

JUDICIAL COUNCIL MEETING

Minutes of June 19, 1998, Meeting

The Judicial Council of California meeting began at 8:45 a.m. on Friday, June 19, 1998, at the Administrative Office of the Courts office in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Justices Marvin R. Baxter, Roger W. Boren, Carol A. Corrigan, and Richard D. Huffman; Judges Paul Boland, J. Richard Couzens, Albert Dover, Lois Haight, Brenda Harbin-Forte, Ana Maria Luna, 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:** Judge Dwayne Keyes, Commissioner Nori Anne Walla, Ms. Sheila Gonzalez, Mr. Joseph A. Lane, Mr. Stephen V. Love, and Mr. Ronald Overholt.

Absent: Senator John L. Burton and Assembly Member Martha M. Escutia.

Others present included: Mr. William C. Vickrey; Judge Edward D. Webster, Mr. Earl Bradley, Ms. Kay Galbraith, Ms. Beth Jay, and Dr. Isaiah Zimmerman; **staff:** Ms. Martha Amlin, Mr. Starr Babcock, Ms. Jessica Fiske Bailey, Mr. Chris Belolli, Mr. Michael Bergeisen, Ms. Wendi Berkowitz, Ms. Karen Cannata, Ms. Eunice Collins, Ms. Janet Grove, Ms. Jacquelyn Harbert, Ms. Kate Harrison, Mr. Jim Hill, Ms. Katharine Holland, Ms. Lynn Holton, Ms. Melissa Johnson, Mr. Dennis Jones, Ms. Fran Jurcso, Mr. Ray LeBov, Ms. Katy Locker, Mr. Barry Lynch, Ms. Karen Mohrhoff, Mr. Martin Moshier, Ms. Judy Myers, Mr. Gaidi Nkruma, Ms. Diane Nunn, Ms. Evelyn Rowan, Mr. Victor Rowley, Ms. Dale Sipes, Ms. Shelley Stump, Ms. Tracy Vesely, Ms. Kady Von Schoeler, and Ms. Kyong Yi; **media representative:** Mr. Philip Carrizosa, *L.A. Daily Journal*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Agenda, Reports, and Recommendations, dated June 19, 1998, which was sent to members in advance of the meeting.)

Council Committee Presentations

Reports on committee activities were included in the binders of Agenda, Reports, and Recommendations, dated June 19, 1998.

Justice Huffman, Chair of the Executive and Planning Committee, updated the council on key actions taken by the committee including several taken at its June 17, 1998 meeting and not reflected in the reports included in the binder. He stated that the committee, on behalf of the council, authorized the Administrative Director to accept a

\$110 million loan from the General Fund to the Trial Court Trust Fund to address the cash flow needs of the trial courts. Justice Huffman reported that the committee, also on behalf of the council, was certifying county's unanimous votes for unification and acting on county's Applications to Call for a Vote to Unify. Additionally, he said that the committee will meet periodically with the Administrative Director to discuss implementation of the plans approved at the council's planning workshop to see if there are budget or policy issues requiring council review.

COUNCIL ITEMS 1a AND 1b WERE APPROVED AS CONSENT ITEMS, PER THE SUBMITTERS' RECOMMENDATIONS.

ITEM 1 RULES, FORMS, AND STANDARDS

Item 1a Motion for Summary Judgment or Summary Adjudication (Cal. Rules of Court, rule 342)

The Civil and Small Claims Advisory Committee proposes that the Judicial Council amend rule 342 of the California Rules of Court relating to motions for summary judgment and summary adjudication, to correct technical defects in the rule.

Council action:

The Judicial Council adopted, effective January 1, 1999, rule 342 of the California Rules of Court, concerning motions for summary judgment and summary adjudication, as amended.

Item 1b Small Claims: Amend Form SC-134, *Application and Order to Appear for Examination*; Conform Form SV-130, *Notice of Entry of Judgment*

The Civil and Small Claims Advisory Committee recommends that Form SC-134 be amended to clarify that the form does not supersede Form EJ-125, *Application and Order for Appearance and Examination* if the small claims judgment creditor is seeking an order of examination only, and not, in addition, an order enforcing the right to receive a completed *Judgment Debtor's Statement of Assets* (Form SC-133). The recommendation responds to requests from small claims clerks for guidance on use of the form.

