

JUDICIAL COUNCIL MEETING
Minutes of the Business Meeting—December 13–14, 2012
Ronald M. George State Office Complex
William C. Vickrey Judicial Council Conference Center
Malcolm M. Lucas Board Room and
Milton Marks Conference Center Auditorium
San Francisco, California

Thursday, December 13, 2012—NON-BUSINESS MEETING—CLOSED
(RULE 10.6(A))

Closed Session 1:00 p.m.–3:15 p.m.

Thursday, December 13, 2012—OPEN MEETING (RULE 10.6(A))—
BUSINESS MEETING

Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, called the meeting to order at 4:30 p.m. on Thursday, December 13, 2012, at the Milton Marks Conference Center Auditorium.

Judicial Council members present: Chief Justice Tani G. Cantil-Sakauye; Justices Judith Ashmann-Gerst, Marvin R. Baxter, Harry E. Hull, Jr., and Douglas P. Miller; Judges Stephen H. Baker, James R. Brandlin, David De Alba (December 14), Sherrill A. Ellsworth, James E. Herman, Teri L. Jackson, Ira R. Kaufman, Mary Ann O’Malley, and David Rosenberg; Ms. Angela J. Davis, Mr. James P. Fox, Ms. Edith R. Matthai, and Mr. Mark P. Robinson, Jr. (December 14 only); Senator Noreen Evans (December 14 only); **advisory members:** Judges Laurie M. Earl, Allan D. Hardcastle, Morris D. Jacobson, Brian L. McCabe, Robert James Moss, Kenneth K. So, and Charles D. Wachob; Commissioner Sue Alexander; Chief Executive Officer Alan Carlson; and Court Executive Officers Mary Beth Todd and David H. Yamasaki;

Secretary to the council: Steven Jahr, Administrative Director of the Courts.

By phone: Judge David De Alba (December 13 only) and Judge Emilie H. Elias.

Others present: Judge David Edwin Power; and Court Executive Officers Tammy L. Grimm and Michael M. Roddy; **public:** Mr. Albert Cordova, Ms. Anabelle Garay, Ms. Yulianna Janzen, Ms. Elizabeth McCarthy, Ms. Arnella Sims, and Mr. Carl Thompson; **media representatives:** Ms. Maria Dinzeo, *Courthouse News Service*, Mr. Paul Jones, *Daily Journal*, Ms. Lorraine Blanco and Mr. Randy Devecchi, *KTVU/KCRA*.

Chief Justice's Report

Chief Justice Cantil-Sakauye recounted notable activities and engagements since the October council meeting. She referred to two press events that drew attention to the issues of equal access to justice for all Californians and the council's priority of adequate funding for the judicial branch: one was an editorial board meeting with the California Lawyer Magazine and the other, a national press conference in Washington, D.C., in association with the Conference of Chief Justices. She also participated in events for the West Hawaii Bar Association, the California Chapter of the American Board of Trial Advocates, the Asian American Bar Association, the Sacramento County Bar Association, and the Chancery Club of Los Angeles. She mentioned ongoing contact since the council's last meeting with the executive and legislative branches, including a meeting on the branch budget with the Governor which was also attended by Justice Marvin R. Baxter and Administrative Director of the Courts Steven Jahr. She administered the oath of office to the newly appointed members of the California State Senate, which she described as a renewed opportunity to reflect on the meaning of the oath to uphold the Constitution of the State of California and the United States.

Administrative Director's Report

Steven Jahr, Administrative Director of the Courts, provided a written report on the activities of the AOC since the October council meeting. He introduced and welcomed Mr. Cory Jaspersen, newly appointed Director, and Ms. Theresa Taylor-Carroll, newly appointed Assistant Director, of the AOC's Office of Governmental Affairs. Judge Jahr highlighted the topic of AOC restructuring. He mentioned that AOC Chief Administrative Officer Curt Soderlund and AOC Chief Operating Officer Curtis L. Child continue to clarify and organize the facility modification and construction responsibilities that were divided between their respective divisions in the AOC restructuring approved by the council in August 2012. He also referenced the summary, prepared by the AOC's Criminal Justice Court Services Office, advising courts on the most recent Department of Justice reporting requirements for post criminal justice realignment dispositions for individual criminal histories. Judge Jahr added that 10 additional courts are expected to apply for participation in the California Courts Protective Order Registry, which is currently in use by 21 trial courts and 5 tribal courts. He commented on new online resources available: interagency partnerships; and the U.S. Senate Judiciary Committee's focus on truancy in schools, the incidence of school suspensions and drop-out rates, and the implications for the juvenile justice system.

Judicial Council Committee Presentations

Policy Coordination and Liaison Committee (PCLC)

Justice Marvin R. Baxter, Chair, welcomed the recently appointed Director and Assistant Director of the AOC Office of Governmental Affairs, Mr. Cory Jaspersen and Ms. Theresa Taylor-Carroll. Since the council meeting in October, PCLC met twice to continue discussion of council-sponsored legislation. On November 15, PCLC approved recommending to the council sponsorship of a legislative proposal on cleanup of the newly-enacted \$30 court reporter fee, enacted by the 2012 public safety budget trailer bill (Senate Bill 1021, ch. 41, stats. of 2012).

The committee was also briefed on the fiscal impact of legislation and the status of proposals for court efficiencies, cost-savings, and new revenue. On November 29, PCLC considered sponsorship of a proposal to establish a pilot project authorizing trial courts to conduct remote video trials in cases involving traffic infractions and violations of the law on compulsory school attendance. Justice Baxter informed the council that the Legislature reconvened on December 3 for the swearing in of newly-elected members and would reconvene in the first week of January.

Executive and Planning Committee (E&P)

Justice Douglas P. Miller, Chair, reported that E&P met seven times, following the October council meeting, to set the agenda for the December 13-14, 2012, meeting and conduct other committee business. In the course of agenda setting, E&P consulted with Judicial Council members who served on the Strategic Evaluation Committee to consider several reports proposed for the meeting agenda that related to the council's directives on AOC restructuring.

On behalf of the council, the committee acted on three separate requests from the Superior Court of California, from the counties of San Diego, San Mateo, and Los Angeles, regarding the conversion of subordinate judicial officer positions to judgeships. (One of the requests was to approve an exception to converting a position eligible to become a judgeship.)

E&P and the council's Rules and Projects Committee held a joint meeting on December 13, to review the current structure of existing Judicial Council advisory bodies—including advisory committees, task forces, working groups and subcommittees. This is part of a council initiative to evaluate the opportunities for consolidating committee activities, strengthening council oversight, and reducing the costs associated with committee operations.

