

JUDICIAL COUNCIL MEETING Minutes of April 19, 2002, Meeting

The Judicial Council of California business meeting began at 8:40 a.m. on Friday, April 19, 2002, at the Administrative Office of the Courts (AOC) in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Associate Justice Marvin R. Baxter; Associate Justices Richard D. Aldrich, Norman L. Epstein, and Richard D. Huffman; Judges Gail A. Andler, Aviva K. Bobb, Robert A. Dukes, Leonard P. Edwards, Brad R. Hill, Donna J. Hitchens, Ronald M. Sabraw, and Barbara Ann Zúñiga; Ms. Pauline W. Gee; Mr. Rex Heeseman; and Mr. Thomas J. Warwick, Jr.; and **advisory members:** Associate Justice Ronald B. Robie; Judges Stephen D. Bradbury and Frederick Paul Horn; Commissioner Bobby R. Vincent, Mr. John J. Collins, Ms. Christine Patton, Mr. Arthur Sims, and Mr. Alan Slater.

Absent: Judge William C. Harrison, Senator Martha Escutia, Assembly Member Darrell Steinberg.

Others present included: Mr. William C. Vickrey, Mr. Brad Driggers, Mr. Jay Folberg, Judge Robert B. Freedman, Ms. Beth Jay, Justice Judith McConnell; **staff:** Ms. Heather Anderson, Mr. Ralph Baird, Ms. Suzanne Bean, Mr. Michael Bergeisen, Mr. Dennis Blanchard, Mr. James Carroll, Mr. Ian Cha, Ms. Wanda Chinn, Mr. Douglas Coffee, Mr. Blaine Corren, Ms. Kim Davis, Ms. Lesley Duncan, Mr. Robert Emerson, Ms. Merilee Fielding, Ms. Susan Goins, Ms. Janet Grove, Ms. Sheila Gonzalez, Ms. Pat Haggerty, Ms. Beth Hawn, Ms. Lynn Holton, Ms. Susan Hough, Ms. Kate Howard, Mr. John A. Judnick, Ms. Camilla Kieliger, Mr. John Larson, Mr. Ray LeBov, Mr. Ed Less, Ms. Melissa Levitt, Ms. Cathy Luckiesh, Ms. Carolyn McGovern, Mr. Frederick Miller, Ms. Suzanne Murphy, Ms. Mary Nelson, Ms. Diane Nunn, Mr. Patrick O'Donnell, Mr. Ronald Overholt, Ms. Nancy Polis, Mr. Daniel Pone, Ms. Evyn Shomer, Ms. Marlene Smith, Ms. Sonya Smith, Ms. Pat Sweeten, Ms. Kim Taylor, Ms. Marcia Taylor, Ms. Karen Thorson, Ms. Jennifer Walter, Mr. Alan Wiener, and Ms. Pat Yerian; **media representatives:** Ms. Donna Domino, *San Francisco Daily Journal*; Mr. Reynolds Holding, *San Francisco Chronicle*; and Mr. Kevin Livingston, *The Recorder*.

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 April 19, 2002, that was sent to members in advance of the meeting.)

Approval of Judicial Council Meeting Minutes of March 1, 2002

The council approved the meeting minutes of March 1, 2002.

Judicial Council Committee Presentations

Executive and Planning Committee

Associate Justice Richard D. Huffman, chair, reported that the Executive and Planning (E&P) Committee had met four times. The committee met as follows:

1. To consider items submitted for the council's February and April 2002 business meetings, determine readiness for council action, and set the agenda.
2. To review nominations materials and submit its recommendations to the Chief Justice to fill the vacant superior court judge position on the council created by the elevation of Justice Ronald B. Robie.
3. To review the final selections made by the Task Force on Self-Represented Litigants concerning funding distribution for five model self-help pilot projects. The committee acted on behalf of the Judicial Council in approving the distribution of grant funds for the following self-help model projects:

Butte County: *Regional Coordination*

Contra Costa County: *Technology*

Fresno County: *Spanish-Speaking*

Los Angeles County: *Urban Coordination*

San Francisco County: *Multilingual*

The committee met several times to discuss the process for implementing the Judicial Council's policies as the Administrative Director undertakes this process for the range of services to the courts as discussed by the council at the planning meeting. The committee agreed on a process in which E&P, as the Administrative Director begins implementing the measures with directions to his staff, would review and determine whether or not the measures are within the council's stated policies. In cases where the policies have unintended consequences that may result in new issues, E&P would refer those issues to the council for discussion of the underlying policy. E&P will provide a report on the implementation activity taking place and the actions of the committee on this subject.

Justice Huffman also referenced item A3 on the agenda pertaining to form interrogatories. He commended the work of the employment law attorneys who have worked on this project since July 2000 to make the employment litigation process more functional. On behalf of the Executive and Planning Committee, Justice Huffman acknowledged the following attorneys and asked the council to thank them all for the enormous amount of time they dedicated to this project:

Poncho Baker, Michelle Barrett, John Cumming, Philip Horowitz, Jackie Kaur, Lindbergh Porter, Jr., Nancy Pritikin, Michelle Reinglass, Deborah C. Saxe, Christopher Whelan, and Jeffrey Winikow.