Council action:

The Judicial Council, effective January 1, 1999:

1. Amended small claims Form SC-134 to:
 - a. change its title to *Application and Order to Produce Statement of Assets and to Appear for Examination*;

- b. add a 150-mile limit on the distance to the place of examination;
 - c. amend the “Instructions for Judgment Creditor” to clarify that the form does not replace the *Application and Order for Appearance and Examination* (Form EJ-125); and
 - d. amend the “Instructions for Judgment Creditor” to clarify that a fee will be charged for the initial and reset hearing dates, as well as to make other conforming and technical changes.
2. Amended small claims Form SC-130, *Notice of Entry of Judgment*, to make a conforming technical amendment to the back of the form under item 2c, “Statement of Assets.”

Item 2 Leading Justice Into the Future: Statewide Community-Focused Court Planning Conference—Keynote Video

Ms. Shelley Stump, AOC planning coordinator, introduced the keynote video of the first statewide court planning conference held in May. The video featured California judges, court administrators, bar members, scholars, and public representatives speaking on three themes of the conference: (1) improving the administration of justice (especially issues related to equal access to justice); (2) addressing diminishing public trust and confidence in the justice system; and (3) providing adequate resources to enable the courts to deliver quality service to the public. Council members acknowledged Ms. Stump for her efforts which resulted in a well-attended and very successful conference.

For information only; no action required.

Item 3 Exemption from Rule 302 Relating to Blue-Back Requirement (Cal. Rules of Court, rule 302.5)

Ms. Wendi Berkowitz, AOC attorney, presented the item. She stated that the Civil and Small Claims Advisory Committee proposes that the Judicial Council extend the date of repeal of rule 302.5 to January 1, 1999. Rule 302.5 permits the Los Angeles County Superior Court to continue to enforce its blue-back requirement during the effective period of the rule.

She stated that the Judicial Council adopted rule 302.5 in August 1997. Blue-backs, required in Los Angeles County Superior Court, are heavier in weight and longer than pleading paper, are blue in color, and contain a description of the document at the bottom. The judges in Los Angeles County Superior Court state that the blue-backs help them find documents quickly and easily.

Ms. Berkowitz reported that after extensive analysis and discussion the Civil and Small Claims Advisory Committee decided against recommending the adoption of a rule requiring blue-backs statewide. Instead, the committee (with the assistance of an expert on court records management) drafted amendments to rules 201 and 501 that would require attorneys to place a footer on the bottom of each page of each document filed with the court. The amendments are currently out for comment and the committee plans to present the footer proposal to the council in October 1998, for adoption effective January 1, 1999.

Council action:

Judge Boland moved that the Judicial Council extend the date of repeal of rule 302.5 to January 1, 1999, to provide for an orderly transition in Los Angeles Superior Court from blue-backs to footers.

The motion passed.

Item 4 California Rules of Court on Judicial Administration (New Rules 2301, 2501, 2520, 2530, and 2531; Amendment of Rules 205, 207, and 532.5); Repeal of Section 27 of the California Standards of Judicial Administration

Mr. Michael Bergeisen, General Counsel, and Ms. Melissa Johnson, AOC attorney, presented the report. Mr. Bergeisen stated that staff proposes new rules covering general principles of trial court management, trial court personnel plans, the role of the Judicial Council in managing the judicial branch budget, and trial court budget management. They noted that these new rules would be part of new Title Six in the California Rules of Court on judicial administration. Staff also recommends amendments to several other rules of court and repeal of a standard of judicial administration regarding personnel plans.

Mr. Bergeisen noted that the rules were drafted in response to the Lockyer-Isenberg Trial Court Funding Act of 1997 (Assem. Bill 233). The rules were reviewed by a working group of court administrators and judges and circulated for comment.

