

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts website. What follows is captured live captioning, formatted and unedited, of the last meeting. The official record of each meeting, the meeting minutes, is usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts website at [www.courts.ca.gov](http://www.courts.ca.gov).

> Please standby for real time captions.

>> The meeting will begin shortly.

>> I am going to ask you to take your seats. We are going to discuss the minutes and our new members who are observing.

>> At this point, I will turn this over to Presiding Justice Norman Epstein who will be presenting at our education program. I know that Dr. Epstein is doing us a favor and has a plane to catch.

>> Thank you, Madame Chief Justice. It is an honor to be here. And it is a particular honor to be here with all of you, and also future members of the council. I suggest that if you have pen in hand, to put it down because I do not think I will be saying anything you would want to write down.

>> The state courts and even the United States Supreme Court were finding their way from the beginning and developing an institution, the courts and their respective judiciaries, to develop a common law and all the great work that they do. There is anecdotal information about all of them. The United States Supreme Court had a lot to say this morning. I have just a couple of anecdotes to share with you about that. The top floor of the court, directly above where the justices sit, is laid out just like a basketball court. They have a rule that there is no dribbling when court is in session. They work on the term system so everything has to get out by the end of the term, which is the end of June. Sometimes they'll lap over into the first days of July, but the Fourth of July is absolutely it. So everyone is working very hard, particular the research attorneys, getting out the opinions, revising the opinions, and all of the other things because they have to meet their deadline. And a local joke is that Independence Day takes on a new meaning because once it arrives they're done. I just want to share one anecdotal piece. There was a very remarkable case from New York. Over a century ago, a member of the New York Supreme Court was elevated to the Court of Appeals, which is their highest court, and he had an appeal from a case he'd decided. The question was whether he should recuse or not? And he thought about it and considered that, "Who knows more about this case than I do? I'll try it."

>> It was necessary to amend the Constitution in the state of New York to get around that opinion. I have almost no citations that I can share with you. But I know that once you hear it, you will never forget it: one New York one.

>> But I digress. And this is how it was over a century ago. California was a nascent state. It was acquired by the United States, because of the war with Mexico. The American plenipotentiary was meeting with the representatives of Mexico. Word reached him that he was fired, and he was told to pack up his stuff and return to Washington D.C. but he did none of that. He continued to negotiate the treaty and came back with a treaty in hand. One of the things that the Mexican representatives insisted upon was a provision to safeguard all of the water rights of Indians in what would be the United States. Over a century later, there was a fight over water rights in the Colorado River. The principal antagonists were the states of Arizona and California. And the United States attorney appeared in the litigation representing all of the tribes along the Colorado River. That delegation, and the state attorney general's office, was having trouble dealing with this provision in the treaty. And the treaty was so good even though they fired the plenipotentiary, Nicholas Trist, it was ratified by Congress. But someone came up with the argument, because the American representative had been fired, and he knew it, therefore the treaty was not valid. And so the rights of the Indians went with the treaty. But then someone said, "Doesn't that mean we're all citizens of Mexico?" At that point, the argument was dropped and not put forward further. The flag behind you is the bear flag and says California Republic. There was for a time something called the California Republic. It was really a farce, there never really was a republic. The only real republic that would join the United States was Texas. But finally the state of California was admitted. Now you can see the great seal behind the Chief Justice. I do not know if you know why Minerva is there. She is the Roman god of wisdom. And the reason she is there is she sprang full-blown from the head of Zeus. And she did not go through a gestation period. So it was that California did not go through the territorial period but was immediately admitted full blown as a state.

>> The first thing the state has to have is a Constitution. The Governor at the beginning, called a convention and all of the delegates came together in Monterrey. They drafted a constitution. I once had the occasion to read the minutes of that session. There are two passages that seem to stand out. One is voting money to haul ice from the Sierras to Colton Hall to try to cool it down and the other was an argument about the stenographic reporting of that debate. Because it was explained that no one here knows what they are talking about, and this will make it clear to posterity. [ Laughter ]