Justice Miller concluded with a status of progress made on the 145 Judicial Council directives concerning AOC restructuring. In summary, AOC offices continue to make progress on the implementation of the AOC restructuring directives, in accordance with the timelines for implementation approved by the Judicial Council. He highlighted and provided explanations for five directives (Directives 86, 40 and 42, 125, and 26) for which the AOC has requested modifications to the plans for implementation. He also announced additional steps taken by E&P to formalize the process of reviewing the council directives on AOC restructuring with the appropriate AOC divisions. The Judicial Council members who serve as liaisons to the AOC divisions will also assume responsibility for monitoring the implementation of AOC restructuring activities with their assigned divisions and reporting final outcomes to the council to ensure accountability for completing all directives.

Rules and Projects Committee (RUPRO)

Justice Harry E. Hull, Jr., Chair, reported that RUPRO met four times by telephone conference call and considered, by e-mail, one proposal, since the October council meeting.

On November 19, RUPRO reviewed proposed revisions to the civil jury instructions and recommended approval, which was the subject of item A1 on the meeting's consent agenda.

On November 26, by e-mail, RUPRO approved the 2013 Uniform Bail and Penalty Schedules, item A5, for submission for the meeting consent agenda.

On November 29, RUPRO reviewed and determined to recommend to the Judicial Council three rules and forms proposals: these are items A2 through A4 on the meeting's consent agenda. The committee recommended two of the proposals, Traffic: Automated Traffic Enforcement System Notice to Appear and Civil Forms: Application for and Notice of Stay and Early Evaluation Conferences in Construction Related Accessibility Claims, for adoption effective January 1, to be consistent with statutory changes effective on that date, though the proposals had not yet circulated for public comment. RUPRO approved the two proposals to circulate for public comment during the Winter Cycle, after their adoption. Following public circulation and further review by the advisory committees and RUPRO, the two proposals are expected to return to the Judicial Council at the April 2013 business meeting. The third proposal, also required to conform to new legislation, involved only technical and minor substantive changes and therefore, under rule 10.22(d)(2), RUPRO recommended its adoption without circulation for public comment.

On December 4, RUPRO reviewed a proposal for a pilot project for remote video trials in traffic and compulsory school attendance cases. Due to various issues raised during and after the comment period, the proposal is expected to be revised and submitted to the Judicial Council for consideration at the January council meeting.

On December 7, RUPRO reviewed 11 proposals to circulate for comment during the Winter Cycle in time for Judicial Council consideration at the April 2012 business meeting. The proposals were required to comply with or implement recent legislation, or to be consistent with recent case law.

Judicial Council Technology Committee

Judge James E. Herman, Chair, reported that strategic and tactical technology development plans remain the committee's focus, as technology funding sources are critically limited for the branch and the courts. The California Technology Agency has advised that the California Department of Finance will not accept funding requests for technology without a technology plan associated with a governance structure and a cost benefit assessment.

Judge Herman recounted committee activities since the October council meeting, which included continuing work on a vision statement and a unified plan for branch technology in accordance with council direction and the council directives on AOC restructuring. The committee has held biweekly meetings to follow specific, ongoing projects and address issues raised by the California Technology Agency. On November 13, Mary Winkley, Assistant Secretary of the California Technology Agency, met with committee members, branch technology working group members, court executive officers, and court information officers to follow up on the Technology Summit that the committee hosted on October 23 and 24, 2012. On November 26, the Technology Committee reviewed a request from the Superior Court of California, County of Kings, for supplemental funding to replace its failing case management system. On November 27, Judge Herman attended a special meeting of the Court Technology Advisory Committee during which the advisory committee voted to approve two technology initiatives: a proposal to

introduce a remote video proceedings pilot project and an invitation to comment on amendments to the California Rules of Court, introducing forms for implementing an e-filing project mandated by the Legislature, effective July 2013.

Judge Herman gave an update on the Judicial Council's authorization of supplemental funding for the Superior Court of California, County of San Luis Obispo, to replace the court's failing family case management system. The court entered into a contract with Tyler Technologies, the vendor's first project in California, to deploy a new system by the end of 2013 or early 2014. He added that the Superior Court of California, counties of Sonoma, Santa Barbara, Placer, and Tulare, are also planning upgrades to their case management systems to adopt e-filing capability, using the vendor eCourt. Sonoma is implementing e-filing for traffic citations, Santa Barbara for civil cases, and Placer and Tulare for all case types. He noted that courts using Sustain have formed a user group, to coordinate and benefit from their common use of vendor technology, a practice also advocated by the California Technology Agency as the courts adopt e-filing and document management technologies.

Public Comment

The letters submitted to the Judicial Council for consideration at this meeting are attached. Two individuals appeared to speak on the agenda, in the following order:

1. Mr. Albert Cordova , on his own behalf
2. Ms. Anabelle Garay, on behalf of the California Federation of Interpreters

CONSENT AGENDA (ITEMS A1–A5, B–Q)

ITEMS A1–A5 RULES, FORMS, AND STANDARDS

Civil Jury Instructions

Item A1 Jury Instructions: Additions, Revisions, Revocations, and Renumbering of Civil Jury Instructions

The Civil Jury Instructions Advisory Committee recommended approval of the proposed additions and revisions to, and revocations and renumbering of, the *Judicial Council of California Civil Jury Instructions* (CACI). These changes will keep CACI current with statutory and case authority.

Council action

The Judicial Council, effective December 14, 2012, approved for publication under rule 2.1050 of the California Rules of Court the civil jury instructions prepared by the committee. The new, revised, revoked, and renumbered instructions will be published in the official 2013 edition of the Judicial Council of California Civil Jury Instructions.

Civil and Small Claims

Item A2 Civil Practice and Procedure: Application for and Notice of Stay and Early Evaluation Conferences in Construction-Related Accessibility Claims

The Civil and Small Claims Advisory Committee recommended that the Judicial Council adopt effective January 1, 2013, forms for defendants to apply for and the court to give notice of a stay of proceedings and early evaluation conference in construction-related accessibility claims. Senate Bill 1186 (Steinberg and Dutton; Stats. 2012, ch. 383) was enacted in late September 2012 to promote compliance with the state's disability access laws and deter unwarranted litigation in that area. Many provisions of the new law are already in effect, including the expansion of the categories of defendants who are eligible for automatic stays and early evaluation conferences under Civil Code section 55.54. The new law mandates that the Judicial Council revise the current provisional and statutorily mandated forms to implement these changes by January 1, 2013.

Council action

The Judicial Council, effective January 1, 2013:

1. Adopted the following mandatory forms:
 - Defendant's Application for Stay of Proceedings and Early Evaluation Conference (form DAL-005);
 - Confidential Coversheet and Declaration re Documents for Stay and Early Evaluation Conference (form DAL-006); and
 - Notice of Stay of Proceedings and Early Evaluation Conference (form DAL-010).
2. Approved as an optional form Proof of Service—Disability Access Litigation (form DAL-012).

