

JUDICIAL COUNCIL MEETING

Minutes of February 23, 2001, Meeting

The Judicial Council of California meeting began at 8:45 a.m. on Friday, February 23, 2001, at the office of the Administrative Office of the Courts in San Francisco, California, on the call of Chief Justice Ronald M. George, Chair.

Judicial Council members present: Chief Justice Ronald M. George; Justices Richard D. Aldrich, Marvin R. Baxter, Carol A. Corrigan, and Richard D. Huffman; Judges Gail A. Andler, Aviva K. Bobb, Leonard P. Edwards, Brad R. Hill, Donna J. Hitchens, Steven E. Jahr, Ana Maria Luna, Ronald B. Robie, Ronald M. Sabraw, and Ronald L. Taylor; Mr. Michael Case, Ms. Pauline W. Gee, and Mr. Rex Heeseman; and **advisory members:** Judges William C. Harrison and Wayne L. Peterson, Commissioner Bobby R. Vincent, Mr. Frederick K. Ohlrich, Mr. Arthur Sims, and Mr. Alan Slater.

Absent: Mr. John J. Collins, Senator Martha Escutia, and Assembly Member Darrell Steinberg.

Others present included: Mr. William C. Vickrey; Judges Fernando Becerra, Jr., Ray L. Hart, Frederick Paul Horn, Jerold A. Krieger, and Roberta McPeters; Ms. Tamara Beard; Ms. Beth Jay, Mr. Mel Toomer, Mr. Guido F. Pensicone; **staff:** Mr. Clifford Alumno, Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. James Carroll, Ms. Roma Cheadle, Ms. Rita Finchum, Mr. Bob Fleshman, Ms. Janet Grove, Mr. José Guillén, Ms. Tina Hansen, Ms. Whitnie Henderson, Ms. Susan Hough, Ms. Kate Howard, Ms. Melissa Johnson, Mr. Gavin Lane, Mr. Ray LeBov, Mr. Lee Morhar, Ms. Vicki Muzny, Mr. Ronald Overholt, Ms. Dale Sipes, Ms. Marlene Smith, Ms. Marcia Taylor, Ms. Karen Thorson, Ms. Arline Tyler, Mr. Jonathan Wolin, Ms. Pat Yerian; **media representative:** Ms. Donna Domino, *L.A. Daily Journal*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated February 23, 2001, which was sent to members in advance of the meeting.)

Council Committee Presentations

Executive and Planning Committee

Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee had met once since the last council meeting to set the agenda for the council's planning meeting and today's council meeting and to receive an update on refinements to the trial court budget development process. The committee also considered a recommendation from the Trial Court Budget Commission to approve emergency funding from the one-percent reserve for unbudgeted expenditures of the Siskiyou and Lake County Superior Courts.

The committee approved a motion, on behalf of the council:

1. To approve \$117,000 in one-time funding to the Superior Court of Siskiyou County to be used for perimeter screening equipment and two security personnel. Should the court's security Budget Change Proposal be approved in full, equipment allocations would not be distributed and the court would not receive double funding for these expenses.
2. To approve \$254,950 in one-time funding to the Superior Court of Lake County to address extraordinary costs for two death penalty cases.

Policy Coordination and Liaison Committee

Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee had not met since the last council meeting. Justice Baxter stated that Chief Justice George's State of the Judiciary address to the joint session of the Legislature is scheduled for March 20, 2001.

Rules and Projects Committee

Judge Steven E. Jahr, chair, reported that the Rules and Projects Committee had not met since the last council meeting and was meeting after the council meeting.

Special Comment

Chief Justice Ronald M. George reported on his participation in the Kings County unification ceremony. He noted that he has asked presiding judges and court administrators around the state to forward updates on the impact of unification.

Chief Justice George also commented on the one-day/one-trial item on the council's consent agenda. He reported that 17 of approximately 33 sites in Los Angeles County were in compliance with the requirements of one-day/one-trial. The courts continue to work toward full compliance. Chief Justice George noted that the situation of Alpine County, which only has a juror pool of about 700, is highly unique.

