

JUDICIAL COUNCIL MEETING
Minutes of October 16, 1997, Meeting

The Judicial Council of California meeting began at 8:40 a.m. on Thursday, October 16, 1997 at the Administrative Office of the Courts (AOC) offices in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Justices Roger W. Boren, Carol A. Corrigan, Richard D. Huffman; Judges Benjamin Aranda III, Paul Boland, J. Richard Couzens, Albert Dover, Brenda Harbin-Forte, Lois Haight, Melinda A. Johnson, Michael B. Orfield, Eleanor Provost, and Kathryn D. Todd; Mr. Maurice Evans, Mr. Sheldon H. Sloan, Ms. Glenda Veasey, and Mr. Brian C. Walsh; and **advisory members:** Ms. Sheila Gonzalez, Mr. Joseph A. Lane, Judge Dwayne Keyes, Mr. Stephen V. Love, Mr. Ronald Overholt, and Hon. Nori Anne Walla.

Absent: Justice Marvin R. Baxter, Senator John L. Burton, and Assembly Member Martha M. Escutia.

Others present included: Mr. William C. Vickrey, Justice Patricia Bamattre-Manoukian, Judge Steven Jahr, Ms. Diane Cummins, Mr. Chris Jansen, Mr. Dennis Jones, Mr. Alex MacBain, Mr. Phil Busse, Ms. Susan Null; **staff:** Ms. Martha Amlin, Ms. Juliet Briskin, Mr. Michael Bergeisen, Ms. Jessica Fiske Bailey, Ms. June Clark, Mr. Neil Cossman, Ms. Lesley Duncan, Ms. Shell Duncan Grimes, Ms. Pat Haggerty, Ms. Kate Harrison, Ms. Lynn Holton, Ms. Beth Jay, Ms. Melissa Johnson, Ms. Angela Joyner, Ms. Martha Kilbourn, Mr. Ray LeBov, Mr. Greg Loarie, Ms. Catherine Lowe, Ms. Ellen Mize, Ms. Karen Mohrhoff, Mr. Martin Moshier, Ms. Judy Myers, Mr. George Nichols, Ms. Taryn Ravazzini, Ms. Nini Redway, Ms. Karen Ringuette, Mr. Stephen Rogers, Mr. Victor Rowley, Ms. Dale Sipes, Ms. Sharon Smith, Mr. Bradley Tahajian, Ms. Kiri Torre, Mr. Anthony Williams, Mr. Jonathan Wolin, Mr. Jerry Yalon, Ms. Kyong Yi, Ms. Edna Yee, Ms. Pat Yerian; **media representatives:** Mr. Philip Carrizosa, *Los Angeles Daily Journal*; Mr. Greg Mitchell, *Daily 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 Agenda Reports and Recommendations dated October 16, 1997, which was sent to members in advance of the meeting.)

Tab A Minutes of the August 22, 1997, Meeting

Council action:

Justice Huffman made a motion that the Judicial Council approve the minutes of the August 22, 1997, meeting.

The motion passed.

Tab B Judicial Council Committee Presentations

- **Executive and Planning Committee Report**

Judge Todd reported that the Executive and Planning Committee had met four times since the last council meeting. The committee reviewed proposed items and set the agenda for the October meeting.

She stated that the committee received over 400 nominations for the 90 vacancies on the Judicial Council's advisory committees and forwarded its recommendations to the Chief Justice, who selected committee members.

Judge Todd reported on the second and third court visits by the council as part of its outreach efforts: At the end of August, several council members and staff visited the Stanislaus County courts and attended a dinner meeting of the judges and administrators from that county, Tuolumne and San Joaquin counties; and for three days in September, a large group of council members visited Los Angeles County courts. Plans for the next court visit, scheduled for early December, are being finalized now.

Judge Todd reported that the committee reviewed drafts of the fiscal year 1998–99 budget. Committee members agreed that the Judicial Council budget request is supportable given the fiscal condition of the state and that the major components are supportive of the council's strategic plan.