>> Virtually all came from other states. They brought with them snippets of their state constitutions, and little bits of them got into our Constitution. Here we have a little bit from Ohio, Idaho, Pennsylvania, and New York, and also a great many other states. The work was done, and the state was started, and the great seal was adopted. As you know, the first Chief Justice was Serranus Hastings. He had been the Chief Justice of Iowa. My wife's ancestor was a partner of Justice Hastings. And Hastings was the founder of Hastings College of the Law. And he was a Chief Justice for a relatively brief time. The next Chief Justice was Hugh C. Murray. Many were attracted to California because of the Gold Rush, and it really did transform California. Murray went from New York and sailed down to Panama. And that he took the boat to California, and that boat stopped at every port. And he was so frustrated. And when it finally stopped at Cabo San Lucas, he walked off the ship and walked to San Francisco. He is definitely

a Type A personality. He is probably best known for one of the most notorious and racist opinions by the California courts and possibly any court at all. I stumbled across this when I was an undergraduate student. The case is *People versus Hall*. And Hall was accused of homicide and the principal evidence against him was the testimony of two Chinese. California had a law at the time that no white person could be convicted on the testimony of any Indian, Negro, or Mulatto, and so the conviction was invalid. And the argument ran that the ancestors of the American Indians came over from Asia. And Asia really is China. And actually the Indians are Chinese. And so the argument was that because the Indians came from Asia, and that all Chinese were Asian, then all Asians must be Chinese. And this is equivalent to saying that French citizens are citizens of Europe, so everyone in Europe must be a French citizen. He said that even if this were not the case, we would reach the same result as a matter of public policy. Public policy? After all of these years, this is incredible to read. This is from 1854. Among other things that Chief Justice Murray said was that with all of the equal rights of citizenship, the Chinese would be admitted to the polls, the jury box, the bench, and even the legislative halls.

>> It was a 2 to 1 decision. There was a second vote, by a man named Solomon Heidenfelt. Obviously he was a bigot. And he became a member of the Supreme Court. How he did that I will never know. Someone fell in an excavation site and they sued the proprietor. And the defense was that he was drunk at the time. Heidenfelt said, "A drunk man is entitled to as safe a street as a sober man and far more in need of it." After he left the court, he went into private practice and was doing that even after the Civil War.

>> After the Civil War, Congress passed something called the Ironclad Law, which was meant to prevent any Confederates from holding office anywhere. What it held was that no one could hold public office who did not swear allegiance to the U.S. Someone who really believed in the Confederacy would have trouble with that. And this also included lawyers because we are officers of the court. Heidenfelt had been retained in a will contest, and at the time he had a draft for \$10,000 in his coat. He comes to court ready for trial and the judge says, "My clerk tells me we do not have a copy of your oath on file. Would you sign the oath, and we'll get on with the case."

>> He would not sign the oath, handed the check back to his client, and he walked out of court into history. And a few years later, we come to the perhaps most colorful time in our history and one I hope never to be repeated. This has to do with Chief Justice David Terry. His great antagonist was Stephen Fields. Their portraits are somewhere in this building. They look like they could have posed for Smith Brothers cough drops with their beards. And Terry was a short guy and he was always in trouble. He actually stabbed another guy with a Bowie knife. He was in one scrape after another. And then he became Chief Justice of California in those days. Then comes along Stephen Fields, who was an associate justice of the Supreme Court. He and Stephen had a comment about Terry: "There is no one who can write such impassable English and make so little sense." Terry also had a quarrel with Senator David Broderick.

>> He made a fortune in Nevada Silver and he became a representative from California. But he made a lot of enemies and one of them was—I am sorry that I got ahead of myself. The senator that I was talking about was Senator David Broderick. And Senator Broderick said, “Terry was an honest man—the only honest man on the bench—now I find I am mistaken. And he is as bad as the rest of them.” After some of these remarks Terry challenged Broderick to a duel. And Terry had the good grace to resign as Chief Justice before the duel. And Terry shot Broderick and killed him. And if you killed someone during a dual, it was still considered homicide. And all of the witnesses had to come up from San Francisco but the ferry was late. And the prosecution did not have any evidence to present so that was it. And now Terry is in private practice. And this takes us to the next phase, where Stephen Field reenters. And he had a mistress, a lady named Ms. Hill, and he put her up in the hotel. But he wanted her to leave the hotel and she refused to go. He took the door taken off, shredded all of the curtains. But she went ahead and tried to divorce him but he said, “What about the divorce, we were not even married.” So there was a series of litigations and a decision from the Supreme Court.

>> All of this is, by the way, in Richard Robbin’s article on California history. Somehow this case got into the federal court. How does divorce go to the federal court I am not sure. But somehow it did. And by this time Fields was a member of the United States Supreme Court. And then as now they have duties as circuit judges. But in those days they actually sat as a trial judge. And John Marshall actually sat in a trial for Aaron Burr. Fields found himself presiding over this case between Hill and Sharon and found Hill and Terry in contempt. Later, Justice Fields was at a railroad station at Lathrop, a dining stop. Justice Fields was there with his bailiff having breakfast. Terry was there and approached Fields with blood in his eye. One story was that he was pushed by David Terry (Hill’s husband). The bailiff stood up to protect Fields and Terry was shot by the bailiff and that was the end of Terry. The bailiff was himself charged with murder but, in a Supreme Court decision, got out of it on immunity since he was protecting a federal officer and that kind of trumped everything. We all recovered from those tumultuous times. The California Supreme Court went on to become a great court and the most cited court in the land other than the U.S. Supreme Court and reached the distinction that it now occupies. That’s the way it was and that’s the way it is now. Thank you so much. It’s a pleasure to be here.