Approval of the Minutes of the December 15, 2000, Judicial Council meeting

Council action:

Justice Huffman moved that the Judicial Council approve the minutes of the December 15, 2000 meeting of the Judicial Council.

The motion passed.

CONSENT AGENDA

Item 1A One-Day/One-Trial Exemption Requests From Alpine and Los Angeles Counties

On December 2, 1999, the Judicial Council approved requests from the Alpine and Los Angeles County trial courts for exemption from Rule 861 of the California Rules of Court, Length of Juror Service. The council approved these exemption requests contingent on verification by Mr. G. Thomas Munsterman of the National Center for State Courts that the grounds for the exemption requests were reasonable. The council requested that staff from the Administrative Office of the Courts provide a follow-up report on the implementation of one-day/one-trial in these two counties.

Mr. Munsterman has verified that the Superior Court of Alpine County has population constraints that adversely affect the full implementation of one-day/one-trial. Alpine County's exemption has expired, and it is requesting approval from the council to extend their exemption from full implementation of one-day/one-trial.

Mr. Munsterman also verified that the projected costs associated with the implementation of one-day/one-trial in Los Angeles are reasonable. The Superior Court of Los Angeles County's exemption expires December 2, 2001, and it is on schedule with the implementation of one-day/one-trial; it is not requesting an extension of the current exemption.

Council action:

The Judicial Council, effective February 23, 2001:

1. Grants the Superior Court of Alpine County a five-year exemption from full implementation of one-day/one-trial, with the understanding that, during the exemption period, Alpine County will operate a one-day/one-trial program to the best of its ability given the population constraints it faces; and
2. Requires the Superior Court of Los Angeles County to provide the Administrative Director of the Courts with a status report on one-day/one-trial program implementation at the end of its two-year exemption period.

Item 2 Special Fund Allocations for Fiscal Year 2000–2001

The Trial Court Funding Act of 1997 created two funds specifically to support special projects that improve the provision and administration of justice in the trial courts.

The total appropriation and reappropriation of the Judicial Administration Efficiency and Modernization Fund (JAEMF) is supported by transfers from the state General Fund with \$45.322 million, of which \$42.117 million has been allocated. The balance, \$3.205 million, remains available to be allocated by the Judicial Council.

The Trial Court Improvement Fund (TCIF) serves, in part, as the statutory repository of a financial reserve of at least one percent of the Trial Court Trust Fund. The mandated reserve amounts to \$18.1 million of which one-half (\$9.05 million) must remain unallocated until March 15, 2001, except for urgent needs. Of the remainder, the council

allocated \$2.39 million at its August 2000 meeting and \$1,398,500 at its December 2000 meeting, leaving a balance of \$5,261,500 available for allocation.

Council action:

The Judicial Council approves:

1. Allocating \$300,000 from the Trial Court Improvement Fund (TCIF) for local courts to develop strategic plans to serve self-represented litigants as directed in the Judicial Council's operational plan, which at section 1(a) calls for each court to develop these strategic plans. These allocations would be made from the portion of the Trial Court Trust Fund reserve set aside in the TCIF for statewide projects.
2. Allocating \$75,000 from the Judicial Administration Efficiency and Modernization Fund to fund start-up costs for the three courts that are acting as partners with legal services programs in the three newly established projects funded through the Equal Access Fund Partnership Grants.

DISCUSSION AGENDA

Item 3 Setting of Budget Priorities and Caps for Fiscal Year 2002–2003 Trial Court Budget Requests

Judge Ray Hart, chair of the Trial Court Budget Commission (TCBC), and Ms. Christine Hansen, AOC chief financial officer, presented the report. Judge Hart noted that this is the first year in which the budget is tied to the strategic planning process.