Traffic

Item A3 Traffic: Automated Traffic Enforcement System Notice to Appear

The Traffic Advisory Committee recommended revision of forms TR-115, *Automated Traffic Enforcement System Notice to Appear*, and TR-INST, *Notice to Appear and Related Forms*, effective January 1, 2013. Vehicle Code section 40518(a) authorizes the Judicial Council to prescribe the form of a notice to appear that is issued when a person is cited by an automated enforcement system for certain red light violations. Recent legislation, enacted effective January 1, 2013, amended Vehicle Code section 40518 to require specific additional contact information for the notice to appear form and Vehicle Code section 42005 to permit drivers with a commercial driver's license who are cited for a violation while driving a noncommercial vehicle to attend traffic violator school (TVS). The revised forms are recommended to comply with the new laws.

Council action

The Judicial Council, effective January 1, 2013, revised forms TR-115 and TR-INST to conform to new law as follows:

1. Revised line 5 on TR-115 to remove the shading on the Class of driver's license field to indicate that the field is mandatory for the form;
2. Revised line 7 on TR-115 to remove the shading on the Commercial Vehicle field to indicate that the field is mandatory for the form;
3. Revised line 8 on TR-115 to remove the shading on the Hazardous Material field to indicate that the field is mandatory for the form;
4. Revised the section at the top of the back of form TR-115 to add fields that are mandatory for the form to provide contact information and the address for the issuing agency regarding the evidence in the case;
5. Revised section 3.010 on page 3 of form TR-INST to provide for implementation of revised form TR-115 by the Judicial Council, effective January 1, 2013; and
6. Revised pages 24 and 25 of form TR-INST to include a copy of the revised form TR-115 that is required for use effective January 1, 2013.

Item A4 Traffic: Procedures and Eligibility Criteria for Attending Traffic Violator School

The Traffic Advisory Committee recommended amending rule 4.104 of the California Rules of Court to update the rule to conform to recent legislation that becomes effective January 1, 2013. Assembly Bill 1888 (Stats. 2012, ch. 302) amended Vehicle Code section 42005 to permit drivers with a commercial driver's license who are cited for a violation while driving a noncommercial vehicle to attend traffic violator school (TVS). AB 1888 also added Vehicle Code section 1808.10, which limits eligibility for TVS to one traffic violation citation in an 18-month period. Amended rule 4.104 provides updated procedures and eligibility criteria for attending traffic violator school.

Council action

The Judicial Council, effective January 1, 2013, amended rule 4.104 to conform to new law and clarify procedures and eligibility criteria for attending traffic violator school, as follows:

1. Amended subdivision (b)(2)(B) to add a reference to Vehicle Code section 1808.10, which limits eligibility for TVS to one traffic violation citation in an 18-month period;
2. Deleted subdivision (b)(2)(I), which prohibits clerks from referring a driver with a commercial driver's license to TVS no matter what type of vehicle was being driven when the violation occurred, while retaining subdivision (b)(2)(H), which prohibits clerks from making a referral to TVS for violations that occur in a commercial vehicle;

3. Amended subdivision (c)(1) to provide that a defendant with a commercial driver's license may request a referral by a judicial officer to TVS if the defendant was operating a noncommercial vehicle;
4. Amended subdivision (c)(1) to specify that completion of TVS by a driver with a commercial driver's license is not reportable as a confidential conviction;
5. Amended subdivision (c)(1) to clarify that a defendant charged with a violation that occurs in a commercial vehicle is not eligible for TVS in lieu of adjudicating an offense, to receive a confidential conviction, or to avoid violator point counts; and
6. Added an advisory committee comment to clarify that the record of drivers that hold a commercial driver's license and complete TVS is not confidential and must be reported to and disclosed by the Department of Motor Vehicles.

Item A5 Uniform Bail and Penalty Schedules: 2013 Edition

The Traffic Advisory Committee recommended revisions to the *Uniform Bail and Penalty Schedules*, effective January 1, 2013. Vehicle Code section 40310 provides that the Judicial Council must annually adopt a uniform traffic penalty schedule for all nonparking Vehicle Code infractions. Under rule 4.102 of the California Rules of Court, trial courts, in performing their duty under Penal Code section 1269b, must revise and adopt a schedule of bail and penalties for all misdemeanor and infraction offenses except Vehicle Code infractions. The penalty schedule for traffic infractions is established by the schedules approved by the Judicial Council. The recommended revisions bring the schedules into conformance with recent legislation.

Council action

The Judicial Council, effective January 1, 2013, adopted the revised 2013 Uniform Penalty and Bail Schedules.

Item B Judicial Council: Parliamentary Procedures for Meetings

The Parliamentary Procedures Working Group recommended that the Judicial Council adopt several minor revisions to the Parliamentary Procedures for the Judicial Council. The procedures provide guidance to the council regarding the conduct of council meetings and voting requirements on council matters.

Council action

The Judicial Council, effective December 14, 2012, adopted the recommended revisions to the Parliamentary Procedures for the Judicial Council.

Item C Access to Visitation: Program Funding Allocation Methodology for Fiscal Year 2013–2014

The Family and Juvenile Law Advisory Committee recommended that the Judicial Council approve a methodology for one-year continuation Access to Visitation grant funding allocations for fiscal year 2013–2014. The recommended process will fund current programs that were previously approved by the Judicial Council for fiscal years 2011–2012 and 2012–2013. Courts will complete a simplified request for application process and the proposed allocations for each court will be submitted to the Judicial Council for approval in early 2013.

Council action

The Judicial Council, effective December 14, 2012:

1. Approved a one-year continuation to Access to Visitation Grant funding allocation methodology for the grant period of April 1, 2013, through March 31, 2014; and
2. Created an Access to Visitation grant stakeholder workgroup charged with proposing new funding methodology options for fiscal year 2014–2015.

Item D Equal Access Fund: Distribution of Funds for Partnership Grants

As stated in its report on the *Equal Access Fund: Distribution of Thirteenth Year Equal Access Fund Partnership Grants*, the State Bar Legal Services Trust Fund Commission requested that the Judicial Council approve the distribution of \$1,624,000 in partnership grants for 2013, according to the statutory formula in the state Budget Act, and approve the commission’s findings that the proposed budget for each individual grant complies with statutory and other guidelines.

