

**JUDICIAL COUNCIL MEETING**  
**Minutes of August 24, 2001, Meeting**

The Judicial Council of California business meeting began at 8:30 a.m. on Friday, August 24, 2001, at 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; Associate 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, Ronald B. Robie, Ronald M. Sabraw, and Ronald L. Taylor; Mr. John J. Collins, Ms. Pauline W. Gee, and Mr. Rex Heeseman; and **advisory members:** Judge Wayne L. Peterson; Commissioner Bobby R. Vincent, Mr. Frederick K. Ohlrich, Mr. Arthur Sims, and Mr. Alan Slater.

**Absent:** Judges Ana Maria Luna and William C. Harrison; Senator Martha Escutia; Assembly Member Darrell Steinberg; and Mr. Michael Case.

**Others present included:** Mr. William C. Vickrey, Mr. Stephen Barnett, Judge Robert A. Dukes, Justice Norman L. Epstein, Mr. Daniel J. Hall, Judge Frederick Paul Horn, Ms. Beth Jay, Mr. Greg Jolivet, Ms. Carole Prescott, Ms. Sharol Strickland, Mr. Ken Torre, Ms. Kiri Torre; **staff:** Ms. Tamara Abrams, Ms. Lesley Allen, Mr. Christopher Belloli, Ms. Deirdre Benedict, Mr. Michael Bergeisen, Ms. Francine Byrne, Mr. James Carroll, Ms. Gisele Corrie, Ms. Sandra Derr, Ms. Lesley Duncan, Mr. Bob Fleshman, Ms. Denise Friday, Mr. Frank Gahub, Ms. Debbra Garrett, Mr. Ruben Gomez, Ms. Sheila Gonzalez, Ms. Charlene Hammitt, Ms. Tina Hansen, Ms. Lynn Holton, Ms. Kate Howard, Ms. Melissa Johnson, Mr. John Judnick, Ms. Camilla Kieliger, Ms. Bonnie Kong, Mr. John Larson, Mr. Ray LeBov, Ms. Melissa Levitt, Ms. Melanie Lewis, Ms. Kate Lucchio, Mr. Dag MacLeod, Mr. Frederick Miller, Ms. Vicki Muzny, Ms. Diane Nunn, Ms. Eraina Ortega, Mr. Ronald G. Overholt, Mr. Mark Pothier, Mr. Michael Roddy, Ms. Sonya Smith, Ms. Marcia Taylor, Ms. Karen Thorson, Mr. Jack Urquhart, Ms. Alice Vilar, Ms. Susie Viray, Mr. Thomas J. Warwick, Jr., Ms. Leah Wilson, Mr. Christopher Wu, Judge Barbara Ann Zúñiga. **media representatives:** Ms. Donna Domino, *San Francisco Daily Journal*, and Mr. Mike McKee, *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 August 24, 2001, which was sent to members in advance of the meeting.)

**Special Comment:**

Chief Justice Ronald M. George welcomed members of the council and others in attendance, and extended a special welcome to incoming new council members. The

Chief Justice acknowledged incoming member Assistant Presiding Judge Robert A. Dukes of the Superior Court of Los Angeles County for his outstanding efforts on behalf of the court.

### **Public Comment Related to Trial Court Budget Issues**

The Chief Justice noted that there had been no requests for public comment.

### **Approval of Judicial Council Meeting Minutes**

The council approved the minutes of the meeting of July 13, 2001.

### **Judicial Council Committee Presentations**

#### *Executive and Planning Committee*

Associate Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee had met three times since the council's July meeting—twice to resolve the agenda for the council's meeting and again to consider nominations for the council's various advisory committees. Justice Huffman informed the council that a number of the nominations are undergoing additional staff review.

#### *Policy Coordination and Liaison Committee*

Associate Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee has not had occasion to meet since the council's July meeting, pending resumption of legislative sessions on September 14, 2001. Justice Baxter thanked those who had served on the committee during the past year.

#### *Rules and Projects Committee*

Judge Steven E. Jahr, chair, reported that the Rules and Projects Committee had had no occasion to meet since the council's last meeting; however, several future meetings are being scheduled to take up new rule proposals. Judge Jahr thanked those who had served with him on the committee during the past year.

### **Judicial Council Court Visit Report**

Mr. Frederick K. Ohlrich reported on recent visits to the Superior Courts of Del Norte and Humboldt Counties. Mr. Ohlrich reported that the Judicial Council members participating in the visit, in addition to himself, included Justice Baxter and Mr. Michael Case. Administrative Office of the Courts (AOC) staff participants included Ms. Linda Theuriet, Ms. Tina Hansen, Ms. Melissa Johnson, and Mr. Robert Fleshman.

Mr. Ohlrich informed the council that, in general, each of the two courts conveyed concerns about the court-county transition, facilities, staffing needs, and the relationship

of the smaller courts to the Judicial Council. He also informed the council that both counties are experiencing depressed economies and high unemployment.

#### *Del Norte County*

The visitors learned that the Del Norte County court's specific concerns include the following:

- Finance/technology/county relations, including the issue of court banking and the authority to spend;
- Family law, and the challenge of resolving complex social issues in the absence of specific expertise in family law and mental health; and
- Personnel issues, including recruitment, retention, and fair compensation—more specifically, the insufficiency of funds to retain certified court interpreters.

#### *Humboldt County*

Mr. Ohlrich indicated that the Humboldt County court's major issues were very similar to those reported in Del Norte County and included:

- Inadequate court facilities and court security;
- Finance/technology/court relations, including some county services to the courts that are substandard, court banking and the court's lack of control of trust funds—specifically, the courthouse construction funds—and undependable computer systems; and
- Personnel issues, including salary structure.

Mr. Ohlrich also urged the council to consider ways to facilitate greater participation in council committees by judicial officers and employees of the state's smaller county court systems. He pointed out that it is often difficult for the smaller courts to release staff members for participation in council committees and that the AOC and the council should continue to explore ways to assist in this regard. Mr. Ohlrich commended the council for the recent establishment of regional AOC offices, headed by Ms. Sheila Gonzales and Mr. Michael Roddy, as a means of improving communication with the courts.

Finally, Mr. Ohlrich recommended that the council consider the possibility of having AOC staff and possibly state auditors examine several financial concerns raised during the recent court visits and perhaps conduct an audit of the use of courthouse construction funds.

## CONSENT AGENDA

### **ITEM 1      Equal Access Fund—Distribution of Funds for IOLTA-Formula Grants (Action Required)**

The State Bar Legal Services Trust Fund Commission (“the commission”) has submitted a report regarding distribution of Equal Access Fund grants. In that report, the commission requests that the Judicial Council approve distribution of \$8,550,000 according to the statutory formula. The Budget Act authorizing the Equal Access Fund provides that the Judicial Council must approve the commission’s recommendations if the Judicial Council determines that the awards comply with statutory and other relevant guidelines.

*Council action:*

The Judicial Council, under the authority of the Budget Act of 2001, approved the June 26, 2001, recommendation of the State Bar Legal Services Trust Fund Commission and allocated \$8,550,000 to the commission for distribution to legal service providers according to the formula established by Business and Professions Code section 6216.

## DISCUSSION AGENDA

### **ITEM 2      Report and Recommendations on Fiscal Year 2002–2003 Statewide Trial Court Budget Request (Action Required)**

Mr. Ronald G. Overholt, Chief Deputy Director of the AOC, made introductory remarks about the judicial branch budget covered in agenda items 2 through 6. Mr. Overholt indicated that agenda item 2 would be presented to the council in four parts and recommended that the council consider motions on the individual components.

Mr. Overholt reminded the council of a pending proposal for the formation of a judicial branch budget committee, which would, if created, review budgets in future years for the trial courts, Judicial Council, Supreme Court, AOC, and Habeas Corpus Resource Center. The committee’s role would be to assist the council in determining priorities and providing budget advocacy.

The council, Mr. Overholt reported, has statutory authority to approve trial court budget requests. The total fiscal year 2002–2003 statewide budget recommendation for the trial courts is \$144,190,000 and 755.5 positions. This represents approximately \$24,400,000 in one-time costs. (Half of the one-time funding is for technology.) This is a 4 percent increase in positions over fiscal year 2001–2002. The ongoing costs are 6.7 percent of the fiscal year 2001–2002 baseline budget.

Mr. Overholt introduced Ms. Tina Hansen, Chief Financial Officer and Director of the AOC's Finance Department, to report on the Trial Court Budget Commission's recommendations to the council.

### **Trial Court Budget Commission's Recommendations to the Judicial Council**

Ms. Hansen informed the council that the trial court budget development process focused on two main goals:

- Linking the trial court strategic planning process to the budget process, and
- Expanding court involvement.

She summarized the steps that were taken to achieve these goals, which included:

- Having the courts complete worksheets to identify funding priorities;
- Discussing the results of those priorities at a court planning workshop in October 2000;
- Asking for input on priorities from Judicial Council advisory committees and task forces;
- Convening a Budget Process Working Group for detailed discussion and review of priorities; and
- Revising priorities based on input from committees and the working group, and soliciting additional trial court feedback on these revisions.

