreach activities. To assist judicial officers, this memorandum provides the following information: (1) the applicable canons from the California Code of Judicial Ethics; (2) an analysis of a recent formal opinion from the Supreme Court's Committee on Judicial Ethics Opinions; and (3) relevant excerpts from David M. Rothman's *California Judicial Conduct Handbook*.

Relevant Canons¹

Governmental Activities

The canon most directly on point for judges who wish to participate in legislative activity is canon 4C(1), which prohibits a judge from appearing at a public hearing or consulting with an

¹ The full text of the canons discussed in this section is set forth in the attached appendix.

executive or legislative body or a public official except on matters concerning the law, the legal system, and the administration of justice. In deciding whether to engage in such activities, a judge must also consider whether that conduct would violate any other provision of the Code of Judicial Ethics. For example, the activity must uphold the integrity, impartiality, and independence of the judiciary (canons 1 and 2A), and it must not cause the judge to be disqualified (canon 4A(4)).

Political Activity

Canon 5 provides that judges may not be involved in political activity that is inconsistent with the independence, integrity, or impartiality of the judiciary or that creates the appearance of political bias or impropriety. Canon 5D states that a judge is not permitted to engage in political activity unless it is related to the law, the legal system, or the administration of justice.

Extrajudicial Activities, Appearance of Impropriety, Lending the Prestige of Office

There are several other canons that should be considered when a judge is involved in legislative activity. Canon 4A states that a judge must conduct any extrajudicial activity so that such activity does not (1) interfere with judicial duties, (2) cast doubt on the judge's impartiality, or (3) lead to frequent disqualification. Canon 2 provides that a judge must not engage in conduct that creates the appearance of impropriety. Canon 2A prohibits a judge from making any statement that commits the judge with respect to cases, controversies, or issues that are likely to come before the courts. Finally, canon 2B(2) states that a judge must not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others.

CJEO Formal Opinion No. 2014-006

The Supreme Court's Committee on Judicial Ethics Opinions issued a formal opinion on October 2, 2014, entitled "Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government."² The opinion addressed the circumstances under which a judge may appear at a public hearing or officially consult with executive or legislative bodies on "matters concerning the law, the legal system, or the administration of justice." (See canon 4C(1), Appendix, p. 1.) The committee concluded that canon 4C(1) allows comment and consultation concerning the court system or matters of judicial administration. The canon permits a judge to appear before or consult with representatives of the other two branches of government "when the subject of the appearance or consultation is one with respect to which the judge's experience and perspective *as a judge* gives him or her unique qualifications to assist the other branches of the government in fulfilling their responsibilities to the public." (CJEO Formal Opn. 2014-006, p. 2, emphasis in original.)

² The full opinion can be found on the CJEO website at http://www.judicialethicsopinions.ca.gov/sites/default/files/CJEO_Formal_Opinion_2014-006.pdf.

The committee stated that based on the reference in canon 4C(1) to matters concerning the administration of justice, judges may testify or advocate at public hearings only on behalf of the legal system, i.e., focusing on court users, the courts, or the administration of justice. (CJEO Formal Opn. 2014-006, *supra*, at p. 7.) There are situations in which a judge may comment about substantive legal issues where the purpose is to benefit the law and legal system itself rather than any particular cause or group and when the comment or consultation is made from a judicial perspective. (*Ibid.*) Thus, any comments from a *legal* knowledge/experience perspective should be provided by attorneys, not judges. (*Ibid.*) Where a judge has both judicial and attorney experience to draw from (or only attorney experience) in a particular area of law, the judge's comments or consultation should be presented from a purely judicial perspective. (*Ibid.*)

The committee noted that even if the exception in canon 4C(1) applies, the judge must ensure that the appearance or consultation does not violate any other canons, such as those set forth in the appendix to this memorandum.

The opinion provides the following illustrative examples:

- A judge may comment or consult about the judicial branch's budget, or a bond measure for court construction, or a bill proposing to replace court reporters with electronic recording.
- Regarding a proposed constitutional amendment to replace the death penalty with life without parole, a judge may comment on the dysfunction of the present system from a judicial perspective, but advocacy for or against the death penalty as a policy matter would violate canon 4C(1).
- A judge who was an environmental attorney may express his or her views in support of a new CEQA settlement process, but only from the viewpoint of a judge who is, for example, seeking to unburden the court's docket by resolving CEQA cases earlier in the judicial process.
- A judge who was a prosecutor but has no judicial experience in criminal law may express support for proposed legislation to reduce the number of peremptory challenges in misdemeanor cases, but those views should be expressed in terms of how the law would affect the legal system or the administration of justice by improving juror satisfaction, enhancing jury diversity, and saving court costs, while still providing the full panoply of due process.
- A judge may not appear at a public hearing of a legislative committee to advocate for longer sentences for certain drug offenders because, even though such comments are

about a matter “concerning the law,” advocacy for longer sentences for only a particular type of offender could undermine public confidence in the impartiality of the judiciary, thus violating canons 1 (upholding the integrity and independence of the judiciary), 2A (promoting public confidence in the integrity and impartiality of the judiciary), 3B(9) (commenting publicly on pending cases), and 4A(1) (casting doubt on the judge’s capacity to act impartially). The judge could, however, discuss the impact of such sentences on the courts or the adjudicatory process.