Policy Coordination and Liaison Committee

Associate Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee (PCLC) had met three times since the last council meeting. The committee took positions on 28 bills relating to the general subjects of civil procedure, criminal procedure, domestic violence, family law and juvenile delinquency, dependency, probate, retirement systems, and traffic.

The committee also reviewed and adopted recommendations on various proposals for council-sponsored legislation. These included proposals to eliminate an obsolete filing fee for limited civil actions, clarify various duties and rights of appointed counsel in family and juvenile cases (giving trial courts the discretion to determine the location of court sessions with the consent of the parties and requiring the Judicial Council to adopt related rules), and eliminate loss of hearing as a basis for general disqualification of a prospective juror.

The next PCLC meeting is with the Attorney General of California and is scheduled for June 14, 2002.

Rules and Projects Committee

Associate Justice Ronald B. Robie, chair, reported that the Rules and Projects (RUPRO) Committee met to review 47 proposals for changes to rules and forms that are now circulating for public comment. The proposals will come back to RUPRO in September and before the council at its October 25, 2002, meeting.

The proposals include those for new plain-English forms for domestic violence and adoption, new probate rules, a judicial sabbatical program, and a reorganization of title V of the California Rules of Court, which contains family and juvenile rules.

Rules and forms items found on today's agenda were discussed at the committee's April 3, 2002, meeting. Items E3 and E4 have been reviewed by the committee several times, including on April 18, 2002. The committee specifically wanted to acknowledge the efforts of Heather Anderson and Melissa Johnson, the Civil and Small Claims Advisory Committee, and the excellent panel that worked to put these two proposals before the council today.

Recognition of *Court News*

The Chief Justice announced that the State Information Officers Council, a nonprofit organization that annually recognizes excellence in communications efforts by state agencies, has recently recognized *Court News*, with its 2002 gold award in the magazine category. The Chief Justice thanked and congratulated AOC staff, especially the Office of Communications and the Editing and Graphics Group, for their fine work not only on *Court News* but also on the California Courts Web site and other media efforts and

programs to improve judicial branch communications. The Chief Justice thanked and specifically congratulated:

Ms. Carolyn McGovern, Supervising Editor, Editing and Graphics Group

Ms. Mary Nelson, Copy Editor for *Court News*

Ms. Suzanne Bean, Graphic Designer

Ms. Sheila Ng, Production Artist

Mr. Blaine Corren, Managing Editor for *Court News*

Mr. James Carroll, Manager and Executive Editor, Office of Communications

CONSENT AGENDA

ITEM 1 RULES, FORMS, AND STANDARDS

General rules

Item A1 Local Rules: Filing, Distribution, and Maintenance (amend Cal. Rules of Court, rule 981)

Council action:

The Judicial Council, effective January 1, 2003, amends rule 981 to require that:

1. Each superior court (1) file an electronic copy of local rule amendments with the Judicial Council, (2) certify whether the court posts local rules to the court's Web site, and (3) certify whether the court provides assistance to members of the public in accessing the Internet; and
2. The Administrative Office of the Courts implement the rule by (1) publishing a list of courts that have filed rules and amendments to rules with the Judicial Council, (2) depositing paper copies of all 58 superior courts' local rules amendments with courts that certify that they do not provide assistance to members of the public in accessing the Internet, and (3) developing a template for electronic rules format.

Civil and Small Claims

Item A2 False Claims Actions (adopt Cal. Rules of Court, rules 243.5–243.8; adopt form MC-060)

Council action:

The Judicial Council, effective July 1, 2002, adopts

1. Rules 243.5–243.8; and
2. The *Confidential Cover Sheet—False Claims Action* (mandatory form MC-060) to provide guidance on the procedures for filing papers in False Claims Act cases.

Item A3 Form Interrogatories: New Employment Law Interrogatories and Revised Standard Interrogatories (approve form FI-130 and revise form FI-120)

Council action:

The Judicial Council, effective July 1, 2002:

1. Approves *Form Interrogatories—Employment Law* (optional form FI-130) to provide the parties in employment cases with a basic set of interrogatories for their use; and
2. Revises *Form Interrogatories* (optional form FI-120) to reflect trial court unification and improve their clarity and style.

Item A4 Attachment (approve form MC-025)

Council action:

The Judicial Council, effective July 1, 2002, approves for optional use *Attachment* (form MC-025) to assist parties who are preparing an attachment to a Judicial Council form.