Ms. Hansen reported that, following this process, the Trial Court Budget Commission met and went forward with the high-priority recommendations received from presiding judges and court executive officers. The commission also agreed on the following recommendations:

- Funding limits: a maximum budget request of 10 percent increase over the baseline budget;
- Technology: \$30 million in earmarked funds;
- Interpreters and court-appointed counsel: \$10 million in earmarked funds; and
- Individual program areas: \$127 million in earmarked funds for the following high-priority individual program areas:
  - Administrative services,
  - Court staffing,
  - Pay parity,
  - Security,
  - Family and children, and
  - Records management.

Ms. Hansen informed the council that each court was allowed to request 7.5 percent of its baseline budget or \$250,000, whichever was greater, in each of the priority program areas. In order to protect smaller courts from possible underfunding, each court with a

\$250,000 limit could also submit up to three budget requests based on extraordinary needs.

At the February 2001 Judicial Council Meeting, the foregoing recommendations were presented and approved by the council, along with the following staff recommendations:

- Greater limitations on priority program to allow for more refined budget requests;
- An additional \$5 million for court interpreters; and
- Moving jury per diems within the range of \$20 to \$25 per day for second and subsequent days.

Ms. Hansen informed the council that budget packages were sent to the courts on April 1, 2001—earlier than in previous years—with a due-back date of June 1, 2001. Four budget sessions were held throughout the state to provide training to the trial courts and to offer them suggestions about, and in some cases assist them in writing, budget change requests (BCRs). The review process, which began on June 1, included the following components:

- Analysts reviewed BCRs and returned disqualified requests for supplemental information as necessary, with the goal of getting as many requests approved as possible;
- Working groups—including representatives from the trial courts, law enforcement, and AOC program staff—convened to review the analysts' recommendations;
- Courts were provided an appeal process for any individual budget requests denied in part or in their entirety;
- Finance Division management reviewed the appeals and made recommendations;
- Appeals not approved in full were reviewed by an Executive Team; and
- Courts were informed of results on appeal.

Ms. Hansen reported on problems identified in the BCR review process that seemed to indicate the need for greater training at the trial court level. To that end, the AOC's Finance and Education Divisions are working to develop a new class specifically for court staff members charged with writing BCRs. The major problem categories identified in the BCR review were as follows:

- Unsupported BCRs;
- The methodology used to determine funding for court appointed council (some courts submitted budgets higher than the amounts they are currently spending); and
- Self-help requests (the courts did not vote to assign this program area a high priority; however, many courts submitted BCRs for self-help programs).

The Trial Court Budget Commission met to review and approve staff recommendations and to make the following recommendation to the Judicial Council:

Approve the recommended fiscal year 2002–2003 statewide trial court budget request of \$144,190,000 (7.9 percent of base), which includes the following budget proposals—including an increase in the technology BCR from \$30 million to \$38.4 million—as well as the delegation of authority to the Finance Director to make technical adjustments to the recommended fiscal year 2002–2003 statewide trial court budget:

| <b>Priority<br/>(in order)</b>                  | <b>Final Amount Recommended</b> |
|---|---------------------------------|
| Assumption/expansion of administrative services | \$ 31,392,053                   |
| Technology                                      | 38,400,000                      |
| Court staffing                                  | 19,247,203                      |
| Pay parity                                      | 1,370,673                       |
| Security  | 24,899,365                      |
| Family and children                             | 11,040,379                      |
| Records management                              | 9,215,634                       |
| Court-appointed counsel                         | 2,503,598                       |
| Court interpreters                              | 6,121,286                       |
| <b>TOTAL:</b>                                   | <b>\$144,190,191</b>            |

*Discussion*

Justice Huffman offered a motion to approve staff’s recommendations, with the following revision to recommendation 4:

Delegate to the ~~finance director~~ Administrative Director of the Courts the authority to make technical adjustments to the recommended fiscal year 2002–2003 statewide trial court budget.

Judge Donna J. Hitchens asked for clarification on items deferred from the proposed budget, specifically negotiated salary increases (NSIs).

Ms. Hansen responded that NSIs had been deferred pending the outcome of negotiations with state employees. Other deferred issues include judgeships and judicial salaries.

Judge Hitchens expressed concern that many courts are in the midst of ongoing labor negotiations even though they do not know what their budget appropriations will be.

Mr. William C. Vickrey, Administrative Director of the Courts, agreed that NSIs are indeed a very difficult problem to resolve. He reported that the Chief Justice, the Governor, and key executive branch staff have met several times to discuss this issue. Those meetings have resulted in adopted language providing the Director of Finance, the Director of Personnel Administration, and the Administrative Director of the Courts the authority to consider factors relating to market-driven conditions, workload issues, and the like, in order to determine a dollar amount for inclusion in the budget, to cover the

outcome of ongoing labor negotiations. Mr. Vickrey informed the council that even this accommodation, which is intended to be ongoing in future years, leaves the trial courts vulnerable. A more permanent solution, he indicated, might be to work with courts to change the schedule for such negotiations so that they commence after budget revenues have been established.

Judge Gail A. Andler expressed concern over the percentage budget allocation for court-appointed counsel (CAC) for children.

Ms. Hansen responded that actual court expenditures for court-appointed counsel at this time are \$10 million less than the adjusted base budget for the courts on an overall basis. Thus, staff could not justify allocating additional funds for CAC expenses when courts had not spent previous allocations authorized for that purpose.

Mr. Alan Slater commended Ms. Hansen and her staff for their work toward a much-improved budget-making process.

*Council action:*

The Judicial Council approved the following revised recommendations of the Trial Court Budget Commission:

1. The recommended fiscal year 2002–2003 statewide trial court budget request for \$144,190,000;
2. An increase in the amount that may be included in the statewide technology request from \$30 million to \$38.4 million;
3. The following revised program prioritization, in order of highest priority to lowest, for the nine programs included in the statewide budget request:
  - Assumption/expansion of administrative services,
  - Technology,
  - Court staffing,
  - Pay parity,
  - Security,
  - Family and children,
  - Records management,
  - Court-appointed counsel, and
  - Court interpreters; and
4. The delegation of authority to the Administrative Director of the Courts to make technical adjustments to the recommended fiscal year 2002–2003 statewide trial court budget.

The motion passed.



## **Item 2A Staff Recommendation for Jury Per Diem Funding**

Ms. Hansen reminded the council that at its February 23, 2001, business meeting it approved a variety of budget priorities for fiscal year 2002–2003. One of these was to increase the jury per diem from \$15 per second or subsequent day to \$20 – \$25, using existing funds if available or, if existing funds are insufficient, requesting additional funding. The Budget Act of 2000 allocated \$19.2 million for the purpose of increasing jury per diem from \$5 per day to \$15 per second or subsequent day of jury service. The amount requested in the original budget change proposal (BCP) submitted for this purpose was based on data from fiscal years 1996–1997 and 1997–1998— the most recent information available at the time. Ms. Hansen reported that, since the submission of the BCP, two major changes in the jury area have affected the need for funding.

First, effective January 1, 2000, almost every court was required to implement a one-day/one-trial program. Second, effective July 1, 2000, payment of first-day per diems were eliminated. The future effect of these two programs on expenditures for jury per diems could not have been calculated at the time the BCP was submitted.

AOC Finance and Trial Court Programs staffs have worked together since the funds were received to determine how to allocate them to the courts. A comparison was made of the fiscal year 1996–1997 base-level funding for juror costs in each court and the actual fiscal year 2000–2001 expenditures available to date from the first three quarterly financial statements. It appears that in many courts the impacts of the two mandates— one-day/one-trial and elimination of first-day per diems—have counterbalanced, to a great extent, the \$10 per-day increase in per diem for second and subsequent days.

Ms. Hansen stated that juror expenditures are not predictable. One or two lengthy homicide cases could seriously affect the adequacy of a small court’s baseline funding. Other courts may have had an unusually low or high level of multiday jury trials in fiscal year 2000–2001. Until the AOC staff can get a better idea of the true need for juror funding, it is recommended that no additional funds or increases in per diem be sought. The following should also be taken into account in considering this recommendation:

- Only three quarters of expenditures for fiscal year 2000–2001 have been received.
- The Los Angeles County court is not scheduled to fully implement its one-day/one-trial program until December 2, 2001. According to sources at the court, full implementation is anticipated by March 2002. It is not possible at this time to estimate the impact of the implementation of the program on the court’s need for additional funding.
- Based on juror expenditures in the first two quarters of fiscal year 2000–2001, Los Angeles County, which alone accounts for 57 percent of total juror expenditures during that period, has spent 60 percent of its fiscal year 1996–1997 juror baseline. It is anticipated that additional funds will be needed to cover the Los Angeles County court’s expenditures for the final two quarters.

- Outstanding issues related to civil juror fees are affecting the reporting of juror expenditures. It appears that some courts are combining civil juror fees with their criminal fees, rather than reporting them separately. The Finance Division recently sent out instructions with the baseline budget package that require courts to report only projected criminal juror expenditures in the Trial Court Trust Fund section of the budget. All projected civil and grand jury expenditures must be reported in the Non-Trial Court Trust Fund section.
- A relatively small number of courts are required to return to the county a certain amount (in some cases, all) of the civil juror deposits they receive from parties to the action. The court is then required to pay the civil juror fees from their regular trial court funds.

For all of these reasons, Ms. Hansen stated that staff recommends that, until additional expenditure information has been received and some of the previously referenced considerations addressed, additional funding not be requested and legislation not be sought for an increase in the juror per diem.

### *Discussion*

Mr. Overholt reported that the Superior Court of Los Angeles County has in fact partially implemented its one-day/one-trial program.