>> Thank you so much, Judge Epstein. Because of time considerations, I saved your introduction for now and the context. All of us know you, and you have been educating many of us for years, and we are graced by your presence. And I always knew you had the history of our court and jurisprudence here. And I’m glad we had the opportunity to invite you because you really have expanded our knowledge. And I know that none of us knew the story of why Minerva was on the seal. I also want to point out to others that Justice Epstein was appointed to the Court of Appeal in Los Angeles, then as presiding justice of Division Four. Arleigh Woods was told by none other than Bernie Witkin, when hearing of the appointment of Justice Epstein, “Arleigh, you won the lottery.” One of the things we can be proud of in California is the quality of our judicial education that we all received in the trial courts, appellate courts, and the Supreme Court, and our educational resources, and Presiding Justice Epstein has contributed to both. He’s a former member of the Judicial Council, also as chair of and long-time faculty for the Center for Judicial

Education and Research. He is the co-author, along with Bernie Witkin, of the well-known and much-used treatise, "California Criminal Law." And I believe, as you've said, that it's important to look back on where we've been and where we are today, and learn the history of the characters who have inhabited our benches as well as our efforts to move beyond the Hidalgo Treaty and determine water rights, and do it in an educated fashion. So I think the work you do, how you've educated us, juxtaposed with the work of the Futures Commission, gives us the sense of belonging to a rich judiciary. And so I thank you and join in a round of applause for your presentation today.

>> So as you know, this is the public business meeting of the Judicial Council. We have been in session. It's June 25, 2015. This is the first of a two-day meeting. We'll adjourn later today around 4:10 p.m. We'll reconvene tomorrow at 8:30 a.m. for our regular council reports, public comments, and updates, our consent agenda, and the remainder of our discussion agenda. But before we begin our agenda today, I want to acknowledge that Governor Brown signed the 2015–2016 state budget following discussions, agreements, and meetings with Senate President Pro Tempore Kevin De Leon and Assembly Speaker Toni Atkins. And I'm proud to say that the council and many branch leaders, along with organizations in support of the branch, actively contributed to these negotiations and to the evolution of the judicial branch portion of this state budget. It was a balanced and on time budget. It addressed many diverse state needs and concerns. I want to call attention to the second line of the Governor's budget introduction. "In addition, it increases spending on education, healthcare, in-home support services, workforce development, drought assistance, and the judiciary." These are words that we advocated for. And we are so grateful to hear that our efforts, transparency, and collaboration have been successful. After several years of cuts, we now have had three years of new investment in California. We have tirelessly advocated for investment in the judicial branch in California. We are so grateful that we are moving in the right direction. It was a local, community, county, and state-level effort. And many of you listened and responded, shared information, and asked questions about our budget and our operation, our history, and our management. We have all data and did full research, and now we are able to move the budget forward. Now we have a purpose. And now we have the ability to have justice for all California. Now we are more responsive. We have pushed to become more efficient in our own investments. And this current budget cycle began last year. And we continued with new investment and a proposed budget from January, and we revised it in May. And it was signed by the Governor yesterday. Thank you for all of your service. I know that Martin will provide more information in tomorrow's meeting about the budget. But I want to take this opportunity to welcome new council members. All of us have been there in the audience waiting to take their seats. Just as there is a state budget cycle, there is also a crucial Judicial Council membership cycle. Our volunteer members will bring a new voice to our council, new ideas, diverse representation, and experience. I think it will enrich our resources. They will bring subject matter expertise. So a warm welcome to our new members who are joining us today for orientation. They will start with their official duties in September. I want them to stand up and be recognized. All seven are experienced and dedicated. They have volunteered their expertise and time. I want to welcome Jake Chatters, court executive officer, Superior Court of Placer County; Judge Samuel Feng, Superior Court of San Francisco County;

Ms. Kimberly Flener, Superior Court of Butte County; Presiding Justice Jim Humes, First Appellate Court, Division One; Mr. Patrick Kelly, State Bar of California appointee; Judge Dalila Lyons, Superior Court of Los Angeles County; and Judge Eric Taylor; president-elect of the California Judges Association and judge of the Superior Court of Los Angeles County.