Council action

The Judicial Council approved the distribution of \$1,624, 000 in Equal Access Fund partnership grants for distribution to the following legal services agencies for programs conducted jointly with courts to provide legal assistance to self-represented litigants:

1. **Asian Pacific American Legal Center:**
Asian Language Self-Help Family Law Workshops (Orange) \$45,000
2. **Asian Pacific Islander Legal Outreach:**
Northern San Mateo County Restraining Order Clinic \$70,000
3. **Bay Area Legal Aid:**
Housing Law Clinic (Contra Costa) \$65,000
4. **Bet Tzedek Legal Services:**
Building Community & Expanding Access to Legal Services
in Los Angeles County \$85,000
5. **California Rural Legal Assistance:**
Landlord/Tenant Pro Per Clinic (Stanislaus) \$60,000

6. Central California Legal Services, Inc.:	
Elder Abuse Access to Justice Partnership – Fresno and Tulare Counties	\$90,000
7. Contra Costa Senior Legal Services:	
Senior Self-Help Clinic	\$25,000
8. East Bay Community Law Center:	
Consumer Law Clinic (Alameda)	\$40,000
9. Elder Law and Advocacy:	
Imperial County Bilingual Conservatorship/Guardianship Clinic	\$45,000
10. Family Violence Law Center:	
Alameda County Domestic Violence Self-Representation Assistance	\$25,000
11. Greater Bakersfield Legal Assistance, Inc.:	
Kern County Orders Project	\$55,000
12. Inland Empire Latino Lawyers Association:	
Small Claims Advocacy & Awareness Project (Riverside/San Bernardino)	\$25,000
13. Legal Aid Foundation of Los Angeles:	
Santa Monica Self-Help Legal Access Center	\$40,000
14. Legal Aid Foundation of Santa Barbara County:	
Legal Resource Center in Lompoc	\$50,000
15. Legal Aid of Marin:	
Unlawful Detainer/MSC Calendar Assistance	\$50,000
16. Legal Aid Society of Napa Valley:	
Small Claims Assistance Project	\$25,000
17. Legal Aid Society of Orange County:	
Central Justice Center Self-Help Center and E-Filing Project	\$65,000
Limited Conservatorship Clinic	\$25,000
18. Legal Aid Society of San Diego, Inc.:	
San Diego County Conservatorship Assistance Project	\$45,000
Unlawful Detainer Assistance Program (South County)	\$40,000
19. Legal Aid Society of San Mateo County:	
San Mateo County Landlord/Tenant Clinic	\$30,000
20. Legal Assistance for Seniors:	
Partnership to Assist Guardianship Litigants (Alameda)	\$40,000

21. Legal Services of Northern California:	
Civil Harassment and Small Claims Mediation Project (Butte)	\$26,000
Mother Lode Pro Per Project (Amador, Calaveras, El Dorado, Placer)	\$58,000
Restraining Order Clinic (Solano)	\$30,000
Consumer Assistance Clinic (Yolo)	\$40,000
22. Los Angeles Center for Law and Justice:	
Young Parent’s Day	\$25,000
23. Neighborhood Legal Services of Los Angeles County:	
Pasadena Consumer Debt Relief	\$55,000
San Fernando Civil Harassment Project	\$45,000
24. Pro Bono Project Silicon Valley:	
Family Court Settlement Project (Santa Clara)	\$45,000
25. Public Law Center:	
Orange County Courthouse Guardianship Clinic	\$25,000
Orange County Spanish Language Self-Help Dissolution Workshops	\$60,000
26. San Diego Volunteer Lawyer Project:	
North County Civil Harassment Restraining Order Clinic	\$50,000
27. San Francisco Bar Volunteer Legal Services:	
Family Law Assisted Self-Help (FLASH) Project	\$45,000
28. Senior Citizens’ Legal Services:	
Conservatorship and Elder Abuse Project (Santa Cruz, San Benito)	\$30,000
29. Watsonville Law Center:	
Language Access to Court Project (Santa Cruz)	\$50,000
Total	\$1,624,000

Item E Judicial Branch Education: Renaming the Office of Education/CJER

The Governing Committee of the Center for Judicial Education and Research recommended that the Office of Education/CJER be renamed the Center for Judiciary Education and Research (CJER). The Governing Committee has determined that the proposed renaming more accurately captures the mission and scope of this office and the work that it does for the entire California judiciary in the area of education. In addition, this name highlights the work that the Judicial Council, the California Judges Association, and the Continuing Education of the Bar accomplished in creating an entity that is devoted to education for the California judicial branch.

Council action

The Judicial Council, effective December 14, 2012, approved renaming the office Center for Judiciary Education and Research (CJER).

NEW CONSENT ITEM

AOC Restructuring: Additional Judicial Council Directive Regarding AOC Policy on Working Remotely (Telecommuting)

On August 31, 2012, the Judicial Council directed the Administrative Director of the Courts to ensure that the AOC adheres to its telecommuting (working remotely) policy consistently and to identify and correct all existing deviations and violations of the existing policy. The council also directed the Administrative Director to review that policy and provide the council with a report proposing any recommendations and amendments to the policy. The Executive and Planning Committee recommended that the council add an additional directive—to consider and report on alternatives, including whether this policy should remain in force—and return to the council with a report and recommendations for the council’s February 2013 meeting.

Council action

The Judicial Council directed the Administrative Director of the Courts, in addition to the two directives from the August 31, 2012, council meeting, to consider and report on alternatives, including whether the AOC policy on working remotely should remain in force and to return to the council with recommendations for the council’s February 2013 meeting.

Item F Judicial Council Legislative Policy Summary: 2012

The Policy Coordination and Liaison Committee recommended that the Judicial Council adopt the updated Legislative Policy Summary reflecting actions through the 2012 legislative year. Adoption of this updated summary of positions taken on court-related legislation will assist the council in making decisions about future legislation, consistent with strategic plan goals.

Council action

The Judicial Council adopted the updated Legislative Policy Summary reflecting actions through the 2012 legislative year.

Item G Judicial Council–Sponsored Legislation: Tribal Court Civil Judgment Act

The Policy Coordination and Liaison Committee, California Tribal Court/State Court Forum, Civil and Small Claims Advisory Committee, and Family and Juvenile Law Advisory Committee, jointly recommended that the Judicial Council sponsor legislation to clarify and simplify the process by which tribal court civil judgments will be recognized and enforced in

California, in the form of the Tribal Court Civil Judgment Act. Currently, tribal court judgments may be recognized under the provisions of the Uniform Foreign-Country Money Judgments Recognition Act (Code of Civ. Proc., §§ 1713-1724). Proceedings to obtain enforcement under that act can be lengthy and costly. This proposal would provide a discrete procedure for recognizing and enforcing tribal court civil judgments, to provide swifter recognition of such judgments while continuing to apply the principles of comity appropriate to judgments of sovereign tribes.