Chief Justice George asked that Judge Robert Dukes update the council on the progress made in implementing one-day/one-trial in Los Angeles County.

Judge Dukes informed the council that one-day/one-trial has already been implemented in all of the county's outlying districts, which account for about 60 percent of the county's court sites. Implementing one-day/one-trial in the Central District presents several problems. Because of the 20-mile radius from which jurors are pulled, once implemented in the Central District, jury selection will cross over district boundaries, which will necessitate some case management changes in the Central District. The timetable for full implementation, Judge Dukes reported, extends to March 2002.

Chief Justice George reported that some smaller counties have been exempted from one-day/one-trial due to the very small populations from which they must draw jurors.

Judge Ronald L. Taylor inquired whether juror fees could be increased for courts that have already implemented one-day/one-trial.

Ms. Hansen responded that the problem in partially implementing an increase in juror per diems is the difficulty of determining the actual expense of doing so. The council would be ill advised to go forward with BCPs for this expense, she stated, when actual need has not been established.

Mr. Overholt responded that AOC staff would continue to review the data as they become available. He indicated that after the first of the year, staff might be able to approach the council with a recommendation for increased juror per diems.

Justice Huffman opined that the agency's current approach to this matter is a responsible one that will help to establish the judicial branch's credibility with the Legislature in matters of budget requests.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council approve staff recommendations to not go forward with an increase in the jury per diem from \$15 to \$20 – \$25 for second and subsequent days of jury service at this time.

The motion passed.

**Item 2B      Staff Recommendation on Funding for Statewide Expansion of the Family Law Interpreters Pilot Program (Action Required)**

Ms. Kate Howard explained that staff is seeking approval of an additional BCP in the amount of \$950,000 to expand the Family Law Interpreters Pilot Program (FLIPP) and make it permanent, effective July 1, 2002. The program provides interpreters for family law proceedings that involve allegations of domestic violence. If this recommendation is approved, Ms. Howard informed the council, the request will be added to the \$6.1 million for court interpreters contained in the fiscal year 2002–2003 trial court budget request already approved by the council.

The funding would be allocated separately from the base interpreter program so as not to put the funding for ongoing interpreter services at risk. To prevent overexpending the augmentation for interpreters in certain domestic violence cases, the funds would be awarded on a grant basis, contingent upon documented usage and meeting program requirements. The amount would also provide for outreach, court coordinator costs, and overhead charges to offset the AOC's administration of the program.

Ms. Howard reported that this level of funding would not fully address the statewide need for interpreters in domestic violence–related cases, but it would begin to address an ongoing need and would encourage the courts to make optimal use of the limited resources.

Ms. Howard reminded the council that Assembly Bill 1884 (Cedillo) provided funding for FLIPP in seven counties to cover the costs of interpreters for parties in certain family law proceedings who were eligible for a fee waiver under Government Code section 68511.3. An evaluation of the pilot program declared it a success in terms of justice and

efficiency and recommended that it be made permanent. Ms. Howard informed the council that the Trial Court Trust Fund is not sufficient to make this a permanent project.

This proposed funding would support three primary areas:

- Certified or registered interpreters in court hearings and family court services mediation;
- Salary, benefit, and administrative costs of hiring additional interpreter coordinators to support the increased workload; and
- Outreach to publicize the availability of the court interpreter services.

*Discussion*

Judge Leonard P. Edwards asked for clarification of the meaning of limited statewide funding.

Ms. Howard responded that pro rata county court allocations would be based on language diversity by county and on interpreter resources. Courts would draw from allocations based on actual usage.

*Council action:*

Judge Gail A. Andler moved that, in addition to the \$6.1 million for court interpreters contained in the fiscal year 2002–2003 trial court budget request, the Judicial Council approve a budget request in the amount of \$950,000 to expand the Family Law Interpreters Pilot Program and make it permanent, effective July 1, 2002, in order to provide interpreters for family law proceedings that involve allegations of domestic violence.

The motion passed.

**Item 2C      Staff Recommendation on Funding for the Complex Civil Litigation Pilot Program**

Ms. Alice Vilardi reported that the Complex Civil Litigation Pilot Program began in January 2000 and operates 15 departments dedicated to complex civil litigation in 6 counties: Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara. Currently the pilot program is funded from the Trial Court Improvement Fund (\$1,100,800 annually) and the Judicial Administration Efficiency and Modernization Fund (\$1,754,000 annually). This funding for the pilot program will end on June 30, 2002. Ms. Vilardi informed the council that staff recommends seeking funding for the program in the Trial Court Trust Fund.

An informal, ongoing evaluation of the pilot program shows that it is a success. Complex cases are being handled more expeditiously than before. Ms. Vilardi told the council that a formal report will be made to the Legislature and Governor in October 2002. The report will provide an overview of the program, including the number and types of cases in each court; a subjective evaluation of complex litigation in the pilot courts before and after implementation of the program; an objective evaluation of the program, using various criteria to compare cases in non-pilot and pilot courts; and observations and conclusions about the program. Based on the report, as well as on feedback from the bench and the bar, the AOC will identify the most useful practices and procedures for handling complex cases and make those practices available to courts, judges, and attorneys across the state.

### *Discussion*

Justice Richard D. Aldrich reported on two significant events in complex litigation programs. The Los Angeles complex litigation courts recently held a two-day symposium attended by over 100 lawyers and judges. More recently, the Chief Justice and the Administrative Director of the Courts attended the opening of the complex litigation courtrooms in Orange County.

Chief Justice George reported that the deskbook produced by the Task Force on Complex Litigation had been very favorably received by attendees at the recent Conference of Chief Justices.

Judge Leonard P. Edwards asked for clarification on the courts that are participating in the pilot program. Justice Aldrich responded that six courts are currently participating in the pilot program, and data collected by the end of the project's two-year term will be used to determine the need for such assistance in other county courts.

### *Council action:*

Justice Richard D. Aldrich moved that the Judicial Council approve submission of a budget change proposal to request \$2,854,800 in Trial Court Trust Fund moneys to permanently continue the Complex Civil Litigation Pilot Program at its current level.

The motion passed.

### **ITEM 3      Fiscal Year 2002–2003 Supreme Court, Court of Appeal, and Judicial Council Budget Change Proposals (Action Required)**

Justice Richard D. Huffman and Mr. Overholt indicated that the budget issues of agenda item 3 would be presented to the council in three parts, and recommended that the council consider motions on the individual components. Chief Justice George agreed with their suggestion.

### **Item 3A      Fiscal Year 2002–2003 Supreme Court Budget (Action Required)**

Ms. Christine Hansen informed the council that the budget figures published in council binders had been significantly revised since publication. The revised proposed fiscal year 2002–2003 budget for the Supreme Court, she reported, contains two BCPs totaling \$741,000, including \$8,000 in one-time costs, and 0.5 position for state operations proposals from the state’s General Fund. This budget augmentation provides additional funding for Supreme Court operations. Ms. Hansen reported that the ongoing costs are 1.9 percent of the fiscal year 2001–2002 baseline budget.

Specific budget change requests for the Supreme Court are as follows:

- *Unpublished Court of Appeal opinions—Web site posting: \$68,000 and 0.5 position.* Ms. Hansen reminded the council that funding of \$44,000 for this half-time position was initially submitted to the Legislature as a member’s request but was vetoed in the enacted Budget Act of 2001. Because the position is necessary to implement a Judicial Council working group recommendation that the Reporter of Decisions post unpublished opinions of the Courts of Appeal on the California Courts Web site, the Supreme Court is submitting this BCP for \$68,000 and a half-time position. In recent years, the Courts of Appeal have decided approximately 15,000 cases per year, 10 percent of which have resulted in published opinions. The remaining 90 percent, or 13,500 cases, have resulted in unpublished opinions, which have not been widely disseminated or are not readily available from any one source. The Supreme Court’s Reporter of Decisions has recently begun to process published opinions of the Supreme Court and the Courts of Appeal, as well as unpublished opinions of the Courts of Appeal. The person in the requested position will assist the Reporter of Decisions in handling the increased workload of posting unpublished Courts of Appeal opinions to the California Courts Web site while ensuring compliance with rules of protective disclosure and providing the required level of scrutiny.
- *Court-appointed counsel program — Supreme Court: \$673,000.* This request supports increased contractual service costs for the Supreme Court Appellate Project and the California Appellate Project—San Francisco (CAP-SF), and reflects CAP-SF’s increases in caseload costs, staffing costs, and direct case expenses.

Ms. Hansen reported that a BCP for capital-case habeas corpus staff amounting to \$812,000 and 7.0 positions had been deferred until the spring of 2002 pending the collection of workload statistics.

## *Discussion*

Chief Justice George summarized the negotiations by which it was agreed that unpublished Court of Appeal opinions should be posted to the Judicial Council's Web site.

### *Council action:*

Justice Richard D. Huffman moved that the Judicial Council:

1. Approve the recommended Supreme Court fiscal year 2002–2003 budget change requests for a total of \$741,000 (approximately 1.9 percent of the baseline budget), which includes \$8,000 in one-time costs, and 0.5 positions (with the BCPs included, the Supreme Court budget from the state General Fund would be approximately \$39 million to cover operating costs for fiscal year 2002–2003); and
2. Delegate authority to the Administrative Director of the Courts to make technical changes to this budget as necessary.

The motion passed.