- **Policy Coordination and Liaison Committee Report**

Justice Boren stated that the committee had met twice by conference call since the last council meeting. He acknowledged the efforts of all council members in the passage of trial court funding, the council's highest priority for the last year.

He reported that the committee voted to reaffirm support for the work of the Jury Instruction Project being carried on by the Task Force on Jury Instruction. That

group, appointed by the Chief Justice, will continue its efforts to draft jury instructions that accurately state the law in language that jurors can understand.

Additionally, Justice Boren reported that the committee and Office of Governmental Affairs (OGA) staff have arranged informal meetings of Judicial Council members, staff, and representatives of court-related organizations in the fall to further enhance communication and cooperation between these groups and the judicial branch. Groups involved in the meetings include the Consumer Attorneys of California, California Defense Council, California District Attorneys Association, California Attorneys for Criminal Justice, and California State Association of Counties.

Justice Boren stated that this fall, as part of the Judicial Council's continuing efforts to reinforce the judiciary's working relationship with the Legislature, the Office of Governmental Affairs, in conjunction with the California Judges Association, will continue the Day on the Bench program. Each legislator will be invited to visit a trial court in his or her district and spend a day shadowing a judge to get a sense of the workload and typical issues facing judges. The program will be expanded this year to include visits to the Courts of Appeal.

Justice Boren also reported that the committee will make recommendations to the council at the November meeting for council-sponsored legislation.

• **Rules and Projects Committee Report**

Judge Boland reported that the committee has met every two weeks by teleconference and plans to meet again shortly to review 30 proposals for rules, standards, and forms that were circulated statewide for comment earlier in the summer. Many of the proposals will appear on the council's November agenda.

Judge Boland stated that the committee is examining policies and procedures for circulating proposals for comment and providing appropriate notice to the bench and bar of new rules and standards. The committee will consider new policies and guidelines designed to:

- Lengthen the comment period;
- Make the bench and bar more aware of the potential significance of the circulated proposals;
- Provide prompt and adequate notice to local courts, practicing attorneys, and the public about rule changes; and
- Assist local benches and bars to implement approved changes.

Judge Boland reported that CJER will also explore ways to educate the judiciary and court personnel about the role of rules and standards and integrate the

discussion of rule changes into CJER presentations on recent statutory and decisional changes.

Judge Boland reported that the consultant hired to revise and reorganize the rules of court has begun to work on appellate rules. Additionally, the committee is asking advisory committees to review rules and standards within their purview every five years and recommend needed revisions.

Judge Boland stated that because Senate Constitutional Amendment 4 (SCA 4) will appear on the ballot next year, an SCA working group is preparing proposed rules pertaining to consolidation elections, consolidated court governance, and other issues. Those proposals will be circulated for comment this winter so that the rules can become effective on July 1, 1998, if SCA 4 receives voter approval.

COUNCIL ITEM 1 WAS APPROVED AS A CONSENT ITEM, PER THE SUBMITTER'S RECOMMENDATIONS:

Item 1 Approval of Additional 1997–98 Drug Court Mini-Grant Recommendations

The Oversight Committee for the California Drug Court Project recommended that the South Bay Trial Courts (San Diego) receive a 1997–98 mini-grant award. The committee noted that the award will not require an additional allocation of money. Instead, the award will be funded by moneys originally allocated for a statewide evaluation of drug court programs (which the Office of Criminal and Justice Planning has indicated it would conduct).

Council action:

The Judicial Council approved a 1997–98 mini-grant to the South Bay Trial Courts (San Diego).

Item 2 Report on Legislative Session

Mr. LeBov presented the item. Reference was made to the Status Chart on Legislation, which represents the final action taken in the first year of this legislative session.

For information only; no action required.