Ms. Hansen outlined the budget development process and explained that the TCBC considered local trial court strategic plans, and the council's strategic plan, and input from court leadership in its analysis of budget requests. Ms. Hansen stated that in developing its recommendation for budget priorities, the TCBC considered whether alternative funding sources existed for identified priority areas (e.g., the Trial Court Improvement Fund) and whether courts did not indicate an area as a priority because they believed the state would fund it nonetheless. Additionally, the TCBC considered whether a public need existed in areas that local courts did not identify as a priority (e.g., increased juror fees).

Ms. Hansen said that the TCBC recommended the following as statewide priority areas for fiscal year 2002–2003:

1. Technology infrastructure and management of court operations and resources, in recognition of the participation of the Court Technology Advisory Committee; and
2. Interpreters and court-appointed counsel, because of statewide need and the redundancy of having all trial courts submit individual requests in these areas and taking them from their cap. Instead, the TCBC asked for specific information from the courts about these areas (e.g., workload), and recommends funding these areas on a statewide basis.

The TCBC recommends the following priority areas for individual court requests:

1. Expansion of administrative services—establishing services previously provided by the counties or funding increases in charges being passed onto the courts for services previously provided by the counties or other vendors;
2. Court staffing;
3. Pay parity;
4. Security;
5. Children and family; and
6. Records management, including technology and staffing.

Ms. Hansen noted that items such as new judgeships, negotiated salary increases (NSIs) for employees, and judicial pay increases are not included here; they will be handled separately and advocated for on behalf of the trial courts throughout the state.

Ms. Hansen noted that several issues were not included in the TCBC recommendation but are in the council's plan. Some, but not a majority, of the courts consider them priorities, and therefore the council may wish to consider discussing them further:

1. Jury. Because there has been recent funding for one-day/one-trial and increases in juror fees, and because there are so many competing needs in the local courts, it was not included on courts individual requests.
2. Infrastructure improvement. Half of the courts considered this a priority. Of the \$5.8 million requested, \$4.6 million was included in the Governor's budget for fiscal year 2001–2002. Infrastructure was not included on the funding priority listing because one-time funding has lower priority than program areas requesting ongoing funding.
3. Training and education. Nearly half of the courts considered training and education a priority. The Judicial Administration Efficiency and Modernization Fund (JAEMF) provided \$2.85 million in fiscal year 1999-2000, but those funds were not fully utilized.
4. Unrepresented litigants. Nearly half of the courts considered this a priority area. The council submitted a budget change proposal for \$4.6 million for fiscal year 2001–2002, but the Governor denied the request. The AOC then submitted a \$8.32 million budget change proposal to fund pilot projects for self-help programs and that was approved by the Governor's Office. Also in fiscal year 2000-2001, the JAEMF funded five grants for self-help centers and another \$300,000 in grants is available to assist courts in developing action plans for serving unrepresented litigants.
5. Public outreach and strategic planning. Fewer than half of the courts considered this a priority. The AOC submitted a budget change proposal for \$900,000 that was not included in the Governor's budget, but the AOC made grants available to assist courts in developing their strategic plans. Many courts have used their own resources for public outreach.

6. Alternative dispute resolution (ADR) and mediation. Few courts considered this a priority because most courts have established ADR/mediation programs. Funding for these programs is available from the JAEMF.
7. Collaborative and specialty courts. Very few courts considered this a priority. A variety of funding sources and grants are available for these programs.

The TCBC established a cap on requests submitted for local needs, the higher of five percent of the baseline budget or \$100,000, for fiscal year 2000-2001. No cap was established for technology, court-appointed counsel, interpreters, county/state charges (including security), negotiated salary increases, or pay equity adjustments. As a result, a large number of budget change requests were submitted in these areas and the TCBC had to cut specific requests by courts. The \$100,000 cap was inadequate for small courts, so that they could not request sufficient funding to address their priorities.

Ms. Hansen stated that in developing the cap for fiscal year 2002–2003, the TCBC considered the level of funding requested in the past and the amount provided in the Budget Act of 2000. The TCBC also determined that a reasonable level for total trial court requests would be 10 percent of the total baseline budget for the trial courts, or approximately \$167 million.