### **Item 3B      Fiscal Year 2002–2003 Courts of Appeal Budget (Action Required)**

Ms. Christine Hansen reported that the proposed fiscal year 2002–2003 budget for the Courts of Appeal contains five BCPs totaling \$3,811,000, including one-time costs of \$23,000, and 31.0 positions for state operations proposals funded from the state's General Fund. These budget augmentations provide increased support to the Courts of Appeal. The ongoing costs are approximately 2.2 percent of the fiscal year 2001–2002 baseline budget. The augmentations, Ms. Hansen informed the council, are in five areas:

- *Research attorneys and judicial secretaries: \$2,484,000 and 28.0 positions.* The Courts of Appeal are requesting a General Fund augmentation of \$2,484,000 to convert the temporary funding of 21 limited-term research attorneys and seven judicial secretaries to permanent funding. Research attorneys prepare memoranda on those appeals that have been assigned to a specific chamber. The goal is to make the funding permanent so that the Courts of Appeal have the flexibility to continue to fill the positions with limited term employees (two-year maximum) and still give the Courts of Appeal the capability of allocating the positions annually to those appellate courts with the greatest need.
- *Associate court systems administrator: \$87,000 and 1.0 position.* The Second Appellate District is requesting a General Fund augmentation of \$87,000 to establish 1.0 permanent full-time position to address additional workload and an increase in the district personnel supported by its technology staff.

- *Court-appointed counsel: \$620,000.* The Courts of Appeal are requesting a General Fund augmentation of \$620,000 to cover increased operating expenses, including rent and lease costs for five appellate projects. The increase is based on the Consumer Price Index (approximately 4 percent) applied to the fiscal year 2001–2002 contract amount (approximately \$15,500,000).
- *Mediation of civil appeals: \$236,000 and 2.0 positions.* The Courts of Appeal are requesting these funds to establish a limited civil appeal settlement conference program that will reduce the current caseload of the court. Settlement conferences expedite the appeal process for civil appeals and allow more cases to be processed. The proposal includes \$65,000 for training volunteer attorneys to become mediators.
- *Major equipment replacement: \$384,000.* The Courts of Appeal are requesting an annual augmentation for the implementation of a major equipment replacement program. The program was implemented in fiscal year 2000–2001 on a one-time basis. This request is to implement the program on an annual basis and create a consistent and cost-effective method for the Courts of Appeal to replace critical major business equipment and ensure the safety of the public, judicial staff, and judicial officers.

### *Discussion*

Justice Richard Huffman informed the council that the limited-term research attorneys and judicial secretaries for whom funding is currently being sought have been instrumental in reducing the backlog in the Courts of Appeal.

Mr. William Vickrey pointed out that the Courts of Appeal budget has grown primarily in response to increased workload. Furthermore, since the Court of Appeal began basing their budget requests on workload standards reviewed and approved by the Department of Finance, their budget has been consistently supported by the Legislature. He pointed out that work currently in progress to develop workload standards for the trial courts might benefit them in a similar manner.

### *Council action:*

Justice Richard D. Huffman moved that the Judicial Council:

1. Approve the Courts of Appeal fiscal year 2002–2003 BCPs totaling \$3,811,000, including one-time costs of \$23,000, and 31.0 positions (with the BCPs included, the budget from all funding sources for Courts of Appeal operating costs in fiscal year 2002–2003 would be approximately \$170 million; and
2. Delegate authority to the Administrative Director of the Courts to make technical changes to this budget as necessary.

The motion passed.



**Item 3C      Fiscal Year 2002–2003 Judicial Council/Administrative Office of the Courts Budget (Action Required)**

Ms. Christine Hansen reported that the proposed fiscal year 2002–2003 budget for the AOC contains 20 BCPs totaling \$15.67 million, including one-time costs of \$2,274,000 and 58.5 positions for state operations proposals from the state’s General Fund, with the exceptions of \$110,000 from the Motor Vehicle Account and \$127,000 in reimbursements from the state Department of Social Services.

Ms. Hansen informed the council of a recent revision to proposed budget item 3 that was not included in the council’s binder. She indicated that an additional \$5 million over the current \$10 million funding for equal access had been included in the budget.

Budget augmentations continue to focus strongly on the AOC’s support to the trial courts. For example, two of the AOC’s highest-priority proposals, regional office expansion and trial court central accounting services, are solely in support of the trial courts. Two other proposals carrying high priorities, human resources support and statewide purchasing, are both principally in support of the trial courts. These four proposals account for \$5,926,000 and 35.5 positions, which is more than half of the total state operations request. The ongoing costs in these proposals represent an 8.2 percent increase over the fiscal year 2001–2002 baseline budget.

Ms. Hansen advised the council that there are two main priority areas in the Judicial Council/AOC budget for 2002–2003:

- Building/improving the judicial branch infrastructure and
- Improving the administration of justice.

She provided the council with the following budget breakdown.

**Priority area: Building/improving the judicial branch infrastructure—total: \$4,693,000 and 31.5 positions**

- *Trial court central accounting services: \$2,127,000 and 14.0 positions.* The AOC, the State Controller’s Office, and the Bureau of State Audits have voiced concern over the lack of fiscal accountability of the trial courts. This proposal is for the creation of a central office that would provide interested trial courts with a full spectrum of accounting services. Contract and procurement services would be provided as needed. This proposal would furnish the resources needed to implement these services for six trial courts by July 1, 2002, with the addition of four more courts by November 1, 2002. More trial courts would be added in subsequent fiscal years.

- *Human resources staffing: \$897,000 and 6.0 positions.* The AOC has identified a need for its staff to develop expertise in labor relations and labor negotiations to better serve the judicial branch, principally the trial courts.
- *Facilitate statewide purchasing for the judicial branch: \$83,000 and 1.0 position.* This position would function as the lead for the implementation of statewide procurement programs and purchasing options for the judiciary, including the appellate courts, the Habeas Corpus Resource Center, and the trial courts.
- *Human resources—salary funding for reclassifications: \$69,000.* Several classification studies have been or are currently being conducted within the AOC to better determine the appropriate classification and pay for specific positions authorized in the Pay and Benefits Unit of the Human Resources Division, the Accounting and Facilities Units of the Finance Division, and the Information Services Division. This proposal would provide the funding needed to reclassify the affected positions in the Human Resources Division to the appropriate level. However, when the other studies are completed, the AOC will request the additional funding needed for the Accounting and Facilities Units and the Information Services Division through a revised cost estimate for this proposal.
- *Staff development, education and training: \$197,000 and 1.5 positions.* The current AOC staff turnover rate is 17 percent. Research indicates that a high rate of turnover can be reduced when employees are provided an opportunity for growth and development in their jobs.
- *Management information analysis: \$310,000 and 2.0 positions.* Court leaders, the Legislature, the Department of Finance, and the Legislative Analyst's Office have urged the AOC to maintain a comprehensive, consistent, and continuing information system that will allow the trial courts to effectively evaluate their operations.
- *Legal services to advisory committees: \$351,000 and 3.0 positions.* Due to the increased number of advisory committees and the expansion of existing committees' responsibilities, the Office of the General Counsel is required to provide ever-increasing levels of service.
- *Security contract augmentation: \$139,000.* The California Highway Patrol provides security services to the AOC.
- *Managing judicial branch technology: \$368,000 and 3.0 positions.* To effectively manage state-funded expenditures for information technology in the trial courts, the Information Services Division requires three additional positions dedicated to managing branchwide initiatives, including technology planning for data integration, telecommunications architecture and design, and trial court case management systems.

- *Grants management: \$152,000 and 1.0 position.* The AOC has experienced explosive growth in grants administration in the past decade and is now responsible for administering an estimated \$64 million in grant funding, yet there is no automated, centralized grant tracking system to capture this information and no staff assigned to this workload.

**Priority Area: Improving the administration of justice—total: \$10,977,000 and 27 positions**

- *Regional office staffing: \$2,819,000 and 14.5 positions.* The AOC established two new regional offices in fiscal year 2001–2002 to directly provide more effective and timely services to the trial courts.
- *Trial court staffing standards: \$410,000 and 2.0 positions.* With state funding of California’s courts and the unification of municipal and superior courts now in place, the next necessary step is the development of workload and staffing standards for central clerk operations in the trial courts, in order to allocate resources throughout the state according to reasonable, uniformly applied measures of workload.
- *Self-represented litigants project: \$295,000 and 1.5 positions.* The number of self-represented litigants is growing, and the courts need support to meet needs in a cost-effective and unified manner.
- *Increased staff for Collaborative Justice Courts Project: \$210,000 and 2.0 positions.* The voters passed the Substance Abuse and Crime Prevention Act (Proposition 36) in November 2000, and it has directly affected the staffing capacity of the Collaborative Justice Courts Project. This augmentation will provide continuity and ensure adequate staffing for the ongoing and expanding scope of the project.
- *Online education course for judges: \$133,000 and 1.0 position.* Online education courses have proven to be an efficient and effective way to educate judicial officers and enhance the fair and efficient administration of justice.
- *Judicial Review and Technical Assistance Project: \$127,000.* This proposal is being submitted in conjunction with a companion proposal from the State Department of Social Services to increase the AOC’s reimbursement authority for fiscal year 2002–2003 due to increased contract costs.
- *Equal Access Fund: \$5,000,000.* This proposal will increase the availability of legal representation to indigent litigants.