Family and Juvenile

Item A5 Juvenile Law: Surrogate Parent Appointment Process (adopt Cal. Rules of Court, rule 1499; and adopt forms JV-535 and JV-536)

Council action:

The Judicial Council, effective July 1, 2002, adopts

1. Rule 1499 of the California Rules of Court to provide a procedure for making surrogate parent appointments;
2. Mandatory form JV-535 to effectuate the court's order limiting parental educational rights and making a recommendation to the local educational agency; and
3. Mandatory form JV-536 to help ensure that surrogate parent appointments are made in accordance with applicable statutes.

Item A6 Juvenile Law: Access to Pupil Records for Truancy Proceedings (adopt Cal. Rules of Court, rule 1499.5; adopt forms JV-530 and JV-531)

Council action:

The Judicial Council, effective July 1, 2002, adopts

1. Rule 1499.5 of the California Rules of Court to provide a procedure for the juvenile court and probation officers to have access to pupil records for the purposes of truancy proceedings;
2. *Certified Request for Pupil Records—Truancy* (mandatory form JV-530) to serve as the judicial officer's or probation officer's request for pupil records from the local educational agency; and
3. *Local Educational Agency Response to JV-530* (mandatory form JV-531) to serve as the response form for the local educational agency to complete and return with the requested records.

Item A7 This item was moved to 10 a.m. on the DISCUSSION AGENDA.

Item A8 **Juvenile Law: Technical Changes to Juvenile Court Rules and Forms (amend Cal. Rules of Court, rules 1401, 1412, 1422, 1432, 1443, 1444, 1445, 1446, 1456, 1460, 1463, 1474, 1475, 1482, 1492, and 1493; revise forms JV-320, JV-450, JV-600, JV-710, and CR-110/JV-790)**

It was requested that form JV-320 be withdrawn from the technical packet and returned to the Family and Juvenile Advisory Committee for revision.

Council action:

With the exception of recommendation #17, concerning form JV-320, the Judicial Council, effective July 1, 2002, amends the following rules of court and revises the following forms as noted below:

Amends/revises:

1. Rule 1401 to add new definitions and amend current definitions to reflect recent statutory and related changes;
2. Rule 1412 to clarify language and reflect statutory changes;
3. Rule 1422 to clarify language and reflect statutory changes regarding required findings at the detention hearing;
4. Rule 1432 to conform to statutory requirement regarding identity of petitioner;
5. Rule 1443 to clarify language and reflect statutory changes regarding required findings at the detention hearing;
6. Rule 1444 to reflect statutory changes regarding conduct of the detention hearing;
7. Rule 1445 to reflect statutory changes regarding detention requirements;
8. Rule 1446 to reflect statutory changes regarding required findings in support of detention;
9. Rule 1456 to clarify language and reflect statutory changes regarding reasonable efforts, court orders, and detention alternatives;
10. Rule 1460 to clarify language and reflect statutory changes regarding sibling relationships;
11. Rule 1463 to reflect statutory changes regarding sibling relationships;
12. Rule 1474 to reflect statutory changes regarding findings prior to ordering a child detained pursuant to a section 601 or 602 petition;
13. Rule 1475 to clarify language and to reflect statutory changes regarding detention report language, and findings and orders prior to detaining a child;
14. Rule 1482 to clarify code reference;
15. Rule 1492 to reflect statutory changes regarding case plan requirements;
16. Rule 1493 to reflect statutory requirements regarding reunification services and placement requirements;
18. Optional form JV-450 to clarify the identity of parties authorized to sign;
19. Optional form JV-600 to clarify and make technical changes;
20. Mandatory form JV-710 to clarify and make technical changes; and
21. Optional form CR-110/JV-790 to clarify references to parents or guardians or any co-

offenders who are jointly and severally liable for victim restitution.

Withdraws and refers back to the Juvenile Law Subcommittee:

17. Mandatory form JV-320, to clarify language and reflect statutory changes regarding sibling relationships and required findings regarding placement and reasonable efforts.

Probate

Item A9 New Probate Forms: Notice of Taking Possession or Control of an Asset of Minor or Conservatee and Notice of Opening or Changing a Guardianship or Conservatorship Account or Safety Deposit Box (adopt forms GC-050 and GC-051)

Council action:

The Judicial Council, effective July 1, 2002, adopts the following:

1. *Notice of Taking Possession or Control of an Asset of Minor or Conservatee* (mandatory form GC-050); and
2. *Notice of Opening or Changing a Guardianship or Conservatorship Account or Safety Deposit Box* (mandatory form GC-051) to make it easier for financial institutions to comply with recent legislation requiring that they file statements concerning the assets of minors and conservatees and to make it easier for the courts to review the information filed.