Ms. Hansen said that based on discussion with AOC technology staff, the TCBC recommended that \$30 million be set aside for statewide technology requests, which takes into account funding for technology available from other sources through 2002–2003 (e.g., the JAEMF). The TCBC also recommended that \$10 million be set aside for statewide requests for court interpreters and court-appointed counsel, which left \$127 million for the remaining priorities.

Ms. Hansen stated that: the TCBC recommendation increases the cap so that small courts can request reasonable funding for needs; extraordinary needs of small courts may require the ability to request beyond the cap; and no larger court should be restricted to requesting less than the amount that small courts can request.

The TCBC discussed whether it should limit the number of budget change requests and decided that limiting the number to one per priority area may be confusing to courts because they may have several different needs in the same priority area.

Ms. Hansen reviewed the recommendation:

- Set aside \$30 million for statewide technology;
- Set aside \$10 million for statewide requests for interpreters and court-appointed counsel;
- Set aside approximately \$127 million for individual court requests;
- Approve the submission of individual court requests in the following six priority areas (in ranked order):
 1. Establishment/expansion of administrative services
 2. Court staffing

3. Pay parity
4. Security
5. Children and family
6. Records management

- Limit caps to the six priority areas;
- Establish a cap of 7.5 percent of the baseline budget for courts with budgets of over \$3.3 million and up to \$250,000 for courts with baseline budgets of under \$3.3 million;
- Allow the submission of an unlimited number of budget change requests within the above caps; and
- Allow small courts to submit a maximum of three budget change requests in the six priority areas beyond the \$250,000 cap for extraordinary needs.

Ms. Hansen stated that AOC staff concurred with the TCBC recommendation with the following refinements:

- Court-appointed counsel requests must be for rate and workload increases for mandated services;
- Children and family requests will be accepted for:
 - Case processing and mediators/evaluators/investigators for all family, juvenile, and probate and mental health matters,
 - Family Code Section 3150 cases, and
 - Court Appointed Special Advocates (CASAs);
- Court staffing requests must be either the result of increases in workload (e.g., increased complexity of cases) or the result of trial court unification (i.e., court reporter, legal research attorney). Staff recommends that fiscal year 2003–2004 should be the last year for requests based on unification;
- Establishment/expansion of administrative services requests should be limited to human resources, contracting, budgeting, procurement, accounting, and support for existing services, including increased charges for contractual services, county/state transition responsibilities, and increased workload and costs;
- Pay parity requests must be for increases related to trial court unification only. The AOC's Human Resources Division is commissioning a statewide compensation study, and staff recommends that market-driven increases be deferred until the study is completed;
- Security requests must be Rule 810 allowable, within current council-approved standards for staffing and for existing services only, unless there is a critical and demonstrable need for new services. Costs related to negotiated salary increase requests must be for confirmed contracts only;
- Records management requests must be related to technology, equipment, staff and related operating expenses, and off-site storage costs. Courts must be able to demonstrate anticipated increased efficiencies or cost avoidance as a result of their request; and

- Technology requests must be for planning (maintaining the strategic plan for court technology), court management systems convergence, technology infrastructure, telecommunications, and communications and information standards.

Ms. Hansen noted that staff recommended amendments in the following areas:

1. Interpreters—The statewide request may include funding for workload and rate increases. Also, the request may include funding to make the Family Law Interpreter Project permanent if the results of the pilot project justify continuation on a permanent basis. Additionally, staff recommended that the council give staff the latitude to increase the amount set aside for interpreters and court-appointed counsel from \$10 to \$15 million to enable courts to move toward the council goal of meeting the federal rate for court interpreters.
2. Jury— Using existing resources, move to a per diem of \$20 to \$25 for second and subsequent days of juror service. Staff will determine whether there are savings from implementing one-day/one-trial and from civil reimbursement sufficient to cover these juror fee increases. Staff will also look at the feasibility of diverting funds currently available for mileage reimbursement. Staff recommended that if existing resources are not sufficient, it should be delegated the authority to request additional state funding for increased juror fees through the budget request process.