Council action

The Judicial Council approved sponsorship of legislation to amend the Code of Civil Procedure by adding the Tribal Court Civil Judgment Act, to provide discrete procedures for state courts' recognition and enforcement of civil judgments issued by trial courts.

Item H **Judicial Council–Sponsored Legislation: Court Reporter Fee Cleanup**

The 2012 public safety budget trailer bill (Sen. Bill 1021; Stats. 2012, ch. 41) created a new \$30 fee to be assessed against litigants for court reporter services in civil proceedings lasting less than one hour. The statute did not provide clear guidance, however, on how to implement this fee. The Policy Coordination and Liaison Committee (PCLC) and the Joint Legislation Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees (JLWG) therefore recommended addressing the lack of specificity and resulting confusion to better enable courts to collect revenue from this new source. This proposal will streamline procedures and create sufficient flexibility and guidance for the courts and for litigants on how this new fee will be assessed.

Council action

The Judicial Council approved sponsorship of legislation to amend Government Code Section 68086 to provide necessary cleanup to the newly enacted \$30 court reporter fee to:

1. Clarify that the fee is for proceedings lasting one hour or less;
2. Clarify that the moving party is responsible for the fee;
3. Authorize the court to collect the fee at the time the party files the papers that result in the scheduled hearing;
4. Specify that the fee is only refundable if the court fails to provide a court reporter at the scheduled hearing (if the parties take the matter off calendar, the fee does not get refunded); and
5. Provide that the funds shall be deposited in the Trial Court Trust Fund and then returned to the court in which the funds were collected.

Item I Judicial Branch Report to the Legislature: Statewide Collection of Court-Ordered Debt

The Enhanced Collections Unit of the AOC Fiscal Services Office recommended approving the fiscal year 2011–2012 annual *Report to the Legislature on Statewide Collection of Court-Ordered Debt*, as required by Penal Code section 1463.010.

Council action

The Judicial Council approved the annual *Report to the Legislature on Statewide Collection of Court-Ordered Debt*, as required by Penal Code section 1463.010.

Item J Judicial Branch Report to the Legislature: Statewide Amnesty Program for Fiscal Year 2011–2012

The Enhanced Collections Unit of the AOC, Fiscal Services Office, prepared a report to the Legislature on the Statewide Amnesty Program for review and approval by the Judicial Council, as required by Vehicle Code section 42008.7.

Council action

The Judicial Council approved the report to the Legislature on the Statewide Amnesty Program for selected categories of court-ordered debt, as required by Vehicle Code section 42008.7.

Item K Judicial Branch Report to the Legislature: Court Facilities Construction Procurement Practices

The AOC recommended that the Judicial Council direct the AOC to submit a report on Judicial Branch Construction Procurement Practices to the Joint Legislative Budget Committee (JLBC) by January 15, 2013, to meet Government Code section 70403(d) statutory reporting requirements. The report to the JLBC discusses the six projects that the AOC completed for the judicial branch during the reporting period of January 1, 2008, to January 1, 2013, delivering each under budget and saving the state nearly \$29 million.

Council action

The Judicial Council directed the AOC to submit the report on Judicial Branch Construction Procurement Practices to the Joint Legislative Budget Committee (JLBC) by January 15, 2013, to meet Senate Bill 78 statutory reporting requirements.

Item L Judicial Branch Report to the Legislature: Receipts and Expenditures From Local Courthouse Construction Funds

The Judicial Branch Capital Program Office of the AOC recommended approving *Receipts and Expenditures From Local Courthouse Construction Funds: Report to the Budget and Fiscal Committees of the Legislature* for submission to the budget and fiscal committees of

the Legislature. The report provides information for the reporting period of July 1, 2011, through June 30, 2012, regarding receipts and expenditures from local courthouse construction funds, as reported by each county. The annual submission of this report is required under Gov. Code section 70403(d).

Council action

The Judicial Council approved the annual report *Receipts and Expenditures From Local Courthouse Construction Funds: Report to the Budget and Fiscal Committees of the Legislature* for the period of July 1, 2011 through June 30, 2012, for submission to the budget and fiscal committees of the California Legislature.

Item M Judicial Branch Report to the Legislature: Tribal Customary Adoption

The AOC, Judicial and Court Operations Services Division, Center for Families, Children & the Courts recommended that the Judicial Council approve for submission to the Legislature the report *Judicial Branch Report to the Legislature: Tribal Customary Adoption*. This report, which evaluates a new statutorily created permanency option for “Indian children” (as defined in 25 U.S.C. § 1903 (4) and Welf. & Inst. Code, § 224.1 (a)), is required to be submitted by the Judicial Council under Welfare and Institutions Code section 366.24 (f).

Council action

The Judicial Council approved the report *Judicial Branch Report to the Legislature: Tribal Customary Adoption* for submission to the Legislature.

Item N Judicial Branch Report to the Legislature: Special Funds Expenditures for Fiscal Year 2011–2012

The AOC recommended that the Judicial Council approve the report of trial court special funds expenditures for fiscal year 2011–2012, as required by Gov. Code section 77209(j), to the chair of the Joint Legislative Budget Committee, vice-chair of the Senate Committee on Budget and Fiscal Review, and the chair and vice-chair of the Assembly Committee on Budget.

Council action

The Judicial Council approved the *Annual Report of Special Funds Expenditures for Fiscal Year 2011–2012 Expenditures* for submission to the Legislature.

Item O Judicial Branch Report to the Legislature: Status of the California Court Case Management System and the Phoenix Program 2012

The AOC recommended that the Judicial Council approve the *Status of the California Court Case Management System and the Phoenix Program 2012*, as required by Government Code section 68511.8(a), to be sent to the chair of the Joint Legislative Budget Committee, vice-

chair of the Senate Committee on Budget and Fiscal Review, and the chair and vice-chair of the Assembly Committee on Budget.

Council action

The Judicial Council approved the *Status of the California Court Case Management System and the Phoenix Program 2012* for submission to the Legislature.

Item P Judicial Branch Report to the Legislature: Judicial Administration Standards and Measures that Promote the Fair and Efficient Administration of Justice

The AOC recommended that the Judicial Council approve the transmittal of the attached report to the Legislature on *Judicial Administration Standards and Measures That Promote the Fair and Efficient Administration of Justice*, as required under Government Code section 77001.5. Although this is an annual requirement, reports due November 2010 and 2011 were not submitted due to resource limitations in the judicial branch. The attached report attempts to overcome these limitations by identifying and reporting on existing measures adopted by the Judicial Council that respond to the reporting requirements. Taking advantage of improvements in data quality, the report provides information on the following standards and measures of trial court operations: (1) caseload clearance rates; (2) time to disposition; (3) stage of case at disposition; (4) trials by type of proceeding; and (5) judicial workload and resources.