The rules show that the Judicial Council sets general policies, guidelines, and priorities that govern trial court management and personnel plans and that management of the resources, personnel, and money is handled locally. Mr. Bergeisen stated that the values expressed in the rules include responsiveness to the public, accountability of the judiciary, and promotion of equal access to justice.

Judge Orfield asked about the use of the words “may” and “should” in rule 2520, sections (c) and (d) (“The personnel plan shall ensure” and “A personnel plan may contain”) which seem to make (c) and (d) optional. Are there some provisions that

ought to be “shalls”? Mr. Bergeisen stated that the working group discussed the issue in great detail and expressed concern about making subsection (c), regarding provisions of a personnel plan, mandatory. The working group wanted to respect local authority and felt that more specificity in the rule was unnecessary.

Chief Justice George stated that rules of court are mandatory and questioned whether they can include components that are merely suggestive. He commented that Standards of Judicial Administration are optional. Mr. Bergeisen said that the current system of having both rules and standards is confusing to some people. The council might want to consider doing away with standards over time, simply including them in the rules, and making it clear in the rules which portions are mandatory and which are suggestive or recommended.

Justice Boren said the rule makes it mandatory that a court shall have a personnel plan and it shall comply with law.

Mr. Love expressed concern that the rule requires the development of a personnel plan by March 1, 1999. He stated that many courts face difficult labor issues and may have trouble meeting the deadline. He suggested keeping the deadline but considering the plans as fluid documents.

Council action:

Judge Couzens moved that the Judicial Council amend the California Rules of Court and Standards of Judicial Administration as follows, effective July 1, 1998:

1. Adopt Title Six, California Rules of Court on Judicial Administration, including:
 - a. rule 2301, regarding the role of the Judicial Council and Administrative Office of the Courts in judicial branch budget and fiscal management;
 - b. rule 2501, regarding general principles of trial court management;
 - c. rule 2520, regarding trial court personnel plans;
 - d. rule 2530, regarding trial court budgeting; and
 - e. rule 2531, regarding trial court budget procedures.
2. Amend rules 205, 207, and 532.5, regarding the duties of presiding judges and court executives in preparing personnel plans.
3. Repeal section 27 of the California Standards of Judicial Administration, regarding trial court personnel plans.

The motion passed.

Item 5 Trial Court Coordination: Assessment of Coordination Implementation; Eligibility for Pay Parity in Selected Counties; Amendments to Section 29 of the California Standards of Judicial Administration and Rule 991 of the California Rules of Court, Criteria for Coordination Assessment Ratings; and Future Reporting Requirements Due to Unification

Judge Edward D. Webster, Chair of the Trial Court Coordination Advisory Committee (TCCAC), presented the report, assisted by Ms. Fran Jurcso, committee staff coordinator. Judge Webster stated that there has been some confusion about whether or not a county needed to have one presiding judge in order to be considered “fully coordinated.” It is the recommendation of the TCCAC that a single presiding judge be a requirement in every county except those approved by the Judicial Council for regional coordination. It is the committee’s position that having a single presiding judge is a major indicator and facilitator of coordination. In the regional court systems (Los Angeles and San Diego Counties), a single presiding judge is inconsistent with a regional structure; therefore, the TCCAC recommends that those counties can be considered fully coordinated under committee oversight as long as the oversight committee follows policies adopted by the Judicial Council on, for instance, specific countywide responsibilities and decision making through majority vote.

Judge Webster noted that the committee discussed how judicial oversight committees should conduct votes. The committee recommends that the council retain its policy adopted in April 1998 that, for an assessment of “fully coordinated,” decisions of an oversight committee must be made by majority vote.

Judge Webster stated that “fully implemented coordination” and “coordination consistent with rule 991” are indistinguishable except for implementation dates. By July 1, 1999, there will be no difference. What may be significant for purposes of various incentives will be whether a county is unified or fully coordinated.