>> And it is also his birthday. Happy birthday!

>> All of our new members are joining a council that was created in 1926. The constitutional amendment was designed to simplify and improve the judicial system. Since 1926, the roles and responsibilities have evolved and reflect the changes in our diverse state, and our society, and the changes in our state as a whole. And we will continue to do so in the future.

>> So our first item of business is going to be the approval of the minutes from April.

>> Chief, I so move to approve the minutes.

>> Any opposed?

>> The minutes are passed. Thank you.

>> Next we will go over Item 2: Judicial Council implementation on Judicial Council directives on staff reconstruction. We welcome Justice Miller and Judge Rubin.

>> It is an honor to be here today. I want to give you a report on a very important meeting that Executive and Planning undertook on March 12 and 13 when we had a two-day, open public meeting. We reviewed the SEC directives. I am going to give you an oral presentation. Now we are going to report on the SEC directives, which incorporate many of the recent audit recommendations.

>> You will see when you look at our webpage, where we have and will continue to have the recommendations regarding the progress report. You will see that we adopted a very descriptive manner to report those.

>> I want to take a moment and review the history of today's report. I want to talk about where we were and what is going to happen, and where we are going. And in reality so much has happened. A short time ago, we went into the worst economic downtime since the depression. And we adopted a new Chief Justice. She brought us into a more modernized branch. She emphasized access for justice and being more efficient. She created a more efficient administrative staff. This was a necessity since the branch budget had been reduced by over \$1 billion. That is a 30% decrease in appropriations. She reached out to many people throughout the branch and she talked about our new structure. She traveled over 30,000 miles, and spoke to interested parties. She even did something that was unheard of: she did a survey on all of the

judicial officers in the state. And she created this top to bottom review. This was a true assessment. We are lucky to have many on this council.

>> As we all remember there were no rules. There was no limitation on who the SEC could contact and they contacted those inside and outside of the branch. She wanted a truly comprehensive report. And after one year of work, the committee delivered its thoughtful report. We had 124 recommendations where we can modernize without sacrificing service. The council accepted the May 26, 2012 report. And the report helped frame a much-needed discussion on where changes should be made. The expectation was clear that a dialogue needed to start. And keeping in the spirit, with the assignment that was given, we met with the SEC members. We converted those recommendations into 151 directives. Any many of you remember, it combines similar SEC recommendations and there were word changes. And there were a few recommendations that were modified to incorporate better business practices. And the goal was to come up with the right size for the council staff, and improve processes and services for the stakeholders, for the public, the trial courts, the courts of review, and also the Supreme Court. These changes worked and they have been profound. I think we should take a minute to look back at those. We took back 100 responsibilities that had been delegated over the years to the Administrative Director. The council and not the staff would make decisions on all aspects of branch budget, priority, infrastructure, improvements, and policy issues. The council committee structure was overhauled. A third of the committees were disbanded, sunseted, or combined with others. The remaining committees began providing annual agendas so the council could see exactly what each group wanted to achieve in the following year. And third, budgeting became a year-round priority. And when any issue came up that required council action. And each committee had to have a responsibility. Now it has been thoroughly vetted. Now, many judges, many CEOs, and many stakeholders have a governance responsibility and they are participating. And some of us including myself made a presentation about the reorganization. And this was brought about because of the recommendations and the conversions into directives.

>> Now we have this annual review. That it was one of the responsibilities of E&P. We wanted to oversee the directives, and to ensure they were implemented. We had at first a closed meeting but we converted that into an open meeting this year. Now we review, annually, all of the council directives. I can tell you that everyone is committed to this effort.

>> This year, it included the additional aspect, the state auditor's findings. And it largely mirrored the SEC report. We had an open public meeting, March 12 and 13. We went over each area that the auditor had some concerns with. We had those who were involved, from the staff level, report to us with documentation and evidence on what had occurred to each of those directives. And we started at the beginning and confirmed that for the majority of the directives this had been close. We actually use the language of the auditor's report when we discuss the individual directives and the concerns. And we question those who were presenting to us. In a few instances, there was a request that sub-directives be changed. The state audit illuminated a weakness on how we were recording information and how we were sharing that information. And the auditor was looking at the same facts. And this showed us that we needed to be more

descriptive on what was occurring on a particular directive. And we needed to improve it. So we took all of this into consideration. We looked at the differences and what they were. Now you can draw your own conclusion of a status on a particular directive. And most of us are lawyers and judges in this room. As you know, two people can see the same event and come up with two different versions. So we are going to be more descriptive and thus more transparent. Here is one example. The FCC provided several recommendations focusing on staff reconstruction. And that council made minor deviations from the recommendations such as that Legal Services report to the chief of staff. We felt this gave us a flexible team. This is one that is close and dear to my heart. I spent a lot of time talking to members that are expert in the field, and coming up with recommendations in regards to LSO. But after this two-day meeting, we agreed with the auditor, that the vast majority of the directives have been completed. Now we have 114 that are considered completed and closed, 37 are pending.