Item A10 Miscellaneous Technical Changes to Rules and Forms (amend Cal. Rules of Court, rules 4, 5.1, 12.5, 1810, 6.655, 6.702, and 6.800; revise forms 982.1(1), 982.1(20), and 982.1(90); and revoke form CP10.6)

Council action:

The Judicial Council, effective July 1, 2002:

Amends:

1. Rule 4 to correctly quote rule 8;
2. Rule 5.1 to correctly reference rule 4;
3. Rule 12.5 to clarify that there is no difference between the showings required in the reviewing courts and in the trial courts to support a motion to seal a record;
4. Rule 1810 to correctly reference renumbered rule 201.8;
5. Rule 6.655 to correctly reference rule 6.603;
6. Rule 6.702 to correctly reference the “Secretariat Office”;
7. Rule 6.800 to correctly reference the “Office of the General Counsel”; and

Revises:

8. *Complaint—Personal Injury, Property Damage, Wrongful Death* (optional form 982.1(1)) to implement Assembly Bill 223, which amends Code of Civil Procedure section 425.10 to no longer require statement of the amount of damages requested in any complaint to recover damages for personal injury or wrongful death; and
9. *Complaint—Contract* and *Complaint—Unlawful Detainer* (optional forms 982.1(20))

and 982.1(90)) to indicate whether the case is a limited or unlimited civil case; and

Revokes:

Prejudgment Claim of Right to Possession—Unlawful Detainer (form CP10.6) to reflect the expiration and repeal of Code of Civil Procedure section 1167.2.

Item B Model Self-Help Pilot Projects

Council action:

For information only; no action necessary.

DISCUSSION AGENDA

Item C Trial Court Operations: Delegation of Authority to Establish Bank Accounts Separate From the County Treasury

Mr. Ralph Baird, Manager, AOC Finance Division, presented this report.

Government Code section 77009(j) (Assem. Bill 223 [Frommer]; Stats. 2001, ch. 812) authorizes the Judicial Council to “establish trial court operations funds separate from the county treasury.” The establishment of trial court operations funds separate from the counties specifically allows “the courts to include any or all money under the control of the court in the funds,” if authorized by the Judicial Council.

Many superior courts and counties wish to separate their court’s finances from those of the county treasury. In some cases, the nature of the relationship between the court and the county makes this separation urgent.

Delegating approval of individual accounts to the Administrative Director of the Courts will permit a timely response to courts requesting establishment of bank accounts while carrying out the policies of the Judicial Council in regard to these accounts.

Council action:

The Judicial Council approves the delegation of authority to establish bank accounts for superior court operations to the Administrative Director of the Courts based on the following standards:

1. The bank is well capitalized as denoted by Bauer Financial Services, a nationally recognized bank rating service, by three or more stars;
2. Funds will be insured by either the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation; and
3. No conflict of interest exists between the institution and any judge or other responsible officer of the court.

The Judicial Council also directs staff to prepare a rule of court that sets forth these requirements and to present the proposed rule to the Presiding Judges Advisory Committee and the Court Executives Advisory Committee for their approval. The rule should then be presented to the council for adoption.

The motion passed.

Item D *Jury System Improvement: Preview of Juror Orientation Video, *Ideals Made Real**

Justice Judith McConnell, vice-chair of the Task Force on Jury System Improvements presented the video on behalf of Judge Dallas Holmes, chair of the task force. Justice McConnell acknowledged the support the task force received from the Chief Justice, Mr. William C. Vickrey, and Mr. Ronald Overholt. She also commended Ms. Kim Taylor and Mr. John Larson for their work on the video.

The task force was established in October 1998 to oversee the implementation of the Blue Ribbon Commission's recommendations. In December 1999 a jury orientation video concept was approved by the task force and the project began. The main objective of the video is to retain jurors for jury duty, instructing them about the importance of jury duty, acknowledging the importance of the role they play in the administration of justice, and explaining the process to them. The video will be seen by jurors statewide, having the potential to reach thousands of potential jurors each year.

The AOC will distribute the video to each trial court statewide on May 3, 2002, to coordinate with Juror Appreciation Week that occurs during the second full week of May each year.

Discussion

It was suggested that the narrator's statement that jurors "can't" visit the crime scene or make their own investigation should perhaps be dubbed to say that jurors "cannot" visit the crime scene. The audio in this part of the video is not clear. The video sounds like the narrator is saying that jurors can visit the crime scene.

Staff explained that the captioning shown during that segment says "no investigation," but agreed that a review of the segment is needed to ensure that it does not encourage jurors to investigate crime scenes.

A question was asked about whether there were any plans to provide access to the video on personal computers.

Staff responded that it is being streamed on the Web.

Council action:

For information only; no action necessary.

ITEM E RULES, FORMS, AND STANDARDS

Item E1 Role of Subordinate Judicial Officers (adopt Cal. Rules of Court, rule 6.609)

Mr. Frederick Miller, Senior Manager, Executive Office Programs Division, presented this report.

On December 15, 2000, the Judicial Council took action on a report on subordinate judicial officers and directed staff to draft a rule of court articulating its long-standing policy that the primary role of subordinate judicial officers (SJOs) is to perform subordinate judicial duties. Staff drafted and circulated for comment the rule proposed here.