Council action

The Judicial Council, effective December 14, 2012, approved the report *Judicial Administration Standards and Measures that Promote the Fair and Efficient Administration of Justice* for submission to the Legislature.

Item Q Judicial Branch Report to the Legislature: Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant

The AOC recommended that the Judicial Council approve the report *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant* for transmission to the Legislature and the Governor. Doing so fulfills the requirements of Penal Code section 1170.45 which requires the Judicial Council to report annually on the disposition of criminal cases statewide according to the defendants' race and ethnicity. Since 2001 the AOC Office of Court Research has produced this report by analyzing the disposition of felony cases using data provided by the California State Department of Justice. Consistent with previous years, the 2012 report finds that when controlling for prior record and type of offense, there are no consistent patterns in the severity of sentence related to the defendants' race/ethnicity.

Council action

The Judicial Council approved the report *Disposition of Criminal Cases According to the Race and Ethnicity of the Defendant* for submission to the Legislature and the Governor.

DISCUSSION AGENDA (ITEMS NEW, R–X)

Item R Judicial Council Legislative Priorities: 2013

Each year, the Judicial Council sponsors legislation to further key council objectives and set its legislative priorities for the upcoming legislative year. For the 2011 and 2012 legislative years, the council’s legislative priorities focused mostly, though not entirely, on budget and budget-related items. The Policy Coordination and Liaison Committee recommended a similar approach for the 2013 legislative session, with the following legislative priorities: (1) budget, including advocating against further reductions and for sufficient resources for the judicial branch as well as continuing to advocate for the 17 operational efficiencies, cost savings, and revenue proposals approved for sponsorship in 2012; and (2) the continuing priority of securing new judgeships and ratifying the authority of the council to convert vacant subordinate judicial officer positions to judgeships in eligible courts. These legislative priorities will help ensure that Californians continue to have access to courts and critical court services, and that the judicial branch can provide some degree of access to justice.

Council action

The Judicial Council adopted two of the three legislative priorities recommended by the Policy Coordination and Liaison Committee; recommendations 1 and 3:

1. Advocate to achieve budget stability for the judicial branch, including advocating against further budget reductions and for sufficient resources to allow courts to be in a position to reopen closed courts and restore critical staff, programs, and services that were reduced or eliminated in the past several years. This advocacy includes sponsorship of the 17 proposals for trial court operational efficiencies, cost savings, and new revenue measures approved for sponsorship in April 2012.
3. Advocate, as is done in each year, for legislative ratification of the Judicial Council’s authority to convert 16 subordinate judicial officer (SJO) positions in eligible courts to judgeships, and sponsor legislation similar to Senate Bill 405 in 2011 (Stats. 2011, ch. 705) for legislative ratification of the council’s authority to convert up to 10 additional SJO positions in fiscal year 2013–2014.

Actions deferred

The council deferred action on the second recommendation, to sponsor legislation to create the third set of 50 new judgeships to be allocated consistent with the council’s most recent Judicial Needs Assessment, pending a discussion by PCLC on whether to recommend advocating for 50 new judgeships or funding for the 50 judgeships previously approved but not funded by the Legislature.

Item S Court Facilities: Trial Court Facility Modifications Working Group Charge

The Trial Court Facility Modifications Working Group (TCFMWG) and the AOC recommended the Judicial Council approve the proposed charge for the TCFMWG. The working group has functioned for over five years without a charge based on the Judicial Council’s policies on Facility Modifications. The proposed charge formalizes the previous responsibilities and includes expanded responsibilities related to operations and maintenance of court facilities.

Council action

The Judicial Council, effective December 14, 2012, approved with one abstention, the Trial Court Modifications Working Group charge (attached to these minutes), as proposed.

Item T Court Security: Final Report of the Court Emergency Response and Security Task Force

The Court Emergency Response and Security Task Force has evaluated court security—including emergency planning, continuity of operations, and personal security issues—and presented its recommendations for the Judicial Council to manage, maintain, and enhance security in the courts. The task force recommended that the council receive its report, maintain the AOC Office of Security, and create a Court Security Advisory Committee to promote the security of judges, court employees, and the public they serve.

Council action

The Judicial Council received the final report of the Court Emergency Response and Security Task Force. It deferred the remaining four recommendations in the report pending the council’s discussion of Item U on the agenda, and until further consideration by the council’s Executive and Planning and Rules and Projects committees on whether to recommend a standing advisory committee for the Judicial Council on issues related to court security and emergency planning functions for the branch. These two council committees are conducting a comprehensive review of council advisory bodies.

Item U Judicial Branch Administration: Retaining the AOC Office of Security

At its August 31, 2012, meeting, the Judicial Council directed the Administrative Director of the Courts “to return to the Judicial Council with an analysis, defining the necessary emergency response and security functions for the branch and a recommendation on the organizational plan for council approval.” Based on the recommendation of the final report of the Court Emergency Response and Security Task Force, the Administrative Director of the Courts recommended maintaining the AOC Office of Security within the Judicial and Court Operations Services Division and directing a proposed Court Security Advisory Committee to review the AOC Office of Security and make recommendations defining the necessary emergency response and security functions to be performed by the office. When the necessary functions are established, the

Administrative Director of the Courts will conduct a staffing and organizational study of the AOC Office of Security and make changes to the office in consultation with the proposed Court Security Advisory Committee, as appropriate.

Council action

The Judicial Council approved the following recommendation proposed by the Administrative Director of the Courts:

1. Maintain the AOC Office of Security within the Judicial and Court Operations Services Division, with responsibility for performing the security and emergency response planning functions currently assigned to it and at the current staffing level.

Actions deferred

The council deferred action on the following two recommendations, pending further consideration by the council's Executive and Planning Committee and Rules and Projects Committee, as part of their joint comprehensive review of council advisory bodies.

2. Direct the proposed Court Security Advisory Committee to review and evaluate the current work of the AOC Office of Security; and
3. Direct the proposed Court Security Advisory Committee to make recommendations to the Judicial Council on the security and emergency response planning functions that the AOC Office of Security should be providing to the courts and the Judicial Council.

Item V Court Facilities: Court Financial Contributions and Judicial Council Oversight

The AOC recommended that the Judicial Council discontinue the existing Court-Funded Facilities Request (CFR) Procedure, with a narrow exception, and recommended additional council actions to ensure informed council oversight of court facilities and related costs. The CFR Procedure was created as an interim measure to assist courts pending completion of the transfers of responsibility for their facilities from counties to the state, and those transfers were completed on December 31, 2009. As legislation enacted this summer further reduced trial court funding and significantly restricted the courts' ability to carry fund balances, the AOC also recommended that an analysis be prepared for presentation to the Judicial Council in June regarding the courts' existing financial commitments to contribute to facilities costs and the advisability of permitting future new contributions to supplement insufficient state funding. Such future new contributions would be via allocation reduction in narrow circumstances with specified requirements. Finally, the AOC recommended designating the council's Trial Court Facility Modifications Working Group to receive reporting about court leases generally.