Judge Harbin-Forte asked where, in rule 991 or elsewhere, is the requirement stated that a single presiding judge is necessary for a court to be considered fully coordinated. Judge Webster responded that the requirement is not in rule 991. He stated that the council adopted three categories of coordination: “in progress,” “meets 991,” and “fully coordinated.”

Mr. Vickrey stated that the council previously established criteria limiting access to the Trial Court Improvement Fund to fully coordinated courts. The language in the statute pertaining to that fund states that in order to be eligible for those funds courts have to have fully implemented requirements of Rule 991 and meet other requirements established by the council. In previous meetings the council voted to set a higher standard for access to the Trial Court Improvement Fund.

Mr. Vickrey stated that in April, when the council allocated Trial Court Improvement Fund money, courts expressed frustration that, after taking steps to comply with requirements to gain access to these funds, the requirements had changed or had not been clear to them. The council in April asked the TCCAC to review the requirements and recommend whether the policy requiring governance by a single presiding judge for a court to gain access to the fund should remain or be revised. Mr. Vickrey noted that for the larger Judicial Administration Efficiency and Modernization Fund the legislative intent and language are clear: a county has to unify under Proposition 220 in order to be eligible to receive these funds.

Ms. Gonzalez noted that a county can decide not to have one presiding judge, and that county would not have access to certain funds. She stated that it is not realistic to complain that rules change because, in fact, rules change in response to new legislation and initiatives. Ms. Gonzalez stated that the passage of Proposition 220 created a higher standard for coordination by providing an opportunity for courts to unify. Therefore, “coordinated to the fullest extent provided by the law” now means unified.

Judge Todd expressed concern about the additional requirement of a majority vote rather than a unanimous vote for judicial oversight committees. She asked the council to revisit its April decision about this requirement. Judge Webster reiterated the TCCAC recommendation that the council keep its policy that in order for a court to be considered “fully coordinated” a county’s oversight committee must act by majority vote.

Ms. Jurcso commented that 48 counties have a single presiding judge. Judge Webster indicated that the only county that does not have a single presiding judge and whose courts would qualify as “fully coordinated” based on other criteria is Santa Clara, which has called for a unification vote.

Mr. Overholt asked for clarification on if the criteria required implementation or merely adoption of uniform local rules. Judge Webster responded that implementation of uniform rules was necessary to achieve an assessment of “fully coordinated.”

Justice Huffman expressed concern that the council has adopted a rule of court that provides options and, by policy, later takes away options in a different context not meant to be addressed by the prior decision. He stated that a county may be coordinated to the fullest extent they are able and not structurally resemble other coordinated courts. He said that a regionally coordinated county that operates by an oversight committee should have access to the Trial Court Improvement Fund. He noted that the county could not have access to the Judicial Administration Efficiency and Modernization Fund since the statute prohibits it.

Mr. Walsh said that he sees the issue of a single presiding judge as a governance issue. The council is to give advisory committees guidance but is not to micromanage them.

The council asked the TCCAC to tell it which courts were truly coordinated. If the committee determines that only those with a single presiding judge are truly coordinated, the council should not second-guess the committee. Additionally, the council should speak consistently. It has always said that a single presiding judge is necessary for a court to be considered fully coordinated.

Council action:

Mr. Walsh moved that the Judicial Council:

1. Direct that the Trial Court Coordination Advisory Committee propose amendments to section 29 of the California Standards of Judicial Administration and rule 991 of the California Rules of Court, and forward them to the Rules and Projects Committee for review.
2. Approve amendments to the overall assessments of coordination implementation for the trial courts in Alameda, Alpine, Amador, Calaveras, Contra Costa, El Dorado, Monterey, and Tehama.
3. Approve eligibility for pay parity for the municipal court judges of the following counties: El Dorado (effective May 1, 1998), Monterey (effective June 1, 1998), and Tehama (effective April 1, 1998) Counties.
4. Relieve trial court systems in counties that have been certified by the Judicial Council as unified of any further obligation to submit trial court coordination plans, coordination progress reports, or coordination progress assessment information to the Trial Court Coordination Advisory Committee.

The motion passed.