Item 3 Overview of Fiscal Year 1998–99 Budget

Ms. Diane Cummins, Deputy Director of Finance, presented the item. Ms. Cummins reported that three issues were of primary importance in the development of the fiscal year 1998–99 budget: (1) a \$1 billion tax cut by year 1999–2000, including \$640 million in 1998–99; (2) trial court restructuring, which will cost \$450 million; and (3) a state employee pay raise for which no dollars have been set aside in a reserve.

Ms. Cummins reported that the Governor and Legislature expressed concern about the Department of Finance’s recommendation that the Governor assume responsibility for a program with growth potential (trial court funding). In this case, the Department of Finance believed that trial court restructuring would give relief to the counties and ultimately provide stable funding for the trial courts, leading to fair access to the judicial system throughout California.

Ms. Cummins stated that budget problems still exist. Although the state budget is over \$53 billion, a lot of the money is earmarked based on constitutional requirements.

The Department of Finance will now look to the Judicial Council, like any state agency, to have an understanding of the state’s fiscal circumstances, set policy and priorities for the judiciary, and submit a reasonable, well-thought-out, and justified budget and budget requests.

She stated that the Department of Finance expects standard analysis: inform them what the issues are and what is currently being done about them; explain why there is still a problem; propose a solution; request necessary funds to resolve the problem; and identify how the Department of Finance will know that the issue is resolved.

Ms. Cummins stated that not every request to the Department of Finance will be granted, nor will the state “get well” (financially) in a couple of years. The Department of Finance will ask questions about solutions and will try to assist efforts to come up with creative alternatives and programs if resources are insufficient.

For information only; no action required.

Item 4 Approval of Fiscal Year 1997–98 Second-Quarter Allocation and Distribution Schedule for the Trial Courts

Judge Steven Jahr presented the item, assisted by Ms. Lesley Duncan, Trial Court Services Division staff. He noted that the Trial Court Budget Commission (TCBC) recommended that the council adopt an allocation schedule for the second quarter of fiscal year 1997–98, without committing to a full-year allocation schedule. Judge Jahr noted that the allocation formula was based, in part, upon estimated actual expenditures for fiscal year 1996–97 and that upon confirmation of actual expenditures the TCBC would bring back a recommended full-year allocation schedule for council consideration at the November business meeting. Judge Jahr pointed out that at its August meeting, the council approved the first-quarter distribution but reserved adoption of a full-year allocation formula until the result of trial court funding legislation was known.

Judge Jahr stated that any allocation made to the trial courts requires funding to be subtracted for the Assigned Judges Program, contract interpreter program, a 1/2 percent reserve, and projected growth in fines and forfeitures. He noted that of the total trial court funding appropriation of \$1.566 billion, the available allocation is \$1.514 billion. He stated that several factors affect the revenue and expenditure assumptions and that therefore the actual figures may vary from estimates referenced in the committee's report.

In recommending an allocation schedule, the TCBC reviewed eight options (calculated for baseline and full budgets):

- A historical (modified block grant) percentage;
- A percentage of the fiscal year 1997–98 TCBC-approved budget;
- A percentage of the fiscal year 1996–97 estimated expenditures; and
- Combinations of two of the above three factors.

Judge Jahr stated that because anticipated available funding for fiscal year 1997–98 is only slightly greater (2.5 percent) than estimated fiscal year 1996–97 expenditures, the TCBC-recommended option focuses on preventing structural failure in the weakest court systems while, at the same time, beginning the transition to a budget-based allocation formula under full state funding as authorized by Assembly Bill 233. The TCBC recommends against any use of any option that will reduce funding to any county court system because of the fragile fiscal health of many courts.

Judge Haight asked if the costs of new judgeships are included in the figures presented. Judge Jahr stated that \$8 million for 21 new judgeships, or \$380,000 per year per judge, are included in the computations.