- *Balanced and Restorative Justice (BARJ) pilot programs: \$1,296,000 and 1.0 position.* The BARJ project refocuses attention on the needs of victims and the community after a delinquent act by a juvenile.
- *Developing judicial branch communications: \$409,000 and 3.0 positions.* In the last five years, the AOC has evolved from a “rules and forms” agency to a “knowledge and resource” center for the state’s 58 trial court systems, which can no longer rely on county services.
- *Traffic administration coordination: \$110,000 and 1.0 position.* The AOC’s current costs for traffic administration exceed the amount of funding appropriated through the Motor Vehicle Account. This proposal will provide the appropriate level of funding needed to administer this program and achieve statewide compliance.
- *Library services expansion: \$168,000 and 1.0 position.* Due to internal AOC staff increases and trial court unification, internal and court community requests have increased dramatically, and demands placed on the library continue to increase. This proposal provides one additional position to encompass cataloguing and reference and research services for Judicial Council committee staff, AOC staff, and court personnel. An increase in the publications budget of \$84,000 is also needed to cover inflationary increases in the costs of legal services and subscriptions.

### *Deferred Items*

Ms. Hansen reported that there are three additional areas for which the AOC may be submit either late BCPs or “spring letters.” They are as follows:

- *Facilities rent.* Current rent charges are approximately \$7.9 million annually. New rates are published during August every year in the *DGS Price Book and Directory of Services*. If the Department of General Services increases the rent in state-owned facilities, the AOC will submit a BCP to cover the increase.
- *Additional office space.* The AOC is currently considering acquiring additional space in the Hiram W. Johnson State Office Building to expand the Judicial Council Conference Center. The expansion would provide additional and larger classroom space to meet staff training needs, create a mock courtroom for testing new courtroom infrastructure prototypes and training, and move the broadcast studio out of the basement and enlarge it to accommodate more than one faculty member during training sessions. If this request goes forward in the current fiscal year, it will require a submission of a BCP and a capital outlay BCP.
- *Civil case coordination: \$550,000.* Civil coordination is a procedural device in which civil actions that have similar law and facts and are combined for all

purposes under one judge. Code of Civil Procedure section 404.9 mandates that the state reimburse the “host” court for its additional costs from funds appropriated to the Judicial Council. Under section 404.8 and the California Rules of Court, the reimbursement shall be for all necessarily incurred expenses. Historically, the Department of Finance has approved the AOC’s deficiency requests, which were submitted each year when needed. We anticipate submitting this request as a spring finance letter.

*Discussion*

Justice Richard Huffman reminded the council that the Executive and Planning Committee and AOC staff have together reviewed in detail the Judicial Council/Administrative Office of the Courts budget requests. He reported that the committee had considered whether to recommend that the council approve only high-priority budget items. However, after careful consideration, both staff and committee members have agreed that all of the budget items are in fact necessary to build an infrastructure that will ensure support for the trial courts and a high quality of service to the public.

Mr. William Vickrey commended Ms. Hansen and her staff for their leadership in making trial court funding a working reality. He reiterated the importance of the priority areas emphasized in the fiscal year 2002–2003 budget. Mr. Vickrey informed the council that the budget under discussion does not encompass facilities issues and explained that the budget implications of this matter won’t be addressed until the council considers facilities-related legislation in the fall. Other matters not addressed include statewide court payroll services, worker’s compensation issues, and self-insured programs.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council approve the amended Judicial Council/AOC amended budget proposals for fiscal year 2002–2003 as follows:

1. Judicial Council/AOC BCPs totaling \$15,670,000, including one-time costs of \$2,274,000, and 58.5 positions. These budget augmentations provide increased support for the AOC. The ongoing costs in these proposals represent a 8.2 percent increase over the fiscal 2001–2002 baseline budget; and
2. The delegation of authority to the Administrative Director of the Courts to make technical changes to this budget as necessary.

The motion passed.

After a short break, the council resumed consideration of the discussion agenda items.

#### **ITEM 4      Family and Juvenile Mentor Court Initiative: Approval of Funding Request (Action Required)**

Ms. Diane Nunn informed the council that the budget proposal before them is intended to establish and fund six “mentor” courts by June 2003. The goals of the mentor court program are to improve the quality of family-related proceedings and improve families’ and children’s access to justice in those proceedings—goals that are in keeping with the Judicial Council’s stated Operational Plan goals for fiscal years 2001–2002 and 2002–2003.

The mentor court program will seek to accomplish this goal, Ms. Nunn stated, by employing the following strategies:

- Improving the coordination of court calendars and proceedings;
- Developing individual case management techniques or differential case management approaches (in family and juvenile proceedings);
- Improving legal assistance and representation (including assistance for self-represented litigants);
- Expanding the use of alternative dispute resolution;
- Improving procedures for court access;
- Promoting multi-county partnerships and/or regional approaches; and
- Promoting effective and coordinated utilization of other court and court-connected services, including expanded use of volunteer services.

Each of the six selected mentor court sites will be required to:

- Demonstrate a four-year commitment to the project;
- Participate in a competitive grant process;
- Form at least one case management team;
- Define how “family” will be determined;
- Adhere to mandated standards of practice;
- Implement the *Deskbook on the Management of Complex Proceedings Involving Children and Families*
- Ensure that all staff participate in training;
- Collaborate with the Center for Families, Children and the Courts Resource Team;
- Participate in a statewide consortium; and
- Serve as a “learning laboratory.”

Each of the six sites would receive funding for:

- One research attorney,
- One case manager; and
- One secretary.

An additional 18 staff members would be allocated among the sites as needed.

Ms. Nunn informed the council that a Mentor Court Resource Center would be developed at the AOC to accomplish the following:

- Oversee statewide implementation and coordination of the mentor courts;
- Annually convene the mentor court consortium;
- Evaluate individual sites against baselines unique to each site;
- Consult on court improvement areas;
- Produce and evaluate the *Deskbook on the Management of Complex Proceedings Involving Children and Families* (by June 2002);
- Publish interim reports; and
- Submit an evaluation report to the Judicial Council (by June 2006).

Ms. Nunn emphasized that research and evaluation have been integrated into the Mentor Court Initiative and that California's initiative, if enacted, would be the first such program to evaluate this sort of court improvement effort from start to finish.

### *Discussion*

Justice Richard D. Huffman informed the council that the Executive and Planning Committee fully supports the mentor court proposal. He moved that the proposal be approved on the condition that the council delegate authority to the Executive and Planning Committee to review the final submission of the proposal, particularly with regard to its fiscal components. Such oversight, he suggested, might help to ensure that the requested funding is obtained. The motion was seconded.

Judge Leonard P. Edwards voiced his support for the proposal, pointing out to the council that one out of five children in care in the United States lives in California and that the state has the nation's highest rate of juvenile detention in delinquency cases. Judge Edwards reminded the council that California has already adopted the Resource Guidelines developed by the National Council of Juvenile and Family Court Judges. These guidelines set forth procedures for operating a dependency court to better serve children. Judge Edwards reported that children reach permanency more quickly in the states that have adopted and implemented the practice guidelines. He pointed out that, although California has adopted the guidelines, they have not yet been implemented in the county courts. Judge Edwards suggested that it is time for the state courts to implement guidelines that have already been adopted as a standard of judicial administration—a standard that, when properly implemented, has been shown to save states foster-care dollars. He indicated that the current proposal for mentor courts seems to be a significant step in the right direction, and requested that staff, in presenting its budget proposal to the state's fiscal authorities, consider some of the foregoing arguments related to the implementation of the previously adopted Resource Guidelines.

Judge Gail Andler asked for clarification on the proposed duties of the research attorney that would be assigned to the six courts under the terms of the mentor court proposal.

Ms. Nunn stated that the research attorney would free up judicial time and resources by assuming responsibility for case work-up and review.

Judge Andler asked whether courts would have the option to use resources allocated for the research attorney in other ways that they deemed more important.

Judge Donna J. Hitchens responded by expressing her support for the proposal exactly as written. She stated that the consolidation of family court proceedings, juvenile delinquency proceedings, and dependency proceedings frequently requires a research attorney to ensure that individual rights are protected and correct legal procedures are followed. For these reasons, Judge Hitchens stated that she supports the allocation of a research attorney at each of the six proposed mentor courts.

Justice Huffman moved that the Executive and Planning Committee also assume responsibility for reviewing the matter of assigned research attorneys as part of the previously offered motion to approve the proposal. The motion was seconded.

Judge Wayne L. Peterson expressed his support for the proposal as written.

Ms. Pauline W. Gee also expressed her support for the proposal as written.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council approve, subject to review by the Executive and Planning Committee, funding for the Family and Juvenile Mentor Court Initiative as follows:

- \$3,020,299 annually, with specific allocations—subject to review by the Executive and Planning Committee—that might include one full-time equivalent (FTE) research attorney, one FTE case manager, and one FTE secretary for each of the six mentor court sites for four project years;
- Eighteen FTE court services positions allocated among the six sites, based on local need; and
- Funding in the amount of \$525,000 for three FTE AOC/CFCC staff members to serve as a resource for the selected mentor courts and to oversee statewide implementation.

The motion passed.