- Based on the judge’s expertise, a judge may advocate for improvements in the administration of justice that would seek to reduce recidivism by providing information about collaborative court programs the judge had presided over or administered that employ alternative sentencing or probation periods for drug offenders.
- A judge may advocate for statewide use of alternative programs based on the judge’s experience, but must not comment on the outcome of cases involving particular offenders and must not imply that the judge will be ruling in a particular way in a class of cases.
- Judicial advocacy for specific legislation on proposed death penalty or collective bargaining measures could violate the prohibition in canon 2A against making statements that commit a judge with respect to cases, controversies, or issues that are likely to come before the court or that are inconsistent with the impartial performance of duties. But a judge may appear before a public body to explain, from a judicial perspective, the effects of proposed laws on the judicial process or judicial administration.

Rothman, *California Judicial Conduct Handbook*

In the *California Judicial Conduct Handbook* (3d ed. 2007), Judge Rothman addresses judicial involvement in executive and legislative matters:

[§11.03] Appearances at Public Hearings and Participation in Executive or Legislative Matters

Ethics rules on the subject. A judge . . . must . . . draw the distinction between inappropriate involvement with the legislative and executive branch in what could be called “political” matters as opposed to appropriate involvement in matters that concern the law, legal system, and administration of justice. Thus, for example, a judge may endorse legislation that would provide the court with facilities and services, because such matters deal with the administration of justice.

* * *

Recognition of the separation of powers—urging moderation in advocacy by judges. Judges have frequently been active in advocating positions before the legislative and executive branches on a variety of subjects. The Code of Judicial Ethics does not prohibit this activity so long as the activity is limited to issues related to the law, the legal system, and administration of justice. The boundary, however, of this limitation is often stretched.

I am not alone in the belief that judges should greatly limit advocacy of issues before the legislative and executive branches to only the clearest and most urgent of circumstances. Where judges frequently engage in such advocacy, they may be perceived as encroaching on legislative and executive prerogatives. When judges do so they should not be surprised if the legislative and executive branches feel comfortable in doing the same in the judicial arena.

Examples abound of an increasing comfort on the part of the legislature in tinkering with the judicial branch. This may be the result of a basic lack of understanding and appreciation of basic concepts of our form of government. Separation of powers and preservation of the independence of the judiciary require judges to ration their advocacy.

Special position of juvenile and family court judges. The special demands of juvenile and family court assignments frequently involve judges in proactive efforts to improve the law. The above caution is less urgent for these judges because they are expected to regularly make recommendations concerning civil procedure and the development of programs to help children.

Examples of issues concerning appropriate advocacy. Is it proper for a judge to be involved in writing a statute that increases or reduces child support, or deals with the length of sentences in juvenile or criminal cases? Judges regularly advocate for additional judicial officers, but would it be improper for them to advocate for additional police officers?

Judges do not agree on the answers to these questions. Some believe that such activity is part of the judicial function and is permissible. Others, however, believe that the test is whether such advocacy could “cast reasonable doubt on the judge’s capacity to act impartially.”

It would be proper for a judge to endorse a bond measure that increases county revenues, which would increase funding for judicial-related activities as well as increasing revenues for non-legal system county projects, provided the

endorsement was carefully phrased to focus on judicial needs, while avoiding endorsement of nonjudicial issues. Because of the Trial Court Funding Act, local judicial-related funding advocacy would be very limited, if any, at the local level.

A judge may write a letter to the legislature regarding a bill proposing to replace court reporters with electronic recording as this plainly concerns the administration of justice. A judge, however, who was formerly a member of the legislature, should not be further involved in legislation or consult with legislators or others except on legislation and other matters concerning the law, the legal system or the administration of justice.

(Rothman, *California Judicial Conduct Handbook*, 3d ed. [California Judges Association, 2007] pp. 569–571.)

Judge Rothman also discusses judicial support of or opposition to ballot measures in the context of inappropriate political activity:

[§11.24] Supporting or Opposing Ballot Measures

Measures not related to improvement of the law, legal system or administration of justice. Although one might argue that anything on the ballot relates to the improvement of the law, such is not the case. For example, it would be improper for a judge to draft, promote, or be listed publicly as supporting a school bond ballot proposal as such a proposal would not fit the limited purpose related to improvement of the legal system. A judge may not sign a ballot statement, essentially a public endorsement, for an ordinance advocating criminal penalties for violation of a law/ordinance.