Council action:

Ms. Gonzalez made a motion that the Judicial Council:

1. Approve and adopt a two-part method of allocation applicable to the first half of fiscal year 1997–98:
 - a. The first component equals the estimated expenditures of each court system in fiscal year 1996–97 [excluding expenditures for Function 4 (Interpreters) and half of Function 5 (Court Collections)]; and
 - b. The second component is drawn from the aggregate remainder of fiscal year 1997–98 state funding and is to be allocated to each of the 58 court systems based on the percentage relationship between each court system’s previously approved baseline budget for fiscal year 1997–98 and the aggregate approved baseline budget for all courts in fiscal year 1997–98;
2. Approve a second-quarter distribution schedule consistent with the recommended formula; and
3. Approve the final (full-year) allocation recommendation of the Trial Court Budget Commission for fiscal year 1997–98 at its November 14, 1997, meeting.

The motion passed.

Item 5 Approval of Fiscal Year 1998–99 Trial Court Operations Budget

Judge Steven Jahr, Chair of the Trial Court Budget Commission (TCBC), presented the item, assisted by Ms. Kiri Torre, Director of the Trial Court Services Division. He stated that the TCBC recommended fiscal year 1998–99 trial court budget request totals \$1.931 billion, reduced from aggregate budget requests from the trial courts of \$2.014 billion. It is approximately 8 percent greater than the TCBC/council-approved fiscal year 1997–98 trial court budget request and represents a 24 percent increase over the trial courts’ projected expenditures in fiscal year 1996–97.

Judge Jahr noted that in the budget request, court personnel is budgeted at the highest salary level (“top step”) and is incorporated into the baseline budget request, using a baseline restoration process. This process, Judge Jahr explained, allows a court, upon submitting justification, to restore its baseline budget request for the budget year under review to that of the previous fiscal year’s approved, but unfunded, base budget amount. He further explained that this process was established to compensate for the lack of adequate state/county funding for the trial courts in an unstable, split-funded environment.

Judge Jahr stated that because of insufficient time, the TCBC was unable to address the Chief Justice's request to prioritize the fiscal year 1998–99 incremental budget requests recommended by the TCBC.

Justice Huffman stated that he understood that the TCBC prepared its budget under the framework of a bifurcated funding system and completed a detailed analysis of local court budget requests before state trial court funding had been signed into law. He made a motion to approve a budget of \$1.614 billion as the base for developing future budget requests, as set forth in the motion below.

Mr. Walsh stated that the TCBC showed compelling reasons for a \$1.9 billion budget request. However, acknowledging the passage of the trial court funding bill and the resulting necessary restructure of the base budget determination, he supported Justice Huffman's motion.

Judge Keyes asked where funding for overtime and extra help would come from if "top step" budgeting were eliminated. He said that "top step" budgeting was a real part of his court's budget. Mr. Vickrey stated that authorized budgets include what courts spent for those items. The \$1.596 billion budget includes estimates based on actual figures that include those costs. Mr. Love stated that court administrators believe that they will be able to cover these costs if "top step" budgeting is eliminated.

Judge Johnson commented that she supported the policy Justice Huffman's motion reflects. She stated that the judiciary's participation in the budget process and playing by established statewide budget development rules do not diminish its independence.

Council action:

Justice Huffman made a motion that:

1. The Judicial Council adopt the legislatively authorized budget of \$1.614 billion for fiscal year 1997–98 as the base for planning a budget request for fiscal year 1998–99. After the Assigned Judges Program budget of \$18 million is set aside, this provides a base of \$1.596 billion for court operations;
2. The TCBC be directed to prepare an incremental request limited to funding for:
 - a. Jury reform as proposed last year;
 - b. Growth for the interpreters budget and for common rates; and
 - c. The top ten local trial court budget priorities, minus "top step" budgeting and collections, as reflected in the TCBC analysis;
3. The TCBC be directed to submit the budget to the Judicial Council by October 24, 1997;

4. Staff be directed to prepare a budget request not greater than \$50 million for the modernization fund by October 24, 1997, consistent with the legislative requirement of AB 233, to be submitted to the Judicial Council through the Executive and Planning Committee; and
5. The Chief Justice and Administrative Director be authorized to negotiate a final budget with the Governor for the trial courts, appellate courts, and Judicial Council.