## **ITEM 5 Court-Appointed Counsel Expenditures (Action Required)**

Ms. Diane Nunn introduced Judge Leonard P. Edwards, who informed the council that Chief Justice George had been the keynote speaker at the National Council of Juvenile and Family Court Judges, held in Monterey on July 16. Judge Edwards commended the Chief Justice for his substantive speech on the subject of children and families, which



was very well received by council members. Judge Edwards expressed his gratitude to the Chief Justice for making a significant contribution to the issues that are so important to the National Council and to the AOC's Center for Families, Children & the Courts.

Ms. Nunn reminded the council that at its April 27, 2001, meeting, staff was directed to develop a new fiscal policy related to trial court expenditures for court-appointed counsel (CACs) in juvenile dependency proceedings. Recent legislation mandating the appointment of counsel for children subject to dependency proceedings in all but the rarest of circumstances (Sen. Bill 2160) reflects the increased legislative priority given to the provision of counsel services in such proceedings. In response to the legislative mandate, and in an effort to ensure the provision of high-quality court-appointed counsel for both children and parents affected by the state's dependency system, the Judicial Council directed the development of a new policy to prevent courts from reallocating designated court-appointed counsel funds without council approval. Such a policy would both align with legislative direction and bolster the Judicial Council's ability to effectively pursue CAC growth funds for the state's trial courts.

Ms. Nunn informed the council that a study, to be summarized later in the presentation, was proposed as a means of determining a longer term solution to fiscal policy related to trial court expenditures for CACs. She outlined the goals of the CAC expenditure policy to be addressed by the study, which are also addressed in the proposed interim fiscal policy. Those goals are:

- To ensure the provision of high-quality CAC services throughout the state by requiring that designated CAC funds be used only for that purpose, and
- To bolster the Judicial Council's ability to effectively pursue CAC growth funds.

Ms. Nunn provided the council with the following overview of the proposed interim CAC policy:

- Beginning in 2002–2003, trial courts' initial CAC allocations will reflect prorated shares of their CAC baseline budgets.
- Actual CAC expenditures will be tracked.
- At scheduled intervals during the fiscal year, CAC allocations will be adjusted to reflect actual expenditures.

The council was shown several hypothetical examples of how the proposals would affect the courts. She indicated that the plan before the council allows for review of adjustments to CAC allocations by a working group consisting of members of the council, the Family and Juvenile Law Advisory Committee, AOC staff, and trial court representatives.

## *Discussion*

With regard to the administration of CAC funds, Mr. William Vickrey asked whether quarterly fund distributions would be based upon actual court expenditures.

Ms. Nunn responded that distributions would be based on actual court expenditures.

Judge Aviva K. Bobb asked how courts would be able to request pay rate increases for CACs within the proposed administrative procedures.

Ms. Christine Hansen responded that proposed CAC administrative procedures would not change the current BCP process, and thus rate increases would be reflected in BCPs presented by the court for consideration by the council. However, she indicated that mechanisms would need to be developed to ensure that courts inquire about the availability of funds *within the existing fiscal-year budget* to sustain any rate increases before they submit BCPs for subsequent fiscal years.

### **Proposed study to develop long-term fiscal policy related to trial court expenditures for court-appointed counsel in juvenile dependency proceedings**

Ms. Leah Wilson, AOC Senior Court Services Analyst, provided a summary of the study that the council directed staff to undertake at its April 27, 2001, meeting. Ms. Wilson reported that the primary purpose of the study was to identify caseload standards for both parents' and children's CACs in a dependency context. Other outcomes were to map court system delivery in terms of modern practices and costs and to identify optimal service delivery models. The study has three primary components:

- The development of performance standards for counsel at the activity level;
- A workload study to determine current practice as related to the performance standards, which will require CACs throughout the state to record activities and the times associated with those activities over a two-week period; and
- To determine the fiscal and practice implications of applying caseload standards.

Ms. Wilson reported that staff is currently preparing an RFP to obtain a contractor to provide technical assistance in the workload phase of the project. Staff estimates that it will take 10 to 12 months to complete the project after selection of the contractor. The study is intended to provide a longer-term approach to CAC fiscal policy than the interim proposal currently before the council.

## *Discussion*

Judge Leonard Edwards asked whether the study would address administrative and structural best practices within the law offices that provide equal representation to children. He indicated that the council already has a policy position on this, which is addressed in section 24 (c) of the Judicial Administration Standards.

Ms. Wilson responded that the referenced standard is part of the study and will be addressed during the workload phase, when issues such as rotation practices, training practices, case assignments, and the experience level of assigned attorneys are closely monitored.

Judge Edwards asked whether paralegals, investigators, and others who support CACs would be taken into account in the study.

Ms. Wilson responded that all of these factors would be taken into account in the study.

Justice Huffman expressed his support for the proposed study as a means of determining a longer-term solution to meeting the needs of families and children. He also expressed his support for the interim proposals outlined by AOC staff as a means of establishing the council's credibility in the fiscal process.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council approve the following methodology for ensuring that funds allocated to the trial courts to address costs associated with court-appointed counsel in dependency proceedings be used only for that purpose.

- In the first quarter of fiscal year 2001–2002, trial court systems will receive notice of their individual baseline budgets as determined by the AOC.
- Beginning in fiscal year 2002–2003, trial courts' baseline CAC budgets will be determined based upon their respective fiscal year 1996–1997 court-appointed counsel expenditure levels as modified by maintenance-of-effort adjustments and deficiency and growth funding augmentations. Each trial court system will receive an initial Trial Court Trust Fund CAC distribution reflective of a prorated share of its respective baseline budget for the program area.
- At scheduled intervals during each fiscal year, beginning in fiscal year 2002-2003, CAC allocations will be reviewed. In those instances in which a given court system is underspending its CAC allocation, the allocation amount will be adjusted downward to reflect actual costs. Any funds captured from court systems whose CAC costs are less than budgeted funding levels will be used to address program shortfalls in affected court systems on a case-by-case basis; in most instances, the maximum program funding available to a given court system will equate with its base CAC funding level.
- A process will be developed by which court systems requesting reallocation of base CAC funds can bring such requests to the Judicial Council.

The enactment date for the above-referenced policy will be July 1, 2002.

The motion passed.

## **ITEM 6      Staff Recommendation Regarding Allocation of Jury Funds (Action Required)**

Ms. Christine Hansen reported that the Budget Act of 2000 contained funding to pay for the increase from \$5 to \$15 of juror per diems for the second and subsequent days of juror service. Ms. Hansen reminded the council that in previous years jury funds have been allocated as part of base budget without consideration for actual expenditures, with the result that some courts were overfunded one year and underfunded the next. The purposes of the proposal before the council, Ms. Hansen indicated, are to ensure that courts are reimbursed for actual expenditures from year to year, and to provide a first step toward the Judicial Council's established goal of a juror per diem of \$40.

Ms. Hansen informed the council that substantial time and effort have been expended in determining how to allocate the funds for fiscal year 2000–2001. Deciding how to allocate the funds has been complicated by two factors: the implementation of one-day/one-trial programs, which have tended to reduce the number of second and subsequent juror days served, and the increase in the per diem by \$10 for those additional days.

The recommendations before the council provide a trial court allocation formula for jury moneys for fiscal year 2001–2002 and beyond, including:

1. Criteria used to determine the methodology and
2. Methodology used to determine the annual trial court allocation.

### *Discussion*

Mr. Alan Slater asked staff to consider data suggesting that it is during the fourth quarter that many courts incur their greatest jury expenses. This situation, he suggested, should be taken into consideration in implementing jury allocation formulas. He also asked Mr. William Vickrey to address the viability of baseline budgets that are based on fiscal year 1996–1997 expenditures—especially as line items are gradually being removed.

Mr. William Vickrey responded that the goal of taking steps such as those outlined in the matter currently before the council is to help ensure that costs driven by factors the court can't manage—such as those associated with CACs, interpreters, and jury per diems—do not adversely affect the availability of adequate resources to cover core operations of trial court. Furthermore, Mr. Vickrey indicated that the planned development of standards for various court operations and projects will help the council to develop fiscal policies that improve the ability of court site managers to manage financial resources—including increased discretionary authority over those funds.

Justice Richard D. Huffman expressed his support for the proposal being considered.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council approve the recommendations for development of a trial court allocation formula for jury moneys for fiscal year 2001—2002 and beyond, as follows:

**Criteria for Allocation Formula**

The formula:

- Is based on reimbursement of actual expenditures incurred for allowable jury expenses;
- Takes into account the baseline budget amount from fiscal year 1996–1997;
- Provides a consistent funding stream to the trial courts;
- Optimizes funding so that courts receive maximum funding or evenly share any shortfall;
- Prevents or recovers overpayments in current and subsequent years; and
- Provides that the trial courts be notified of initial and total allocations in a timely manner.

**Allocation Methodology Used to Determine the Jury Allocation Formula**

1. Trial court expenditures relating to allowable jury expenses shall be collected for three quarters of fiscal year 2000–2001, as reported in the quarterly financial statements (QFSs).
2. Those reported expenditures shall be summed, and an annual expenditure prediction shall be made based upon an average.
3. The fiscal year 1996–1997 jury baseline amount shall be subtracted from the total annual allocation prediction. Trial courts shall be given one opportunity to appeal the use of the fiscal year 1996–1997 jury baseline *only* if they believe that it does not accurately reflect their criminal jury costs. The appeal would apply to both the allocations already made for fiscal year 2000–2001 (which were based on a comparison of actual expenditures from the fiscal year 2000–2001 QFS with the fiscal year 1996–1997 jury baseline) and the fiscal year 2001–2002 jury allocations. This might result in a one-time adjustment to a court’s jury baseline.
4. An average monthly allocation shall be determined from that total and distributed, if applicable, to the trial courts monthly in conjunction with a regular distribution of Trial Court Trust Fund amounts.
5. Upon collection of two quarters of reported expenditures for the current year, a comparison of allocation to expenditures shall be conducted by Trial Court Budget Support staff, and the subsequent trial court jury allotment shall be adjusted to reflect actual expenditure predictions.
6. On a rolling basis, allotment of jury funds will “zero out” when compared to expenditures. No court will be over- or under reimbursed for jury expenditures, within the limits of the appropriation to the judicial branch.