Council action

The Judicial Council, effective December 14, 2012:

1. Discontinued the existing Court-Funded Facilities Request Procedure for all new requests, except those described in 2, below, because the procedure was originally intended as an interim measure pending completion of the transfers of

responsibility for court facilities from counties to the state, and those transfers have been completed. The council directed that existing requests approved to proceed via written communication sent to a court by or before December 13, 2012, as authorized by the Administrative Director of the Courts, may go forward.

2. Delegated to the Administrative Director the authority to approve the following types of new Court-Funded Facilities Requests (CFRs) between December 14, 2012, and the date of the Judicial Council's June 2013 meeting, consistent with the following guidelines and requirements:
 - The court contribution will be used exclusively to pay either:
 - Lease-related costs (i.e., lease payments, operating costs, repairs, or modifications required by a lease); or
 - Costs that otherwise are allowable under rule 10.810 of the California Rules of Court (i.e., equipment, furnishings, interior painting, flooring replacement or repair, furniture repair, or records storage);
 - The resulting court financial commitment will not extend longer than three years;
 - If the court contribution is for lease-related costs, the contribution must be necessary to avoid other greater costs, for example, a lease termination that would require relocation to a different facility and increased space rental costs;
 - The court demonstrates its ability to meet its full financial commitment; and
 - Each CFR so approved between December 2012 and June 2013 will be reported to the Judicial Council by the Administrative Director at each council meeting during this time period, in an informational report covering CFR approvals that have occurred since the last council meeting, with the report to cover all points specified in this delegation.
3. Directed the Administrative Director to return to the Judicial Council in June 2013 to report on:
 - The extent of the outstanding financial commitments that courts have incurred as part of the CFR Procedure;
 - The impact of recent legislation restricting courts' fund balances; and
 - The advisability of the council's approving a new policy permitting courts to make limited financial contributions to help meet urgent facilities needs, consistent with guidelines and reporting obligations that the council may approve.
4. Delegated to the Judicial Council's Trial Court Facility Modifications Working Group the responsibility for receiving regular reports about all court facilities leases and forwarding information relating to such for the council's information

or action, as appropriate (amended by the council in a motion during the discussion).

5. Approved the revised Court-Funded Request Form for courts' use for requests under the limited exception to the otherwise discontinued procedure.

Item W Discussion item deferred to a future 2013 meeting.

Item X Public Access to Judicial Administrative Records: AOC Policy and Procedures for Responding to Requests for Information and Records Under Rule 10.500

Judicial Council members recommended that the council approve and direct the Administrative Director of the Courts to implement a policy for guiding AOC staff in responding to public requests for information/explanation and for judicial administrative records under rule 10.500 of the California Rules of Court. A formal policy is needed because the AOC has recently been receiving an increased number of requests that do not fall squarely within the bounds of rule 10.500. Adoption of the proposed policy and direction to the AOC to implement will ensure appropriate, consistent handling of all requests.

Council action

The Judicial Council approved and adopted the AOC Staff Policy on and Procedures for Responding to Requests for Judicial Administrative Records and Information, and directed the AOC to provide a status report in six months.

In Memoriam

Chief Justice Cantil-Sakauye closed the meeting with a moment of silence to remember recently deceased judicial colleagues and honor their service to their courts and the cause of justice:

- Hon. Reynaldo Chaparro (Ret.), Superior Court of California, County of Los Angeles
- Hon. Walter H. Harrington, Jr. (Ret.), Superior Court of California, County of San Mateo.

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)

INFO 1 Judicial Council: Implementation of Judicial Council Directives on AOC Restructuring

The Chair of the Executive and Planning Committee (E&P) presented this informational report on the implementation of the Judicial Council AOC Restructuring directives as approved by the council on August 31, 2012. The AOC Restructuring directives specifically direct the

Administrative Director of the Courts to report to E&P before each Judicial Council meeting on each of the directives. This informational report provides an update on the progress of implementation efforts.

INFO 2 Government Code Section 68106: Public Notice by Courts of Closures or Reduced Clerks' Office Hours (Gov. Code, § 68106—Report No. 16)

Government Code section 68106 directs (1) trial courts to notify the public and the Judicial Council before closing courtrooms or clerks' offices or reducing clerks' regular office hours, and (2) the council to post all such notices on its website and also relay them to the Legislature. This was the 16th report to date listing the latest court notices received by the council under this statutory requirement; since the previous report, 10 superior courts—those of Yolo, Fresno, San Joaquin, Plumas, Mendocino, Sonoma, Sutter, Solano, San Mateo, and San Bernardino Counties—have issued new notices.

INFO 3 Trial Courts: *Trial Court Records Manual, Version 2.0*

This report presented the revised *Trial Court Records Manual* (Version 2.0), prepared by the Court Executives Advisory Committee. The manual is an important resource, containing references to statutes, rules, industry standards, and best practices relating to records management. The revised manual includes new sections on standards for managing microfilm records and for records created, maintained, and preserved in electronic form. It also contains a new section on the filing of documents, the form and format requirements for filed documents, and the role of civil fees and fee waivers.

There being no further public business, the meeting was adjourned at approximately 1:00 p.m.

Circulating Order since the last business meeting
(None)

Respectfully submitted,



Steven Jahr
Administrative Director of the Courts and
Secretary of the Judicial Council

Attachments

1. Trial Court Facility Modifications Working Group charge
2. Correspondence dated December 10, 2012, from John David Pereira, Law Offices of John David Pereira
3. Correspondence dated December 12, 2012, from Terry Francke, General Counsel, Californians Aware

TRIAL COURT FACILITY MODIFICATIONS WORKING GROUP

Working Group Charge

The purpose of the Trial Court Facility Modifications Working Group (working group) is to provide ongoing oversight of the judicial branch program that manages renovations, facilities operations, maintenance, and real estate for trial courts throughout the state. The working group will oversee the work of the Administrative Office of the Courts (AOC) in its management of court facilities statewide.