The motion passed.

Mr. Vickrey recommended tabling the issue of budget development criteria until after the Executive and Planning Committee reviews them. He noted that AB 233 requires the Judicial Council to develop an implementation plan that includes budget development procedures.

Council action:

Justice Huffman made a motion that the Judicial Council table until November the issue of budget development guidelines for use in fiscal year 1999–2000 and subsequent years.

The motion passed.

Judge Jahr reminded the council that the budget development guidelines referenced in the binder of Reports and Recommendations dated October 16, 1997, were used to evaluate the fiscal year 1998/99 incremental requests in the budget figures under discussion by the council.

Mr. Overholt asked Judge Jahr to communicate to the TCBC that the actions just taken by the council should not be seen as a rejection of the work of the commission but rather as a response to changing times.

Item 6 Approval of Fiscal Year 1998–99 Budget

Mr. Dennis Jones and Mr. George Nichols presented the recommendations for the Courts of Appeal, facilities, and Judicial Council budgets for fiscal year 1998–99.

They stated that the Supreme Court budget includes staffing increases to implement the legislatively mandated California Habeas Resource Center. They also noted that six of the positions requested for the Court of Appeal will be assigned to handle work generated by recently passed legislation regarding Public Utility Commission matters. Mr. Jones stated that the base budget of the Supreme Court is \$22.4 million. The incremental requests equal \$5 million for 48 full-time

employees for the habeas center, \$0.2 million for two full-time employees assigned to central staff, and \$1.9 million for the Court Appointed Counsel Program.

Judge Johnson commented that the Court of Appeal budget request includes about a 15 percent increase. She asked if that was realistic in the current political and fiscal situation. Mr. Jones stated that most of the increase is for the Court Appointed Counsel program, which is pass through money.

Council action:

Justice Huffman made a motion that the Judicial Council approve the proposed Courts of Appeal fiscal year 1998–99 budget of \$141.6 million for submission to the Governor.

The motion passed.

Mr. Jones reported that the Supreme Court, First Appellate District, and Administrative Office of the Courts (AOC) will be moving to a new office building in San Francisco in late 1998 or early 1999. He noted that significant increases in facility costs are necessitated by the move and that these have not been included in the budget requests of the Supreme Court, Court of Appeal, or AOC. He said that there will not be a separate facilities budget in the future and that associated costs will be requested in the other three budgets. Mr. Jones stated that quantifying the costs now, or the options for funding, was very difficult. However, he believed that the figure was likely to be around \$10 million.

Mr. Walsh asked if the council could act on the recommendation when the actual figures were clear. Mr. Jones stated that the budget must be submitted by November 1, 1997.

Council action:

Justice Huffman made a motion that the Judicial Council approve submission of a facility Budget Change Proposal (BCP) whose costs would be split among the Supreme Court, Courts of Appeal, and AOC in an amount from \$162,509 to \$13,000,000, based on subsequent (future) discussions with the state Office of Real Estate Design and the Department of Finance.

The motion passed.

Mr. Jones reported that the base budget includes two components: federal money that is part of the council budget but passes through to the trial courts in support of the AB 1058 program (Child Support Enforcement) and funds that support the

operations of the AOC. The council budget for fiscal year 1998–99 is \$79,861,000, including \$39,200,000 in support of AB 1058 activities, \$1,828,000 in federal grants and other reimbursements, and \$38,833,000 in support of AOC activities.

He stated that the AOC and Executive and Planning Committee developed goals or “ends” upon which the budget requests beyond the base budget were compared. He reported that the individual budget requests submitted support the following goals:

- All members of the judicial branch are able to communicate with one another;
- Trial courts have facilities that assist them in dispensing justice;
- The AOC delivers efficient and effective services to its principal customers with a focus on achieving the goals in the Judicial Council’s Long-Range Strategic Plan; and
- Trial court funding results in improvement in access to and the quality of justice.