Council action:

Mr. Walsh moved that the Judicial Council:

1. Amend the current council-approved criteria for the overall assessment of trial court coordination progress to include the use of an oversight committee in the two alternatively structured counties with duties and voting procedures as defined by Judicial Council policy, and retain the current assessment of “fully coordinated” for trial court systems that have implemented unified local rules but have not yet fully complied with rule 981(j).
2. The criteria will also clearly indicate that, for a court to be assessed “fully coordinated,” unified rules must be adopted and implemented and all elements must be completed.

The motion passed.

Item 6 Proposed *Judicial Branch Statistical Information (JBSIS) Manual*

Mr. Earl Bradley, Chair of the Court Administrators Advisory Committee's Subcommittee on Statistical Reporting, presented the report, assisted by Ms. Karen Cannata of AOC staff. Mr. Bradley stated that the *Judicial Branch Statistical Information (JBSIS) Manual* includes data collection assumptions and case-related standards that enable consistent aggregate reporting of case statistics and standards that document workflow. A methodology for the collection and transmission of information, JBSIS will provide aggregate statistical information. Information at the case level is available locally.

Mr. Bradley stated that JBSIS was needed because the current statistical reporting system is inadequate and has not been updated for at least 20 years. This prevents the agency and the courts from developing long-range plans and presenting adequate information to the Legislature and others.

He stated that the focus of the committee was developing a clear definition of the data elements. He reported that in October 1996 the committee presented proposed policies and a timeline to the Judicial Council. Since then there has been broad-based participation in this project at the court management and staff levels, as well as consultation with the National Center for State Courts and agencies external to the court system. The manual was circulated for comment at three different phases of development, and the recommendations were presented to ten Judicial Council advisory committees.

Mr. Bradley stated that implementation can begin July 1, 1998. Based on responses received in a survey, 40 percent of courts will be able to comply with the standards in whole or in large part within a year. Full implementation is anticipated by 2001. He noted that funding will be provided to courts that are not able to implement the standards with their current automation systems. The primary funding for implementation will be from function budget category 9 of trial court funding (Cal. Rules of Court, rule 810) and the Judicial Administration Efficiency and Modernization Fund.

Mr. Vickrey commended the committee and AOC staff for their monumental effort in developing JBSIS. He noted that the Legislature reviewed and supported development of JBSIS.

Judge Lois Haight expressed concern that training will be needed to ensure that accurate data is captured.

Mr. Bradley noted that courts would have electronic access to local and state court data and eventually to data collected by other justice-related agencies. He reported that the committee is exploring the possibility of changing the implementation date in rule 996 of the California Rules of Court, relating to JBSIS, to 2001 to allow courts time to deal with the year 2000 problem as well as to implement JBSIS.

Council action:

Ms. Gonzalez moved that the Judicial Council:

1. Effective July 1, 1998, adopt the *Judicial Branch Statistical Information System (JBSIS) Manual* for implementation to begin immediately among courts with adequate automated systems, with initial reporting to begin January 1, 1999.
2. Authorize the Court Administrators Advisory Committee to make nonsubstantive revisions to the case-related standards based on experience gained during the initial implementations.
3. Direct the Court Administrators Advisory Committee to report annually to the Judicial Council on substantive revisions and additions to JBSIS case-related standards based on legislative mandates, changes in information needs, and changes in technology.
4. Direct the Court Administrators Advisory Committee to work with the Trial Court Budget Commission (TCBC) to define data standards to meet the TCBC's information needs.

The motion passed.

STATUS CHART ON LEGISLATION

For information only; no action required.

CIRCULATING ORDERS APPROVED SINCE LAST BUSINESS MEETING

Circulating Order CO-98-06: Joint Adoption of Rule on Petitions for Review by Committee of Bar Examiners (Cal. Rules of Court, rule 952.6)

For information only; no action required.

JUDICIAL COUNCIL APPOINTMENT ORDERS SINCE LAST BUSINESS MEETING

For information only; no action required.

The meeting was adjourned at 12:05 p.m.

Respectfully submitted,

William C. Vickrey
Secretary