Judge Leonard Edwards asked whether the \$10 million mentioned for interpreters and court-appointed counsel was \$10 million each or total, and how the money would be apportioned. Ms. Hansen replied that staff recommended increasing the amount to a total of \$15 million. Apportioning the money would depend on actual workload increases and needs.

Judge Edwards asked what the relationship was between technology and case processing for all family, juvenile, and probate and mental health matters. Ms. Hansen stated that the technology aspects of every area except for records management are included in technology. The case processing area relates more to staffing and operational cost issues.

Judge Edwards offered a technical amendment to the recommendation, adding guardians ad litem to the court-appointed counsel area.

Judge Steven Jahr asked whether the staff recommendation in the area of administrative services allowed for differences between the cost for services provided to the courts by counties and the cost of hiring staff to fulfill the same function (e.g., legal services beyond litigation management). Ms. Hansen replied that it did. Mr. Vickrey stated that the areas noted in the budget recommendation are those most often reported as needed services by the trial courts and cautioned the council to avoid losing focus in the budget request.

Judge Donna Hitchens suggested raising the recommendation regarding court-appointed counsel costs to \$15 million because appointment of counsel for children in dependency cases is no longer discretionary as of July 1. Judge Hitchens stated that many counties

have not provided counsel to children in dependency cases before and therefore there is no good estimate of the financial effect of the new requirement.

Judge Ronald Robie asked whether the courts should be surveyed to find out how they are handling nonlitigation needs for legal services (e.g., lease advice).

Mr. Michael Bergeisen commented that the AOC offers trial courts legal opinions and advice on general administrative issues in addition to providing litigation management. Additionally, the AOC can provide funding to courts to obtain outside contracting assistance because the AOC has a small in-house capacity.

Judge Jahr explained that his concern was with the day-to-day legal issues in trial courts that need a rapid, simple response (e.g., personnel issues). Judge Jahr suggested that legal services be added to the administrative services category.

Justice Richard Huffman noted that the council was setting priorities for requesting and allocating limited funding. He suggested that the council accept the staff proposal to leave the administrative services request as is and evaluate the results of the litigation management and legal assistance provided to the courts by the AOC after the first year of operation.

Judge Gail Andler asked about progress on negotiated salary increases for employees not included in the security category. Ms. Hansen stated that AOC staff is drafting amendments to the Budget Act regarding NSIs. She commented that the directors of the Administrative Office of the Courts, Department of Personnel Administration, and Department of Finance are working on a solution to this dilemma.

Mr. William Vickrey stated that the trial courts were going to continue to face challenges in dealing with NSIs. The unions would like increases in trial court budgets to be formulaic rather than program-based so they can negotiate within that overall ambit.

Judge William Harrison asked how security NSIs would be confirmed and how increases would be handled. Mr. Vickrey reported that a working group was focusing on security issues. One proposal they are considering is to make security NSIs part of a court's baseline budget and for increases to be accepted in the following year's baseline budget. Mr. Vickrey commented that the Governor has expressed concern that the state is being asked to fund contracts for which it is not a party to the negotiations.

Mr. Rex Heeseman asked whether the \$30 million set aside for technology achieves statewide integration of computer systems throughout the judiciary. He asked if local court budgets are reviewed to ensure that technology money is spent to achieve statewide integration. Ms. Pat Yerian, Director of the Information Systems Division, stated that work is under way to achieve statewide integration, a priority stated in the *Tactical Plan for Court Technology*.

Judge Wayne Peterson asked whether the definition of “pay parity” includes efforts by courts that went through the unification process to pay employees doing the same work the same pay and pay similar to that paid in courts of like size with similar case complexity. Ms. Hansen said that pay parity does include the former issue. A salary study now under way will address the latter issue.