Mr. Jones said that the AOC’s staffing level is significantly lower than both the federal AOC and the AOCs of other states with comparable numbers of judges. He stated that the individual budget requests submitted are in the following programmatic areas: (1) re-engineering; (2) direct support to trial and appellate courts; and (3) infrastructure.

Mr. Lane clarified that the recommendation was to approve budget change proposals to increase the base budget.

Ms. Gonzalez commented that the council should communicate to the trial courts what the AOC will be doing for the trial courts as a result of increases in the budget.

Judge Dover stated that the Executive and Planning Committee ascertained that the budget requests were based on needs (not wants) and tied to direct support of the courts.

Council action:

Justice Huffman made a motion that the Judicial Council:

1. Approve Budget Change Proposals (BCPs) totaling \$5.967 million that fund:
 - a. BCPs approved for submittal by the council in fiscal year 1997–98, submitted by the Governor in his fiscal year 1997–98 budget, approved for funding by both houses of the Legislature, and later

- de-funded in August as part of the reductions necessary to fund the \$1.3 billion Public Employees Retirement (PERS) reimbursement; and
- b. Statewide initiatives to directly support the trial and appellate courts totaling \$8.283 million; and
2. Direct staff to submit the budget change proposals referenced in the binder of Reports and Recommendations dated October 16, 1997, to the Governor.
- The motion passed.

Chief Justice George stated that the Supreme Court budget should include three new staff positions, not two as was stated in the presentation. The positions are needed to handle automatic appeals, habeas petitions, and an increased workload in criminal law matters and to meet the needs of the Supreme Court.

Council action:

Justice Huffman made a motion that the Judicial Council approve the proposed Supreme Court fiscal year 1998–99 budget of \$29.5 million for submission to the Governor, amended to include three new staff positions and the appropriate budget adjustments.

The motion passed.

Item 7 Approval of Long-Range Plan for Judicial Branch Education

Justice Patricia Bamattre-Manoukian, Chair of the CJER Governing Committee, presented the item assisted by Ms. Catherine Lowe, Director of the Education Division. They outlined the proposed long-range plan for judicial branch education, and noted that it was the first strategic plan to integrate the educational needs of court staff at the trial and appellate levels with those of the judiciary. The plan provides for the development of educational programs, publications, video library services, and other technical support based on the CJER Governing Committee’s assessment of the judiciary’s needs.

Justice Boren asked whether CJER will take advantage of existing resources of such national providers as the National Center for State Courts during the implementation phase of the strategic plan. Ms. Lowe replied that CJER works closely not only with the National Center for State Courts, but also with the National Association for State Judicial Educators, the National Judicial College, the National Council of Juvenile and Family Court Judges, and others.

Both Judge Brenda Harbin-Forte and Ms. Sheila Gonzalez, council liaisons to the CJER Governing Committee, expressed appreciation for the work of CJER. Judge Harbin-Forte indicated that she participated in the CJER strategic planning process and that CJER is conscientious in responding to the direction set forth in the Judicial Council's Long-Range Strategic Plan. She noted that the quality of the educational programs is excellent. Ms. Gonzalez indicated that the plan for joint governance of judicial branch education, involving both judges and court administrators on the CJER Governing Committee is a success.

Council action:

Justice Corrigan moved that the Judicial Council adopt the long-range plan for judicial branch education as set forth in Tab 7 of the binder of Reports and Recommendations dated October 16, 1997.

The motion passed.

Tab C Circulating Orders Approved Since Last Business Meeting

For information only; no action required.

Tab D Judicial Council Appointment Orders Since Last Business Meeting

For information only; no action required.

The meeting was adjourned at 1:55 p.m.

Respectfully submitted,

William C. Vickrey
Secretary