>> And you will find in the report, thousands of pages that are going to go through each recommendation and explain where we are, what we accomplished, and why we have made great progress in most if not all of these areas. I know that council organizational structure will always be in flux because there is always change in the court. And it is always going to be ongoing.

>> And for this reason, items should be reported even if they are not completed. We need to see if they are implemented or ongoing? Are they completed? Now we will include a table that will list all 151 directives both pending and closed with links. And we will have a detail about each directive. We will also replace the information on the webpage. And most importantly, as outstanding directives are reported, we will review the implementation at each council meeting to ensure that we are meeting the directive. This is what I consider to be one of the greatest aspects of Executive and Planning Committee activities. It was an honor to work on this with Judges Wachob, Judge McCabe, and Judge Ellsworth, now retired, and it is an honor to work with the Chief. Thank you.

>> I came through this process in 2011–2012. I came back a year later, and I was struck by how far we have gone in such a short amount of time. I was impressed; kudos to my chair. And I want to thank all of the hard work the committee did to get all of this done.

>> Thank you.

>> Justice Hull?

>> Thank you. Of the 151 directives the council adopted, I think you said—and the state auditor agreed—all but 37 have been completed. And out of 37, 23 should be resolved after the classification and compensation study later this summer or fall. That would leave 14 to be completed?

>> Thank you. Judge Herman?

>> I have been on the council since before this process started. I just want to give you my congratulations. It was a tremendous well-done work in terms of how we operate as a council.

>> Thank you.

>> Judge Wachob.

>> I just want to follow up on a point Justice Miller made. We met in March, doing the equivalent of an evidentiary hearing. We wanted to have the staff show that all of these recommendations have been completed. There were concerns because some were reported as being completed but they were not. Or there was a discrepancy that some recommendations were implemented but were not, but what I thought was interesting was we actually backtracked on some. Not because the initial report was incorrect, but because of the effort to implement these recommendations. There was a recommendation, 8.4, that the Finance division should track expenditure and keep historical record, so that a year-to-year comparison could be done. Now we increased accountability and transparency. But when we look at this recommendation, which was directive number 37, this was originally reported as having been completed in October 2013 but because of further efforts that were made to revamp the display, now the public and others can look at this, and we can say this is in progress. Some of the discrepancies have been cleared up due to the efforts that are ongoing.

>> I am very grateful for all of the work done by Judge Wachob and Judge McCabe's team. Let me say that I recall 55 weeks of work. I do recall when the branch was quite active on a number of other fronts. And remember this was done without staff. This is truly having not only a day job. It was research and interviews, and widespread reaching out. It is all about a herculean effort. I do not think any of us could say what we would find at the end of this kind of investigation. Now we have a historical document for the court. At a time we were doing the work for ourselves and by ourselves. And we had never done a document like this before, so we put it out for public comment. We wanted to make sure that everyone had an opportunity to speak to it. When you talk about 2012 and these directives, just speaking about it does not do justice to all the stomach churning that went on. I want to give a tremendous shout-out to the staff of the Judicial Council, who endeavored in good faith to hit the ground running. And they needed direction. I cannot say enough about their entire team effort on behalf of the branch.

>> Thank you.

>> Next item is going to be an action item. This is Item 3: Judicial Branch Administration: Workers' Compensation Program: Allocations Methodology and Excess Liability Insurance for the Judiciary. We welcome Ms. Tania Ugrin-Capobianco, chair, and someone not on our list.

>> My name is Gregory L. Trout.

>> Thank you Mr. Trout.

>> I am honored to be here and I appreciate this opportunity to address the council about the Compensation Advisory Committee. I want to provide two recommendations. With me today is Greg Trout.

>> We have provided financial overview of this program. Over the past few years, the deficit has been growing annually. In order to achieve a stable financial program, we recommend going from a pay-as-you-go type program, to a forward funding program or ultimate funding. I now will ask Greg to share the status.

>> Thank you, Tania.