### **Maintenance of Effort Agreements**

Trial courts whose maintenance-of-effort agreements with their counties include provisions whereby civil jury deposits are swept by the county (either at the fixed fiscal year 1996–1997 amount or at actuals) will be reviewed during the next year and recommendations will be made regarding legislation that would correct these clauses.

### **Jury Usage Data Requests**

In order to assist the trial courts and the AOC in accurately reporting juror usage in future years, AOC staff from the Finance, Trial Court Programs, and Information Services Divisions, and the Research and Planning Unit will work with trial court representatives to define jury usage information needs and install those reporting requirements into jury case management systems approved by the user groups.

### **Allocation Methodology in Case of Deficit or Excess of Jury Funds**

When there is a shortfall in jury funds for a particular year, the available funds will be prorated evenly across the trial courts so that no court benefits at the expense of another. When there is an excess of jury funds, they will be kept in a Trial Court Trust Fund reserve account for future jury expenditures and eventually earmarked to offset costs associated with legislation that increases juror per diems.

The motion passed.

## **ITEM 7      A New Process for Assessing Judicial Needs in California (Action Required)**

Mr. Frederick Miller, Acting Director of Judicial Council Services, introduced presenters Mr. Daniel J. Hall of the National Center for State Courts (NCSC); Judge Robert A. Dukes of the Superior Court of Los Angeles County; Ms. Sharol Strickland, Executive Officer of the Superior Court of Butte County; and Mr. Christopher Belloli, Senior AOC Research Analyst and Project Manager. Mr. Miller acknowledged the contributions of Brian Ostrum, Ph.D., of the NCSC, a national expert on caseload and workload studies, and Charles Ostrum, Ph.D., Scholar in Residence with the NCSC. He also thanked the committee members of the Workload Assessment Policy Committee, as well as the judicial officers and staff of the participating Phase I and Phase II courts, for their participation and their dedication to the project.

Mr. Miller informed the council that the Research and Planning Unit, in consultation with the NCSC, recently completed the California Judicial Needs Assessment Project and in doing so, developed a new method for determining judicial needs in California. Through the participation of 11 project courts—4 courts in Phase I of the project (Superior Courts of Butte, Los Angeles, Sacramento, and San Mateo Counties) and 7 courts in Phase II (Superior Courts of Del Norte, Merced, Orange, San Bernardino, Santa Clara, Sutter, and Ventura Counties)—this new method has established a set of judicial workload standards

for 22 specific case types that can be used to assess the statewide need for additional judges annually on the basis of filings data. AOC staff, with input from representatives of the 11 project courts, also developed (1) a preliminary strategy for implementing these judicial workload standards as part of an annual judicial needs assessment process, and (2) a plan to periodically review and update the standards to ensure that they continue to accurately represent judicial workload.

Mr. Belloli provided the council with additional background on the current issue. He reported that in January 2000 the Executive Office had directed the AOC's Research and Planning Unit to develop a new method for determining judicial needs in California. The new method would replace the interim "peer review" process used by the Court Profiles Advisory Committee. With the assistance of the NCSC, which has conducted judicial needs assessments in more than 10 states, Research and Planning staff began the California Judicial Needs Assessment Project in January 2000 and completed the project in July 2001. Mr. Belloli stated that the Executive and Planning Committee initially reviewed the project work plan, and staff provided regular project updates to the Judicial Council and the Court Executives Advisory Committee. Based on the results of the judicial needs project, staff has developed four recommendations for the council's consideration. Mr. Belloli outlined the recommendations as follows:

1. Approve the final set of judicial workload standards developed from the California Judicial Needs Assessment Project.
2. Direct AOC staff to conduct a statewide assessment of judicial needs using these workload standards, and present the following at the October 2001 Judicial Council meeting:
  - A. Recommendations for an initial three-year plan and subsequent two-year plans for obtaining additional judgeships that are needed statewide, as implied by the judicial workload standards;
  - B. Recommendations for ranking the courts that show a need for additional judicial resources, in order to develop a list of new judgeships for which the Judicial Council will seek funding in the current year, allowing for review by the trial courts.
  - C. Recommendations for a process to reassess judicial needs annually.
3. Direct the Executive Office of the AOC to notify the Department of Finance of the Judicial Council's intent to submit a request for new judgeships effective in January 2003.
4. Direct AOC staff to develop a process to periodically review and update the judicial workload standards so that they continue to accurately represent judicial workload.

#### *Recommendation 1*

Mr. Daniel J. Hall of the NCSC provided the council with background on the workload standards and the processes used to develop them, in support of recommendation 1. The

goal of the California Judicial Needs Assessment Project was to accurately determine the amounts of time required by judges to resolve different types of cases efficiently and effectively. Mr. Hall assured the council that assessing judicial workload through such a model is an objective, credible, and practical method for determining the need for additional judgeships, and has been accepted in states that employ similar strategies. He reiterated that the project was conducted in two phases in order to supply the Workload Assessment Policy Committee with a body of information sufficient to determine final standards. Phase I of the project consisted of three steps:

- Participation in a Delphi exercise, which provides a rigorous means of:
  - Gathering expert opinion,
  - Encouraging explicit thought about specific types of cases and how they are resolved,
  - Clarifying the complete work of the court, and
  - Providing a benchmark for evaluating time study.
  
- A two-month time study to:
  - Measure current practice,
  - Track *all* judicial activity on and off the bench, and
  - Track time that is case related and non–case related.
  
- A quality-of-justice assessment focusing on adequacy of time and current performance.

Phase I resulted in an initial set of workload standards.

Phase II, Mr. Hall explained, represented the validation component of the project and began with a review of the results of the time study. Phase II participants also completed a Delphi exercise and a quality-of-justice assessment. Phase II culminated with a second set of workload standards.

The Workload Assessment Policy Committee then reconvened to examine both sets of standards and recommend a final set of workload standards. Mr. Hall provided the council with the following overview of the final standards:

- Workload standards were developed for each of the 22 types of cases examined (e.g., probate, juvenile dependency, motor vehicle tort).
- The workload standards represent the average bench and non-bench time (in minutes) required to resolve each case type (from filing through disposition and any post-judgment activity).
- The number of raw case filings is combined with the workload standards (time required to handle cases) to arrive at workload.



- Total workload entering a particular court is then divided by the “standard” amount of time each judge has available per year to complete case-related work. This calculation provides an estimate of the number of judges needed to resolve the number of cases filed.
- The California Judicial Needs Assessment Project continuously and intensively involved a wide range of courts in the development, validation, and implementation of the judicial workload standards. The standards will serve as the foundation for a new judicial needs assessment process in California.

*Final set of workload standards.* Mr. Hall introduced the final set of judicial workload standards (shown in Exhibit 1) and explained that the standards were approved by representatives from the 11 project courts at the final project meeting in July.

### Exhibit 1: Implications for Statewide Judicial Need

| Case Type                             | 1999/2000 Filings              | Time Study (Adjusted) |                              | FINAL             |                              |
|---------------------------------------|--------------------------------|-----------------------|------------------------------|-------------------|------------------------------|
|                                       |                                | Workload Standard     | Implied Statewide Judge Need | Workload Standard | Implied Statewide Judge Need |
| Probate                               | 50,750                         | 47                    | 31                           | 52                | 34                           |
| Family (divorce and dissolution)      | 156,078                        | 84                    | 170                          | 84                | 169                          |
| Juv. Dependency                       | 40,672                         | 128                   | 67                           | 224               | 118                          |
| Juv. Delinquency                      | 93,649                         | 50                    | 60                           | 60                | 73                           |
| Mental Health                         | 7,671                          | 285                   | 28                           | 148               | 15                           |
| Other Civil Petition                  | 327,337                        | 70                    | 296                          | 70                | 296                          |
| <b>Sub-Total, Family Case Types</b>   |                                |                       | <b>653</b>                   |                   | <b>704</b>                   |
| Motor Vehicle Torts                   | 45,782                         | 62                    | 37                           | 79                | 47                           |
| Oth. Personal Injury Torts            | 25,359                         | 351                   | 115                          | 390               | 128                          |
| Other Civil Complaints                | 129,557                        | 70                    | 117                          | 70                | 117                          |
| Appeals from Lower Courts             | 14,562                         | 69                    | 13                           | 95                | 18                           |
| Criminal Habeas Corpus                | 5,509                          | 10                    | 1                            | 37                | 3                            |
| Other Civil (<\$25k)                  | 272,083                        | 14                    | 48                           | 21                | 74                           |
| Unlawful Detainer                     | 198,685                        | 9                     | 24                           | 16                | 41                           |
| Small Claims                          | 320,650                        | 10                    | 39                           | 15                | 62                           |
| <b>Sub-Total, Civil Case Types</b>    |                                |                       | <b>394</b>                   |                   | <b>489</b>                   |
| Felony                                | 238,685                        | 174                   | 535                          | 197               | 608                          |
| Class A & C Misdemeanor               | 609,611                        | 36                    | 286                          | 43                | 339                          |
| Class B & D Misdemeanor               | 624,053                        | 4                     | 33                           | 5                 | 40                           |
| Infractions                           | 5,373,713                      | 1.40                  | 97                           | 1.06              | 74                           |
| <b>Sub-Total, Criminal Case Types</b> |                                |                       | <b>953</b>                   |                   | <b>1,060</b>                 |
| <b>Total</b>                          | <b>8,534,406</b>               |                       | <b>2,000</b>                 |                   | <b>2,254</b>                 |
|                                       | <b>Actual JPE (FY 1999-00)</b> |                       | <b>1,996</b>                 |                   |                              |