Council action:

The Judicial Council, effective July 1, 2002, adopts rule 6.609 of the California Rules of Court to:

1. Establish that the primary role of subordinate judicial officers is to perform subordinate judicial duties; and
2. Provide that presiding judges may assign subordinate judicial officers to act as temporary judges when a shortage of judges makes it necessary.

The motion passed.

Item E2 Guidelines for the Design of Court Facilities (adopt Cal. Rules of Court, rule 6.150; repeal Cal. Standards Jud. Admin., § 3)

Ms. Kim Davis, Assistant Director, and Mr. Robert Emerson, Manager of the AOC Facilities Unit, presented this report.

For the design of court facilities, section 3 of the California Standards of Judicial Administration requires trial courts to use guidelines adopted in November 1991. In March 2001, the Task Force on Court Facilities issued three new sets of guidelines for the design of court facilities. One of the guidelines, on trial court facilities, would replace the guidelines adopted in November 1991. The other two guidelines cover areas not addressed by previous guidelines. The plan is to distribute hard copies of the guidelines in July 2002. The guidelines will also be available online to the general public and to practitioners in the field.

Discussion

An inquiry was made about when the reporting process will begin. It was further noted that some courts are currently in the process of signing a contract and are just beginning the design phase and would want facilities staff to participate in the project.

It was explained that staff is available and ready to be of assistance. Ms. Davis also reported that the facilities staff is initiating an outreach effort to provide their services to both the courts and the counties, and they anticipate beginning the reporting process in July 2002.

Council action:

The Judicial Council, effective July 1, 2002:

1. Adopts rule 6.150 of the California Rules of Court, which gives the AOC responsibility for the facilities guidelines and requires courts to use those guidelines;
2. Repeals section 3 of the California Standards of Judicial Administration;
3. Adopts *Trial Court Facilities Guidelines*, *Appellate Court Facilities Guidelines*, and *Facility Guidelines for Technology in the Courthouse* (deleting section I of each guideline, which addresses use of the guideline in the task force's efforts) for use in the design of court facilities; and
4. Authorizes the AOC to publish the guidelines as adopted by the Judicial Council (deleting section I of each guideline), crediting the Task Force on Court Facilities for the development of the guidelines.

The motion passed.

Item A7 **Juvenile Dependency: Termination of Dependency Jurisdiction for a Child Who Has Reached the Age of Majority (amend Cal. Rules of Court, rule 1466; adopt form JV-365)**

Ms. Jennifer Walter, Supervising Attorney in the Center for Families, Children & the Courts, presented this report.

The Family and Juvenile Law Advisory Committee recommends amending a rule and adopting a form to clarify the criteria that a court must apply before terminating juvenile dependency jurisdiction when a dependent minor reaches the age of majority and to provide a checklist for the child welfare department and the judicial officer to ensure that all the proper information and services have been provided to the child. The reason behind the law (Assem. Bill 686; Stats. 2000, ch. 911) is that, unfortunately, foster youth who exit the system are frequently found to be homeless within one year. This statute, the rule, and form are especially critical for the juvenile court to exercise its jurisdiction and oversight responsibilities to make sure the agency has performed its responsibilities under the statute.

Discussion

Concern was expressed that the rule originally submitted for consideration implemented statutes that impermissibly extended juvenile court jurisdiction over an adult, and while the legislative goal is a laudable one--the provision of services to young adults--the council should not adopt rules that support juvenile court jurisdiction over adults who are not incapacitated and do not agree to continued jurisdiction.

It was explained that the statute's directive is to the courts and agencies, and not the young adult. It was stated that perhaps the rule could be modified to include an escape clause for the young adult who would not need to submit to the court's jurisdiction in order for the court to exercise its oversight responsibility to ensure that the agency meet its legal obligation to provide necessary services for the young adult.

RUPRO and the Family and Juvenile Law Advisory Committee jointly submitted a revised rule in place of the rule originally submitted. It was recommended that the revised rule be adopted and that the original rule be referred back to the Family and Juvenile Law Advisory Committee in view of the discussion.

Council action:

The Judicial Council, effective July 1, 2002:

1. Adopts the form (mandatory form JV-365) and revised version of the rule submitted by RUPRO and the Family and Juvenile Law Advisory Committee; and
2. Refers the original version of rule 1466 of the California Rules of Court, submitted to RUPRO, back to the Family and Juvenile Law Advisory Committee for further study and to consider revising the rule on how to implement the law in a way that is more compatible with the intent.

The motion passed.

Acknowledgments From the Chief Justice

The Chief Justice announced that this would be the last Judicial Council meeting at which Ms. Christine Patton would serve as an advisory member. He reminded everyone that as of June 15, 2002, Ms. Patton would be joining the AOC as the Bay Area/Northern Coastal Regional Director.

The Chief Justice announced that the Superior Court of Los Angeles County has completed implementation of the one-day or one-trial jury system and congratulated Judges James Allen Bascue and Robert A. Dukes, Executive Officer John A. Clarke, and the entire court for implementing this great public service.