Mr. Alan Slater commented that having pay parity with county employees is important in preventing “brain drain.” Ms. Hansen agreed. She said the AOC proposed pay parity based on both factors to the Governor; however, more information regarding the latter issue is needed for it to be argued successfully. The salary study will document need for pay parity based on market and geographic factors.

Mr. Vickrey stated that the different means courts use to compare salaries make the Legislature and Governor less receptive to our requests for pay parity among courts. They believe that courts are using factors that are most advantageous rather than rational. An independent salary study is comparing like factors in all courts.

Council action:

Justice Huffman moved that the Judicial Council, for fiscal year 2002–2003:

1. Approve the following budget priority areas:
 - a. Set aside \$30 million for statewide technology requests in the areas of technology infrastructure, including telecommunications, and management of court operations and resources;
 - b. Set aside \$15 million for statewide budget requests in the areas of interpreters and court-appointed counsel/guardians ad litem, for rate increases and workload increases in mandated services only;
 - c. Using existing resources, if available, move to a per diem of \$20–\$25 for second and subsequent days of juror service;
 - d. Set aside approximately \$127 million to be requested by individual courts within approved priority areas (other than the statewide areas listed above); and
 - e. Establish the following six trial court budget priorities for individual court requests:
 - i. Establishment/expansion of administrative services to support existing service levels in the areas of human resources, budgeting, procurement, contracting, business services, and accounting such as:
 - (1) Increased charges for existing contractual or county-provided services;
 - (2) Costs of transition from county-provided administrative services to court management (offset by current charges for the county-provided services);
 - (3) Increased workload or increased costs for existing services in administrative operations, if demonstrated.
 - ii. Court staffing, provided that requests for additional staff are:
 - (1) The result of increases in workload (e.g., increased complexity of cases or increased caseload); and
 - (2) The result of trial court unification (i.e., court reporter, legal research

attorney, judicial secretary). Fiscal year 2003–2004 would be the final year in which requests for additional positions related to unification would be accepted.

- iii. Pay parity related to trial court unification. Fiscal year 2003–2004 would be the last year in which pay parity funding requests related to unification would be accepted. No comparative information upon which to evaluate market-driven pay parity requests currently exists. The AOC’s Human Resources Division will commission a statewide compensation study this year. For this reason, market-driven pay parity requests should not be accepted until the statewide study is completed, and then only for those requests that are within the parameters of the study.
 - iv. Security that is Rule 810 allowable and within the current Judicial Council-approved standards.
 - v. Family and children in the areas of:
 - (1) Case processing for all family, juvenile, and probate and mental health matters;
 - (2) Mediators, evaluators, and investigators for all family, juvenile, and mental health matters;
 - (3) Family Code Section 3150 cases; and
 - (4) Court Appointed Special Advocates (CASAs).
 - vi. Records management
2. Approve the following caps for individual court budget requests in the six above-listed priority areas in an amount not to exceed \$127 million:
- a. Up to 7.5 percent of baseline budgets (excluding superior court judges’ salaries and assigned judges costs) for courts with budgets of more than \$3.3 million and up to \$250,000 for courts with baseline budgets below \$3.3 million;
 - b. Submission of as many budget change requests as a court wants within the six priority areas as long as they do not exceed the 7.5 percent of baseline budget or \$250,000 cap; and
 - c. Submission beyond the \$250,000 cap, of a maximum of three additional budget requests for extraordinary needs in the six previously listed budget priority areas for courts with baseline budgets of less than \$3.3 million. Courts must document the urgent need for the request and the adverse impact of the request’s denial on the court or the public.

The motion passed.

Circulating Order Approved

Circulating Order CO-01-01: SCA 4 Certification of Voting Results of Unification in the Kings County Trial Courts

For information only; no action necessary.

Appointment Orders

For information only; no action necessary.

The meeting was adjourned at 3:10 p.m.

Respectfully submitted,

William C. Vickrey
Secretary