>> We were retained by the judicial workers' comp program in 2013, and we became the actuarial consultant. Part of our responsibility was to calculate the estimated liability of the workers' compensation program and to calculate annual program expenses. This has been a self-funded program since 2003, our study (and we have two studies). One, we did a calculation on all claims that have not yet been paid. And I estimate that is roughly \$80 million. And against those claims liabilities are the program assets, which are maintained by the council, approximately \$50 million. If this were on a balance sheet, it would be a shortfall funding of \$30 million. And the second part of our study was to calculate what needs to be funded annually in the program to pay for the program expenses and the claims payments, and what is likely to be paid in the year. Historically, this program has budgeted on what we call a cash flow basis. We would estimate how much was going to be paid on claims during the fiscal year and other expenses. And those are added up and those are part of the budget. The committee that met in the spring recommended the program funding methodology will be changed from a cash flow basis to an ultimate loss basis for all claims that are projected to occur during this next year. The ultimate cost would be estimated, and that amount would be funded by judicial branch workers' comp.

>> And the ultimate cost would be \$2 million and distributed among all the courts and the judiciary. And so this change in methodology does have a financial consequence.

>> And those costs are calculated as payroll, and the cost for each court.

>> Our recommendation that we brought to the committee is that the funding methodology be changed from cash flow to ultimate funding and that the committee be instructed to develop a plan establishing a full funding of a structural deficit, and that is roughly \$30 million. One of the primary reasons why it is beneficial to this program in our opinion is that it will stop the erosion of the program's assets and increases in liabilities. We do have a bar chart on page number three. It shows the red bars, which are the program liabilities and the assets. And the deficit in 2009–2010 was roughly \$27 million. And we project at the end of this year it will be \$30.5 million. If this continues, using the cash flow basis, another \$2 million would be added to that deficit. So at the end of 2015–2016, if the program would continue on a cash flow basis, the deficits in our estimate would be roughly \$32 million.

>> I will be happy to answer any of your questions.

>> Thank you. Justice Hull and then Justice Miller.

>> I have two questions. First of all, thank you so much for writing this report. When we talk about the subject of workers' comp and the esoterics of funding and all, it is beyond my knowledge. Two questions: is that going to be for all of the courts and all of the employees?

>> Yes. It does include all of the employees of the judiciary and the trial courts. And as you may recall, trial court employees used to be county employees until 2003 but now they are considered Judicial Council employees. We have the trial court employees, and we have the judicial branch employees.

>> Thank you.

>> The reason I asked you, it is my understanding that for the trial court employees they would be covered?

>> The judiciary side of the house and the trial court side of the house would be part of it with the exception of Los Angeles. We have 57 courts, save the Los Angeles division.

>> In my experience, allocations go to people not from people. What does that phrase mean?

>> It is the cost of the program based on the claims activity. And we allocate those costs back to the court. It is just a mechanism to move that cost back. Basically, it is billing the court.

>> I see.

>> It is a premium charge. And we calculate that amount that was based historically, what was historically used.

>> Thank you.

>> We have Justice Miller, then Judge Tangeman.

>> There was a concern raised about the increase. We do not think that it was vetted by the PJs or CEAC. Even though we did place it on the agenda, we wanted to communicate with the trial court. I'm not sure if you want to hear from them first? Because all of us are touched by this.

>> We are not going to take action on this.

>> No. They already have done that.

>> Okay.

>> I just want to ask the speakers, to inform me in more plain and simple terms. Should the trial courts see an increase in cost and if so by what margin?

>> I cannot answer that question. But I can say that it did go out to the court executive officers and presiding judges.

>> I only received two comments. But yes, there is an increase. If we go with an actual liability payment method or whatever you want to call it, but I do want to address the feedback that you got. I cannot sit here and say that all of the CEOs were able to look at that. I think we only had less than a week turnaround. I am not sure what kind of feedback you got. But I don't know that I saw everything that came through.

>> Thank you.

>> There are a variety of changes and I think eight courts would have less premium. It can be upwards to 40%. And one court, because they are new to the program would be 81%. And their premium for the second year would escalate, but it is a very small amount.

>> That does depend on their history. What is the margin on the other side? Who is going to save money?

>> It should be about 17.95%.

>> Which part can we see?

>> Thank you very much.

>> I want to thank the individuals who did respond. I had approximately 12 CEOs that responded.

>> I think everyone pretty much understands the necessity to stop the flow. We do have to address both issues. But we do have to take one at a time.

>> But we do have that \$30 million gap that we have to address. We have to decide if we're going to take a 10-year approach or 15-year approach to recovery. We need to manage these claims. From a business perspective, this is a very important thing.

>> Thank you.

>> We have Judge Stout.