The working group will be a standing committee of the Judicial Council of California (Judicial Council),¹ charged with the following responsibilities concerning courthouse facilities:

- Provide ongoing oversight of policy issues, business practices, and budget monitoring and control for all facility-related issues in existing branch facilities. This includes all areas for which the Office of Real Estate and Facilities Management is responsible, including operations and maintenance, facility modifications, non-capital-related real estate transactions, energy management, and environmental management and sustainability.
- Authorize funding of Facility Modifications in accordance with the Judicial Council's policy.
- Provide recommendations to the Judicial Council on funding-related issues, including funding requirements for both operations and maintenance, and Facility Modifications.
- Support the Court Facilities Working Group in the development of the Capital Program, including providing input to design standards, prioritization of capital projects, and methods to reduce construction cost without impacting long-term operations and maintenance cost.
- Advise on issues related to the working group's charge as requested by the Chief Justice, the Judicial Council, or the Administrative Director of the Courts. These may include issues related to funding, AOC staffing support, development and oversight of contracts, and policies and procedures related to the trial court facilities.
- Provide quarterly and annual reports on the Facility Modification Program in accordance with the Judicial Council's policy.

Working Group Membership

The working group membership will be composed of judges and court executive officers appointed in accordance with the Judicial Council's *Trial Court Facility Modifications Policy*.

¹ In the past this group has been overseen by the Court Facilities Working Group. It is the intention, with this formal charge, to separate the responsibilities of the two groups so that neither oversees the other: the Court Facilities Working Group will be focused on the facilities capital program and the Trial Court Facility Modifications Working Group will be focused on facilities modifications, maintenance, and operations.

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December 10, 2012

Judicial Council, State of California
Ronald M. George State Office Complex
William C. Vickrey Judicial Council Conference Center
Malcolm M. Lucas Board Room
455 Golden Gate Avenue
San Francisco, California 94102-3688

RECEIVED

DEC 12 2012

JUDICIAL COUNCIL
ADMINISTRATIVE OFFICE OF THE COURTS

Re: Written Public Comment for Meeting
of December 14, 2012.

Dear Judicial Council:

As a practicing attorney I register my vehement objection to the mandatory court reporter fees imposed upon the filing of a motion. Code of Civil Procedure Section 269 does not mandate use of a court reporter except by order of the court or upon request of a party. If one is requested by a party I can understand imposition of a fee. However, creating a mandatory \$30.00 fee even when no court reporter is needed or requested is unacceptable.

Having recently filed two motions and having been told by the court my client cannot waive the court reporter and eliminate the fee, the \$30.00 fee is not truly a court reporter fee but another revenue generating mechanism under disguise. Also, since most courts in California use a tentative ruling system whereby absent an objection the tentative ruling becomes the Order of the Court, it is incredible that a litigant must still pay a fee when no actual hearing is conducted.

The motion fee already has been raised to \$60.00 and with this new "mandatory fee" the cost to file any motion is now \$90.00. Quite frankly, it's embarrassing to our profession and unfair to the litigants who ultimately suffer the cost of paying for something they often don't need or use just because government is looking for not so clever ways to generate revenue.

Very truly yours,


John David Pereira



December 12, 2012

The Honorable Tani G. Cantil-Sakauye
Chief Justice of California

RE: Judicial Council Meeting of Friday, December 14: Agenda Item X

Dear Chief Justice Cantil-Sakauye,

Californians Aware, a nonprofit, nonpartisan public interest organization concerned to protect and advance open government and public information policies and practices in California, asks that the Judicial Council defer the action recommendation proposed under agenda item X for Friday's meeting.

The proposal calls for a complex, nuanced and somewhat subjective spectrum of authorized responses or (non-responses) to requests for information about judicial branch administration that are required to be given response—or not—under Rule of Court 10.500, governing access to judicial administrative records.

Before approving the recommended procedures, we urge the Judicial Council to direct AOC staff to consider, evaluate and report back on a far simpler approach. That approach will do nothing to solve the problem of reduced staff resources, but should at least make the work somewhat simpler in the sense of simplifying the decisional tree.

It should also permit dispensing with an apparent discretionary filter under which “Who’s asking?” can make a definite difference inconsistent with Rule 10.500’s declared aim to provide access comparable, by and large, to that of the California Public Records Act (CPRA), under which the requester’s identity or purpose are not to be factors considered in making a disclosure decision. Clearly judges may need specific information for practical and official purposes in doing their jobs; those requests are understandably to be given priority outside the Rule 10.500 scheme.

But otherwise, categorically qualifying and properly submitted requests (including those from judges) that reflect a general civic, policy or even political perspective should not be sliced, diced and pigeonholed for better or less better response depending on who the requester is.

Much of the problem that the recommendation identifies is one familiar to CPRA processors: a request for explanation, justification, qualitative or quantitative analysis, listing, etc. that calls on the agency, in effect, to create a new record. This issue is addressed in Rule 10.500 (e) (1) (B): “Nothing in this rule requires a judicial branch entity to create any record or to compile or assemble data in response to a request for judicial administrative records if the judicial branch

entity does not compile or assemble the data in the requested form for its own use or for provision to other agencies."

But usually this kind of request can be recast into one which seeks records *reflecting or addressing* the subject matter of interest, for example treating the question, "Why does the AOC need an employee in China?" as "Please provide any record or records documenting the decision to have an AOC representative in China." Most requests or queries that do not literally ask for records, in other words, can be converted fairly easily into those that do, and fulfilled accordingly, or declined, either because those records are exempt from disclosure under the Rule, or because they do not exist. The latter situation should be extremely rare: *if something about how the branch is or has been run is being researched or questioned, it almost certainly has a documentary history.* The records constituting that history can be provided, allowing the requester to draw his or her own conclusions.

A phrasing commonly used by public agencies in answering CPRA-based queries is that the agency has located "records responsive to your request," meaning that the records are not necessarily those specified in the request but do contain information of the kind that seems to be sought. In fact often requesters cannot specify precisely the records whose contents will best answer their concerns. As the Court of Appeal has pointed out,

Unquestionably, public records must be described clearly enough to permit the agency to determine whether writings of the type described in the request are under its control.

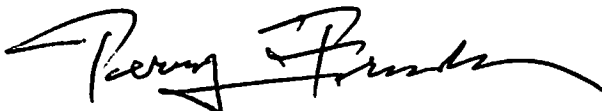
(The CPRA) compels an agency to provide a copy of nonexempt records upon a request 'which reasonably describes an identifiable record, or information produced therefrom . .

.' However, the requirement of clarity must be tempered by the reality that a requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content. The agency must then determine whether it has such writings under its control and the applicability of any exemption. An agency is thus obliged to search for records based on criteria set forth in the search request.

California First Amendment Coalition v. Superior Court, 78 Cal.Rptr.2d 847, 849 (1998).

Accordingly, Californians Aware requests that the Judicial Council defer approval of the recommended policy pending consideration of the approach suggested here, specification of the kind of request(s) that it could not accommodate, and the reasons why.

Respectfully submitted,



Terry Francke
General Counsel