Mr. Hall provided the following additional information about the standards:

- The workload standards represent the average bench and non-bench time (in minutes) required to resolve each case type (from filing through disposition and any post-judgment activity).
- For example, a typical probate case (line 1 in the preceding chart) requires an average of 52 minutes of judicial officer time from filing to resolution, including post-judgment activity.
- Note that workload standards were developed for the different types of felony cases (homicide, crimes against persons, property crimes, drug offenses, and other felonies) that the Judicial Branch Statistical Information System will capture, even though Exhibit 1 only lists an overall felony workload standard.
- At this time, we can use only an overall felony workload standard, since courts currently report filings for all felonies in aggregate.

### *Recommendation 2*

Mr. Belloli presented the council with an overview of recommendation 2, which includes the following specific recommendations:

- A staff assessment of judicial needs that will provide estimates of the number of judicial officers needed in every county and in the state as a whole (it is important to remember that these judicial workload standards provide only a presumptive measure of judicial need, and will not objectively determine the exact number of judges needed to stay current with caseloads).
- Implementation of an incremental approach for requesting additional judgeships over time, which would be synchronized with the two-year legislative cycle for purposes of continuity.
- Given that we are already one year into the current legislative cycle, an initial three-year plan for obtaining additional judgeships followed by subsequent two-year plans.
- A staff ranking of courts to show the need for additional judicial officers using the method recommended by the NCSC.
- Based on feedback from the trial courts and input from the Executive Office and the Finance Department of the AOC, a prioritized list of new judgeships for FY 2002–2003, presented by staff at the October 2001 Judicial Council meeting.

Mr. Belloli outlined the following process for reassessing the need for additional judicial officers annually. Final recommendations will be developed and presented at the October 2001 Judicial Council meeting, following additional consultation with the trial courts.

- Review current filings data;
- Assess statewide judicial need;

- Develop prioritized list for current year;
- Send results to courts and provide opportunity to comment; and
- Review comments and develop final list of new judgeships for JC approval.

### *Recommendation 3*

Mr. Belloli informed the council that the results from the current judicial needs assessment, including the prioritized list of new judgeships for fiscal year 2002–2003, would not be completed in time to meet the September deadline for submitting the budget to the Department of Finance. To ensure that these additional judgeships are considered in the fiscal year 2002–2003 budget process, AOC staff recommends that the Executive Office of the AOC notify the Department of Finance of the Judicial Council’s intention to submit a request for new judgeships effective January 2003.

### *Recommendation 4*

Mr. Belloli reported that California needs a process to periodically review and update the judicial workload standards so that they continue to accurately represent judicial workload. Over time, these workload standards will be influenced by complex and dynamic factors, including changes in legislation, new court rules and procedures, changes in caseload management, and administrative factors.

For these workload standards to remain reliable and accurate over time, staff recommends the following:

1. Convene a working group within the next six months, which will meet annually to review the impacts of new legislation and other contextual factors on the judicial workload standards. This review process will serve to identify areas in which specific research may be needed to quantify the impacts of new laws, policy, and court procedures on the standards for specific types of cases.
2. Conduct a systematic update of the entire set of workload standards every five to seven years, depending on the judgment of the working group.

Ms. Sharol Strickland, Executive Officer of the Superior Court of Butte County, reported on the experiences shared by the judges and staff of her court as they participated in the Judicial Needs Assessment Project. She reported that 100 percent of the courts’ judicial officers and the majority of the court staff took part in the project. The dialogue among court participants, the AOC, and the NCSC, Ms. Strickland stated, was very useful and helpful. She expressed her confidence in the data collected from Butte County’s court participants and indicated that one of the many side benefits of participating in the project was that it helped the court with its strategic planning process. She reported that as data were continually collected, the WAPC meetings became progressively more stimulating, and it was easier and easier for the members to reach consensus.

Mr. Miller concluded the presentation by pointing out to the council that, due to certain inconsistencies in data collected from the courts, the standard developed for one category—“other civil petitions”—actually represents an aggregate of two case types, other civil petitions and other civil complaints.

### *Discussion*

Judge Brad R. Hill thanked Chief Justice George and Mr. William Vickrey for their continuing advocacy for California’s judicial needs. Judge Hill expressed his confidence in the data on which the proposed standards are based, and stated that the data will help to establish the council’s credibility with the Legislature. He also expressed his appreciation to the participants in the Judicial Needs Assessment Project.

Justice Richard D. Huffman expressed his support for staff’s recommendations and moved approval of the recommendations with the proviso that staff would work with the Executive and Planning Committee in preparing final recommendations for the council’s October 2001 meeting. The motion was seconded.

Judge Wayne L. Peterson inquired whether there was any merit in correlating the impact of an expanding judiciary, pursuant to the proposed standards, with the need for construction of new court facilities.

Mr. Miller responded that staff for the Judicial Needs Assessment Project would be willing to work with the state Task Force on Court Facilities to ensure that its construction projections are accurate.

Judge Ronald L. Taylor inquired how the proposed standards would affect new judgeships authorized by the council at its October 2000 meeting.

Mr. William Vickrey responded that the current effort would erase the previous list. Furthermore, he stated that at its October meeting the council would receive a new set of recommendations under the motion that would apply to 2002–2003, 2003–2004, and 2004–2005.

Judge Aviva K. Bobb expressed her support for the project recommendations, and indicated that one of the benefits of the standards is that they can assist presiding judges in allocating workload. Because of this, she continued, the standards would be even more useful if the case type categories could be even more refined into subcategories.

Mr. Miller agreed, and responded that staff hopes to refine the case categories as additional data are received from the courts.

Commissioner Bobby R. Vincent suggested that differentiating domestic violence cases from the “other civil petitions” case category would be very helpful to the courts.

Judge Leonard P. Edwards suggested that another level of analysis that would be useful in the future is the determination of judicial needs when certain services are, or are not, in place. For example, if mediation or arbitration is in place, does that reduce judicial time?

Mr. Alan Slater expressed his concern that there may be other areas not addressed by the current proposal. He expressed his desire to work with staff and the Executive and Planning Committee to address his concerns before the proposals come before the council in October 2001.

Mr. William Vickrey advised the council that as work goes forward on assessments, the proposed standards will be distributed to the courts and the courts will be given the opportunity to suggest adjustments. Under the process proposed, information and appeals received from the courts—along with staff analysis and recommendations—would come before the council, which would act as the ultimate decision-making body. Also, the data that come before the council will provide information about where judges are and *are not* needed.

Judge Steven E. Jahr concurred with Mr. Vickrey's comments and suggested that it is more appropriate for the council to assume a proactive stance in reallocating judicial resources.

*Council action:*

Justice Richard D. Huffman moved that the Judicial Council approve, subject to review by the Executive and Planning Committee, the following AOC Research and Planning staff recommendations:

1. Approve the final set of judicial workload standards developed from the California Judicial Needs Assessment Project.
2. Direct AOC staff to conduct a statewide assessment of judicial needs using these workload standards, and present the following at the October 2001 Judicial Council meeting:
  - A. Recommendations for an initial three-year plan and subsequent two2-year plans for obtaining additional judgeships that are needed statewide, as implied by the judicial workload standards;
  - B. Recommendations for ranking the courts that show a need for additional judicial resources, in order to develop a list of new judgeships for which the Judicial Council will seek funding in the current year, allowing for review by the trial courts; and
  - C. Recommendations for a process to reassess judicial needs annually.
3. Direct the Executive Office of the AOC to notify the Department of Finance of the Judicial Council's intent to submit a request for new judgeships effective in January 2003.

4. Direct AOC staff to develop a process to periodically review and update the judicial workload standards so that they continue to accurately represent judicial workload.

The motion passed.

### **Circulating and Appointment Orders Approved**

#### **Circulating Orders:**

No circulating orders were approved since the last business meeting.

#### **Appointment Orders: Appointments to the Judicial Council Traffic Advisory Committee**

For information only; no action necessary.

#### **Appointment Orders: Appointments to the Judicial Council of California**

For information only; no action necessary.

#### **Appointment Orders: Appointments to the Judicial Council Access and Fairness Advisory Committee, Sexual Orientation Fairness Subcommittee**

For information only; no action necessary.

#### **Appointment Orders: Appointments to the Judicial Council Task Force on Self-Represented Litigants**

For information only; no action necessary.

There being no further business, the meeting was adjourned at 1:10 p.m.

Respectfully submitted,

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William C. Vickrey  
Secretary