>> Thank you. First let me say the issue was presented to the Trial Court Budget Advisory Committee. If I remember, it was an informational presentation. On behalf of the presiding judges, and I am going out of my comfort zone because I do not know a lot about workers' comp. But I do recognize that it is important. I think the concept and the need is real. I am concerned about the timing of the change, given the reallocation. There are courts that would be significantly impacted.

>> That is a good point.

>> I appreciate the need to change the methodology, and I also appreciate the recommendations. But I am concerned about the relatively short notice. I can look at these numbers, what it means that we have to shorten the gap by \$2 million. But my concern is that we have a \$30 million gap. There were no projections. I would feel more comfortable if I knew what those projections would look like. I do agree in principle but I'm not sure if we can support this.

>> Thank you.

>> Judge Fox.

>> Right now, you have courts that are subsidizing other courts based upon the claims that were filed. If you go to the cross-allocation method, the court is going to be responsible. But it will give them incentive to come up with a plan to minimize claims, which I think is important.

>> Justice Anderson.

>> [ Indiscernible -- audience member speaking]

>> I do not think your microphone is on.

>> I would like to look at the global perspective. For our court it would be a 30% increase. And the proposed methodology in principle is a valid one. Even though there is a cost increase of 30%. But it was balanced against the new local costs for courts and other programs/other areas. And this is another program that is being pushed. Maybe I should not use the word pushed but rather say that this is a new cost the courts are incurring. So when do the costs stop incurring to local courts? What do we do and how do we help those courts? When we look at all of our allocations? And how can we afford those? I think we do need to have a better program.

>> But our greatest concern, are the courts going to pick up many things and not have the budget? At what point do we share the cost?

>> I think most of us would agree that this is a business decision and it is a good decision. But if we chose, and forgive me if this goes beyond the scope of your study. If we were to delay

implementation for one fiscal year, how much more would the deficit grow? Because that is part of the balancing act here.

>> It would be approximately \$2.3 million.

>> As was mentioned, one court might have a 30% increase. And the cost changes from court to court. Instead of charging \$18.5 million and collecting it back, this new method would collect \$20.6 million which is approximately \$2 million more that would need to be collected.

>> And that amount is across all 57 courts?

>> It is both sides of the house. Now that you have an advisory committee, I think we now have an opportunity to look at how to manage these caseloads better, whether these are programs that we can develop and distribute around the state. But now that we have a legitimate committee, this is going to give us a broad area to go out and assist people. Obviously when the cost of court is going down, they are doing something right. And they are being proactive.

>> Judge Rosenberg and Rick Feldstein.

>> Virtually everything that we deal with at the Judicial Council can be divided into substantive and procedural aspects. This methodology does make sense. But my concern is with the process. I am concerned that the CEOs and PJs have had a relatively short window of time to provide input on behalf of their courts. That is not to say they would not agree with it. But we have to make sure that the process is open and transparent. And they need time to digest. And it is a concern for me that we do not have enough time.

>> Thank you. Rick?

>> Is time of the essence? Can we put this off until the July meeting? What is the potential growth?

>> It would be a potential one-year growth of the unfunded liability of \$2 million. And the program is operating on a cash flow basis since it started operating. It still has \$50 million in assets. The program is not in dire financial straits. And another year of continuing past practices would not be a financial problem.

>> We are talking about just one month?

>> I am sorry. I thought you were talking about one year.

>> There might be a deferral for the first month when we are not paying any allocations.

>> Would that give you an opportunity to address some of our concerns so that we have a comfort level? Because these are some of the same concerns we had and we felt a little under the gun.

>> I want to wrap this up. I want Rick to speak.

>> Let me say this, from the perspective of a court in the worst case scenario. Our court has a 40% increase. And we do not see any additional money coming into the court. And this is a terrible time to absorb this. I know it is not going to get better for us. So I think it would be better to bite the bullet right now. It is just like making payments on a credit card: you have to bring the balance down. I know this is not great news but I thought maybe this would be a better time to start.

>> Justice McCabe.

>> Thank you.

>> We want to take advantage of modern technology. And we did discuss this two weeks ago at CTCC. The folks at my court are way ahead of me. But I'm not sure if all of the courts had an opportunity, so I would suggest that we put this off just one month to give all 57 courts the opportunity.

>> It sounds like it is a good idea if we can put this off for just a month. I know it matters because we are dealing with money. And forgive me if it is in your table or statistics because, if it is, I missed it. If we have this on the agenda in July, when you talk in terms of percentages, for me it is difficult because 40% of \$10 or \$14 is one thing, and 40% of \$100,000 or \$140,000 is another thing. I did not want to give you more work necessarily but we want to see hard dollar increases.

>> We can do that.

>> Thank you.