The Chief Justice announced substantial savings in the use of assigned judges in the Superior Courts of Los Angeles and Orange Counties. He stated that in Los Angeles alone the expenditures have been reduced by almost \$100,000 in the past three months. Orange County has experienced a drop in expenditures of about \$10,000 per month.

Item E3 Standards of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases (adopt Cal. Rules of Court, rules 1620–1620.9 and 1622)

Judge Robert B. Freedman presented the report and acknowledged Mr. Alan Wiener's presence and his invaluable assistance in this preparation of the proposed rules.

Staff indicated that the purpose for the proposal is to fill a gap that currently exists in the ethics standards that apply to neutrals who serve in court-connected programs. Ethics standards previously adopted by the Judicial Council apply to temporary judges, referees, and court-appointed arbitrators, but no standards currently apply to mediators in civil cases. There is also no statewide certification program for mediators and no licensing. The Task Force on the Quality of Justice, Subcommittee on Alternative Dispute Resolution and the Judicial System was charged with looking at what entity had or should have the responsibility for setting ethics standards for various types of neutrals and reviewing the existing ethics standards. The task force issued a report in 1999 that identified the lack of existing standards for mediators in court-connected civil programs and recommended that a group be appointed to develop a set of ethics standards for these mediators.

The Civil and Small Claims Advisory Committee took on this role of developing the ethics standards. The Alternative Dispute Resolution (ADR) Subcommittee of this group tried to make the development process an very collaborative effort, realizing the standards were of concern to judges, administrators of court-connected civil mediation programs, and the mediators and lawyers who participate in those programs.

A working group was developed that included ADR Subcommittee members, judges, administrators of ADR programs in federal and state courts, and mediators and attorneys who are familiar with mediation programs. The group gathered existing standards and took about a year to develop a draft that was circulated for informal comment to members of the judiciary and the mediation community. During the public comment period, public forums were held in San Diego, Los Angeles, and Northern California. That draft was substantially revised based on the comments received and then sent out for the formal comment process.

The rules found in the series 1620–1620.9, in general, would establish minimum standards of conduct for mediators in court-connected mediation programs for general civil cases.

Council action:

Judicial Council, effective January 1, 2003:

1. Adopts rules 1620–1620.9 to establish minimum standards of conduct for mediators in court-connected mediation programs for civil cases; and
2. Adopts rule 1622 to require that courts establish procedures for handling complaints concerning mediators who are on their lists or whom they recommend, select, appoint, or compensate.

The motion passed.

Prior to the presentation of item E4, the Chief Justice recused himself from any participation in discussing or voting on this matter because of the possibility of its coming before the California Supreme Court. Justice Marvin E. Baxter also recused himself from any participation in discussing or voting on this issue. The Chief Justice appointed Justice Richard D. Huffman to act as chair during the discussion and vote on the issue.

**Item E4 Ethics Standards for Neutral Arbitrators in Contractual Arbitration
(adopt Cal. Rules of Court, Division VI of the Appendix to the Cal.
Rules of Court)**

Code of Civil Procedure section 1281.85 was enacted in late September 2001 as part of Senate Bill 475, which was cosponsored by the Judicial Council, the Governor, and Senator Martha Escutia, the chair of the Senate Judiciary Committee. This section requires the Judicial Council to adopt ethics standards, effective July 1, 2002, for all neutral arbitrators serving in arbitrations pursuant to an arbitration agreement.

Discussion

Mr. Michael Bergeisen noted that the proposal is before the council because Code of Civil Procedure section 1281.85 requires the Judicial Council to adopt ethics standards for neutral arbitrators effective July 1, 2002. The section also requires that all persons appointed as neutral arbitrators pursuant to arbitration agreements comply with these standards beginning July 1, 2002. Mr. Bergeisen noted the following highlights of section 1281.85:

1. The standards must be consistent with the standards for arbitrators acting in judicial arbitration;
2. The standards may expand, but may not limit, disclosure and disqualification requirements that are set forth in chapter two of the California Arbitration Act; and
3. The standards are required to address the following subjects:

- The disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service by the individual as an arbitrator or other dispute resolution neutral;
- Disqualifications;
- Acceptance of gifts; and
- Establishment of future professional relationships.

Mr. Ray LeBov provided background on what the Legislature had in mind when it directed the Judicial Council to adopt these rules rather than have the legislation itself contain the standards. He outlined four rationales for the Legislature's directive.

1. The Legislature's feeling that the Judicial Council process would remove the drafting of the standards significantly from the normal political arena surrounding the enactment of legislation and thereby enable more focus on the technical aspects of the drafting process.
2. The Legislature's recognition of the expertise to be found in the judicial branch and the Judicial Council in drafting ethics standards.
3. The belief that the Judicial Council had done a good job with the judicial arbitration ethical requirements and that since the direction was that these standards, to the extent it is contextually appropriate, track those standards, the council was in the best position to ensure that result.
4. The belief that it was important to have greater flexibility to make subsequent changes to the standards and that the council's rule-making process provides greater flexibility in this regard, rather than having to enact a statutory change to react to any perceived need for changes.