* * *

Appropriate ballot measures for comment by judges. Appropriate judicial activity related to ballot measures would include public support of a tax override measure or other ballot proposition that would provide revenue for court operations or jail construction, since the objects of the funding pertain to the administration of justice. A court and its judges may also take a public position on a ballot proposition that affects judicial funding and the administration of justice. A judge may support or oppose a ballot measure dealing with the unification of the court.

A judge may speak and take a public stance against a ballot measure that would take away the power to appoint and retain the chief probation officer from the courts and place it in the hands of the board of supervisors.

A judge may act in support of political goals that directly relate to improvement of the judicial system such as jail construction or renovation of a juvenile detention facility.

A judge may participate in a newspaper ad concerning a ballot measure that concerns the law, legal system or administration of justice.

(Rothman, *supra*, at pp. 578–579.)

Disqualification and Disclosure

Judges who are involved in legislative activity should be aware of the disqualification and disclosure implications if it appears that the judge cannot be impartial in ruling on a matter concerning the issue with which the judge was involved. Code of Civil Procedure section 170.1(a)(6)(A)(iii) provides that a judge is disqualified if “[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial.” A judge is *not* disqualified, however, if the judge “[h]as as a lawyer or public official participated in the drafting of laws or in the effort to pass or defeat laws, the meaning, effect or application of which is in issue in the proceeding unless the judge believes that his or her prior involvement was so well known as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.” (Code Civ. Proc., § 170.2(c).)

Judge Rothman addresses this issue:

[A] judge’s expression of opinions outside of the context of judicial decision may raise disclosure and disqualification issues.

* * *

Drafting or advocating concerning laws. Although there can be an argument that the use of the term “public official” is not intended to encompass a judge, subdivision (c) of section 170.2 above appears to allow a judge (i.e., a “public official”) to participate in the drafting of or advocacy concerning laws that the judge may later have to interpret. Judges have been involved on many occasions in such activities although, as noted in the concluding language of subdivision (c), such involvement has the potential of requiring disqualification.

Cory Jaspersen
Laura Speed
October 27, 2014
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(Rothman, *California Judicial Conduct Handbook*, 3d ed. [California Judges Association, 2007] pp. 368–369.)

Judges should also be aware of canon 4A(4), which states that a judge must conduct all of the judge's extrajudicial activities so that they do not lead to frequent disqualification of the judge.

Contact Information for Questions

If judicial officers have questions about whether their own conduct would violate any provision of the Code of Judicial Ethics, they may contact the Supreme Court's Committee on Judicial Ethics Opinions at judicial.ethics@jud.ca.gov or 855-854-5366, or the California Judges Association's Judicial Ethics Hotline at 866-432-1252. For more general information about ethical constraints discussed in this memorandum, they may contact Senior Attorney Mark Jacobson at 415-865-7898 or mark.jacobson@jud.ca.gov.

DCB/MJ/ms
Attachment
cc: Jody Patel, Chief of Staff

Appendix

Canon 2

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Canon 2A

A. Promoting Public Confidence

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Canon 2B(2) states:

A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others.

Canon 4A

A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge's capacity to act impartially;
- (2) demean the judicial office;
- (3) interfere with the proper performance of judicial duties; or
- (4) lead to frequent disqualification of the judge.

Canon 4C(1)

A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law, the legal system, or the administration of justice or in matters involving the judge's private economic or personal interests.

Advisory Committee Commentary to Canon 4C(1) (added January 1, 2013)

When deciding whether to appear at a public hearing or whether to consult with an executive or legislative body or public official on matters concerning the law, the legal system, or the

administration of justice, a judge should consider whether that conduct would violate any other provisions of this code. For a list of factors to consider, see the explanation of “law, the legal system, or the administration of justice” in the Terminology section. See also Canon 2B regarding the obligation to avoid improper influence.

Canon 5

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Judges and candidates for judicial office are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety. Judicial independence, impartiality, and integrity shall dictate the conduct of judges and candidates for judicial office.

Canon 5D

A judge or candidate for judicial office may engage in activity in relation to measures concerning the improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with this code.

Advisory Committee Commentary to Canon 5D (added January 1, 2013)

When deciding whether to engage in activity relating to measures concerning the law, the legal system, or the administration of justice, such as commenting publicly on ballot measures, a judge must consider whether the conduct would violate any other provisions of this code. See explanation of “law, the legal system, or the administration of justice” in the terminology section.

Explanation of “law, the legal system, or the administration of justice” from the Terminology section (added January 1, 2013)

When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether it impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)).