>> We want to see how much the changes are due to changing the basis instead of the claims, and we could pull that out. Then we would know claimed loss. I think if we can see that clearly, that would give the council more confidence in what they're approving.

>> Thank you.

>> We do have a second part that needs action. We are asking you to approve the next year's excess insurance premium for the trial courts and for the first time engage in an excess insurance policy for the judiciary. The recommendation was taken to the presiding justices of the appellate

courts and all their clerks, from the meeting of May 18, and they did approve moving forward with this.

>> I think we should have a motion.

>> Thank you, Justice Hull.

>> I think this is an appropriate motion. For recommendation number one, I would move to table consideration of that recommendation until the July meeting.

>> All in favor?

>> Any opposed?

>> Motion has been approved.

>> Now we have number two.

>> Could I move to adopt recommendation two?

>> All in favor?

>> Any opposed?

>> Recommendation number two carries.

>> Thank you, Ms. Ugrin-Capobianco and Mr. Trout.

>> The next item also requires action. This is the Trial Court's Resource Assessment Study Model Interim Complex Civil Caseweight. We had a previous discussion on how to weigh complex civil. And for this presentation, we have Ms. Kim Turner, Workload Assessment Advisory Committee, and Ms. Deana Farole, Office of Court Research.

>> I am here on behalf of Judge Lorna Alksne, the chair of the Workload Assessment Advisory Committee, and I'm here to talk about the complex civil caseweights. As you know from your April meeting, the council approved a Trial Court Budget Advisory Committee recommendation to eliminate the IMF funding that's been going for many years to the complex civil litigation pilot programs. The council also approved a companion recommendation to request that the Workload Advisory Committee develop a separate interim RAS caseweight for complex civil cases, which previously had been rolled into the unlimited civil category as a means of continuing to support enhanced processing of those cases. Today, we request that the council approve a recommendation to establish an interim caseweight of 2,271 minutes for complex civil cases for the fiscal year 2015–2016 budget allocation. We also ask that you revisit the interim

caseweight next spring once we have done an updated RAS study and have new information about whether that caseweight needs to be adjusted. So that would be revisited for the 16–17 budget allocation. We are grateful for all of the time and effort that the Office of Court Research put into putting this together. We tried to make this caseweight as data-driven as possible, and we contacted the 10 courts that have the highest number of complex civil cases. There was a focus group to find out what additional activities there are, and the extra time and care that goes into monitoring and management of these cases. And from what was derived from those conversations, they made some adjustments. Please look at attachment B. You can see that we had the unlimited civil caseweights, where adjustments were made, and the minutes needed to process those cases. That's where the 2, 271 minutes value was derived. We are proposing that the interim caseweight be reconsidered in 2016–2017. The RAS model will be updated then as it's going to be reconsidered in the study this fall. We will then determine a long-term solution for measuring this workload. We want to capture and segregate those cases. So the updated RAS model that we are proposing today will increase the number of FTEs in our RAS model by 43 positions affecting 12 courts.

>> And because there is no additional funding in the model to create 43 new positions, the allocations for each trial court will be adjusted to absorb these new positions in the funding model.

>> I have Jennifer Rolie. She's the technical wizard.

>> Welcome.

>> If you have any questions we will be happy to answer them.

>> I was expecting a tough crowd. [ Laughter ]

>> As a member of WAC, there was a loss of IMF funding to support the complex litigation program. And at the time, if you recall, there was quite a bit of a debate. But I think they did the best they could, given the circumstances. I do want to caution, I personally was uncomfortable with basically taking something out of context and messing with RAS. I hope in the future we will remember the integrity of the model is only as good as the data we collect. I do not want to see this data manipulated because it undermines the entire program. But in the end, I think the results are fine. But I caution in the future we need to think long and hard before we quickly modify little, small aspects of that program.

>> Mary Beth, I agree with you. In fact, we were talking about that. We have to be very careful when we use an arithmetically vetted model, that we do not tinker with it too much. Had it not been for the painful decision that the advisory committee had to make on this pilot project that had been in place for 13 or 14 years, we probably would have taken a more cautious approach. But I want to applaud the efforts of OCR who jumped on this when we asked them to and who

helped us calculate this information to fold into the model until the next RAS study which, as you know, is right around the corner.

>> Your point is well taken.

>> Are there any other questions?

>> All in favor?

>> Any opposed?

>> The motion has been approved. Thank you for the hard work, and it's complex, and we look forward to the results of the study.

>> That concludes our agenda items for today. As you know we have a closed session. At this point, we will stand in recess for 10 minutes and return at 3:45 p.m. for our closed session.

>> [ Event concluded ]