Professor Jay Folberg discussed the work of the Blue Ribbon Panel of Experts on Arbitrator Ethics. He noted that there are really two types of arbitration. One is commercial and business arbitration, where all parties have agreed to the arbitration and the arbitration is viewed as a desirable alternative to the courts. The second is consumer arbitration triggered by predispute arbitration clauses in consumer, health-care, and employment contracts.

Professor Folberg stated that there are definitely legitimate concerns about predispute arbitration clauses in consumer matters. In regard to consumer arbitration, what the panel heard was not so much stories of difficulty with individual arbitrators, but stories both about consumers being forced into arbitration and about possible conflicts that might exist for some of the provider organizations.

What really divided the panel of experts who worked on this issue was concern that the reforms aimed at consumer arbitration might cripple commercial arbitration, which is working reasonably well. The panel's most important contribution was to separate these two areas. The concern, as debated by the panel, was that these proposed standards offer only an indirect method of addressing the concerns about consumer arbitration.

However, having the Legislature deal with consumer arbitration directly, by restricting, banning, or regulating pre-dispute arbitration clauses, is complicated by the Federal Arbitration Act and the possible preemption of the state laws.

The standards, as best as possible, follow the dictates of the legislation as to what must be in the standards and address the issue of public confidence concerning consumer arbitration. The standards do, in fact, separate consumer from commercial arbitration.

The panel was also concerned about timing because the 30-day period for circulation for comment was not adequate time, particularly for bar associations and other organizations with membership, to consider the standards. The standards are regarded as quite significant (i.e., they will change practice and could present unintended consequences), so these organizations very much wanted to carefully consider the standards and they felt they couldn't do so in the short time period available. Professor Folberg noted that, in part to address these concerns, the provider organization disclosures in consumer cases have been put before the council with the request that implementation be delayed until January 1, 2003.

Ms. Heather Anderson reported that RUPRO modified the staff's recommendation that the standards be reviewed within a year after their implementation and requested that staff send the standards out after their adoption for further comment so the review process could actually start almost immediately. Ms. Anderson noted that this request can be incorporated in the staff recommendations shown in the report summary by striking the words, "after they have been in effect for one year and" from recommendation 3.

Ms. Anderson reported on specific standards that were most important or raised the most controversy in the public comment process. She also reported on various suggestions or changes RUPRO made at its April 18, 2002, meeting.

Standard 2. Definitions

RUPRO asked that the words "but is not limited to," in subdivision (q) be eliminated.

Standard 3. Application and Effective Date

This standard specifically is intended to clarify for arbitrators and others what is meant by arbitrators serving under an arbitration agreement. The RUPRO recommendation was to eliminate paragraph (a)(3).

Standard 7. Disclosure

Ms. Anderson said this is the standard about which people seemed to have the most concern. Commentators expressed concern about both the detailed nature of the disclosure requirements and their scope, characterizing the standard as too complicated and too burdensome, and expressed concern that the complexity and burden would ultimately negatively impact arbitration in California. Commentators suggested that the finality of arbitration awards might be threatened by expanding the available grounds for vacating an arbitration award, increasing the time needed to appoint an arbitrator and complete arbitration because of the possibility of the arbitrator being disqualified. Commentators also suggested the standard might discourage arbitrators from serving in California, particularly in small cases, thereby decreasing the public's access to arbitration services.

Ms. Anderson acknowledged that this is a long and complex provision that contains extensive and very detailed requirements. The length and complexity do make it difficult to understand, so the reaction that the standard ought to be pared down is understandable. However, much of what is in standard 7 reflects existing disclosures that arbitrators are already required to make under current statutes. Code of Civil Procedure section 1281.9 includes a specific list of matters that must be disclosed by arbitrators, including information about all the prior arbitrations they have had with the parties and attorneys in front of them over the last five years. It also requires that arbitrators disclose any matter that would be grounds for disqualifying a judge under Code of Civil Procedure section 170.1.

As Mr. Bergeisen mentioned earlier, the statute requiring the council to adopt these standards requires that the standards address disclosure of interests, relationships, or affiliations that may constitute a conflict of interest, including prior service as an arbitrator or with other dispute resolution entities. The statute also says that the standards may expand, but may not limit, the disclosure and disqualification requirements already imposed on contractual arbitrators by statute. Whether or not the panel or the council feels that the existing disclosure requirements imposed by statute are too detailed or too broad, under Code of Civil Procedure section 1281.85, the council has no authority to limit those existing requirements.

Ms. Anderson referred members to the bulleted list under "Standard 7. Disclosure" on pages 25–26 of the report that lists the new disclosure requirements that this standard would impose on arbitrators. That list represents the new obligations that the council would be creating if the standard were adopted.

Ms. Anderson discussed the subdivision requiring arbitrators to make disclosures concerning relationships between the provider that is administering the arbitration and the parties or attorneys that are appearing before the arbitrator. Ms. Anderson directed members to page 39 of the report and stated that this was the most controversial part of

the proposed standards. Both the panel and commentators were divided on whether this provision should be adopted.

She stated that staff is recommending this provision be adopted because they believe arbitrators should be responsible for disclosing information about the provider organizations with which they are affiliated. Those provider organizations are the arbitrator's agents when they are procuring cases, and they have a direct interest in cultivating and maintaining relationships with parties who can be a source of ongoing streams of business for the provider organization. Every arbitrator who receives cases from provider organizations benefits directly from the activities undertaken by that provider organization to cultivate and maintain that stream of cases. Staff noted that the same commentators objected to this standard on the ground that arbitrators who are affiliated with the same provider organization would disclose similar information about that provider organization's relationships. However, the standard also requires disclosure of information about the individual arbitrator's relationship with that provider that will vary from arbitrator to arbitrator, which will give context for the information about the provider organization's relationships.

Staff is also recommending that this provision be adopted with an effective date of January 1, 2003, rather than July 1, 2002. That is in part a response to comments that it will take a longer time for arbitrators to implement this standard and also in recognition that there is legislation currently pending in the Legislature that may directly affect some of the required disclosures.

Standard 9. Duty to Refuse Gift, Bequest, or Favor

This standard requires arbitrators to refuse gifts, during arbitration, from parties whose interests are reasonably likely to come before them and to refuse gifts from those whose interests did come before them in arbitration for two years following the conclusion of the arbitration.

Standard 10. Duties and Limitations Regarding Future Professional Relationships or Employment

This standard prohibits arbitrators from serving as an attorney, expert witness, or consultant for a party or attorney in the arbitration while that arbitration is pending. It also requires that, at the outset of the arbitration, arbitrators disclose whether they will entertain offers of subsequent employment from a party or attorney while the arbitration is pending, and it allows parties to disqualify an arbitrator based on that disclosure.

This standard also requires that, in a consumer arbitration, when such an offer of subsequent employment is made by a party or attorney, arbitrators get the consent of the parties in the current arbitration to take on that additional employment.

Justice Norman L. Epstein complimented Ms. Anderson and Mr. Folberg on an admirable job done on a complicated subject within severe time constraints. He expressed concern about the resulting structure that involves some serious and substantial changes. He noted that, in the current system, an enormous amount of information must be disclosed and that anything that is disclosed is, by definition, a basis to object to the neutral arbitrator. There is no requirement that the objection have any logical relationship to the disclosure. Although the standards include a provision allowing the arbitrator to satisfy certain of these disclosure requirements by providing a statement that he or she has made a good faith effort to get the required information, the arbitrator can still be disqualified on the basis of that statement. Justice Epstein also suggested that several of the disclosure provisions, such as the provision with reference to a “significant relationship,” are not clearly defined.

Justice Epstein suggested further review of the standards. Justice Huffman asked if RUPRO’s recommendation that the standards be circulated for comment upon adoption addressed this concern. Justice Epstein indicated that it did.

Justice Huffman clarified with Ms. Anderson that adoption of the proposed division VI of the appendix to the California Rules of Court, including amendments by RUPRO in standard 2(q) and standard 3(a)(3) and the recirculation upon adoption rather than after one year, is what the panel is asking the council to vote on. Ms. Anderson concurred.

Council action:

1. The Judicial Council, effective July 1, 2002, adopts, as division VI of the appendix to the California Rules of Court, all the proposed ethics standards for neutral arbitrators in contractual arbitration except standard 7(b)(12).
2. The Judicial Council, effective January 1, 2003, adopts proposed standard 7(b)(12) requiring that, in consumer arbitrations, arbitrators disclose information about their relationship with any dispute resolution provider organization that is administering the arbitration and any financial or professional relationship between that provider organization and parties or attorneys in the arbitration.

The Judicial Council directs staff to re-circulate these standards for comment and report to the council on recommended amendments to the standards.

The motion passed.

Circulating and Appointment Orders Approved

Circulating Orders:

No circulating orders were approved since the last meeting.

Appointment Orders: Appointments to the Task Force on Jury System Improvements

For information only; no action necessary.

Appointment Orders: Appointment to the Task Force on Self-Represented Litigants

For information only; no action necessary.

Appointment Orders: Appointments to the Appellate Indigent Defense Oversight Advisory Committee

For information only; no action necessary.

Appointment Orders: Appointment to the California Council for Interstate Adult Offender Supervision

For information only; no action necessary.

Appointment Orders: Appointment to the California State-Federal Judicial Council

For information only; no action necessary.

Resolutions: Judicial Council Resolution in Support of State Justice Institute (SJI)

For information only; no action necessary.

There being no further business, the meeting was adjourned at 11:45 a.m.

Respectfully submitted,

William C. Vickrey
Secretary