

JUDICIAL COUNCIL MEETING
Minutes of January 30, 2002, Meeting

The Judicial Council of California business meeting began at 1:45 p.m. on Wednesday, January 30, 2002, at the Administrative Office of the Courts (AOC) in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

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

Absent: Senator Martha Escutia and Assembly Member Darrell Steinberg.

Others present included: Mr. William C. Vickrey, Justice Daniel J. Kremer, Ms. Liliana Campos, Ms. Patricia Collins, Mr. Scott Graves, Ms. Donna Hoenig Carly, Ms. Beth Jay, Ms. Sandra Jimenez, Mr. Beau Kilmer, Mr. Ron Kreber, Ms. Rosemarie Reed, Mr. Derek Sanders, Ms. Laura Shigemitsu, Mr. Stephen Underhill, Ms. Nancy Vue, Ms. Sheri Wert, Mr. Marc Wolf, and Ms. Betty Yee (via phone); **staff:** Mr. Michael Bergeisen, Mr. Dennis Blanchard, Ms. Patricia Bonderud, Ms. Joan Callen, Mr. James Carroll, Mr. Ian Cha, Mr. Steven Chang, Ms. Roma Cheadle, Ms. Yvonne Choong, Mr. Blaine Corren, Ms. Connie Delago, Mr. Robert Emerson, Ms. Merilee Fielding, Mr. Ruben Gomez, Ms. Sheila Gonzalez, Ms. Tina Hansen, Ms. Terri Harris, Ms. Lynn Holton, Ms. Susan Hough, Ms. Kathleen Howard, Ms. Britney Hughn, Ms. Melissa Johnson, Mr. Ray LeBov, Mr. Robert Lloyd, Ms. Lisa McLaughlin, Mr. Frederick Miller, Mr. Thomas Ng, Mr. Ronald Overholt, Ms. Harriet Raphael, Ms. Laura Rigdon, Ms. Mary Roberts, Mr. Michael M. Roddy, Mr. Gustavo Salas-Huizar, Mr. Scott Shin, Ms. Pat Sweeten, Mr. Frank Tang, Ms. Nancy Taylor, and Ms. Alla Vorobets; **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 January 30, 2002, that were sent to members in advance of the meeting.)

Public Comment Related to Trial Court Budget Issues

Chief Justice Ronald M. George noted that there had been no requests for public comment.

Elevation Announced

The Chief Justice announced the elevation of Judge Ronald B. Robie to Associate Justice of the Court of Appeal, Third Appellate District. This results in a vacant seat on the Judicial Council. However, the Chief Justice has appointed Justice Robie an advisory member of the council.

Approval of Judicial Council Meeting Minutes

Minutes of the December 18, 2001, meeting were distributed at the meeting, and Mr. William C. Vickrey suggested deferring approval of the minutes until the end of the meeting.

Overview of the Governor's Proposed 2002–2003 Budget

Ms. Betty T. Yee, Chief Deputy Director of the California State Department of Finance (DOF) made a presentation, by phone, concerning the 2002–2003 budget. Ms. Yee's presentation referenced materials that were distributed at the meeting: (1) *California Governor's Budget 2002–2003* and (2) *California Governor's Budget Highlights 2002–2003*. She pointed out the importance of understanding the context of how the budget was put together in order to understand the external factors that are driving the decline of state revenues in California and across the country. The documents presented were intended to make clear why the budget was structured the way it was and to clarify the understanding DOF has of this situation.

Ms. Yee pointed out that the national and California economies slowed in 2001, with the national economy slipping into recession in March 2001. The gross domestic product is expected to begin to grow again by spring 2002. The DOF forecasts are driven by the national economy, as well as assumptions about the diverse industry sectors that make up California's economy.

The DOF anticipates national unemployment will peak in the third quarter of 2002 at 6.3 percent. Low interest rates and expansive fiscal policies will also contribute to an economic boost. Loss of confidence by consumers before the economy begins to turn around and any protraction of the high tech recession will be risk factors with respect to the timing of recovery at the national level.

Relative to all economic indicators, California fared much better than the rest of the nation. The DOF expects that the economy will grow by mid calendar year 2002, and by June signs of rising economic activity should be apparent.

Although the DOF does not expect a lot of job creation in the first half of the year, hiring will pick up in the second half. It is anticipated that unemployment will continue to rise even after the economy begins to grow since employers will be likely to wait to make

certain a recovery is well under way before making hiring decisions. For the year 2002, we expect that unemployment will average about 6.2 percent.

The state economy will also rely on low interest rates and moderate energy prices, as well as expansive fiscal policies to boost the state economy. The DOF sees the same types of risks in the timing of the economic recovery in California, with consumers not being able to hold out until recovery starts and beginning to lose confidence. Certainly the high tech risk is more relevant to California than to the rest of the nation.

Reviewing the eight largest metropolitan areas in California in terms of employment growth, the DOF found that San Francisco and the Silicon Valley area were most affected. Growth of companies exporting California-made merchandise fell sharply in 2001 as the economies of some of California's major trading partners weakened as well. Construction slowed significantly in 2001, particularly in nonresidential building. The terrorist attacks of September 11 exacerbated the slowdown in the state's economy, which also accelerated the slowdown in the tourism and travel industries.

California, probably unlike any other state, is highly dependent on stock market-related income for its state revenues, particularly in personal income tax revenue receipts. After growing almost 10 percent in 2000, California personal income grew only 1.4 percent in 2001. That sharp decline is due primarily to slumping stock prices. When stock prices soared between 1995 and 2000, this option income gave a huge boost to California personal income. The descent of stock market prices that began in March 2000 cut stock option income almost in half in 2001. Personal income growth is not expected to be so volatile in the years ahead. The moderate rebound expected in the stock market should help California personal income grow by about 2.6 percent in 2002.

The decline of state revenues was even more pronounced than what was expected at the time of the 2001 Governor's Budget May revision. The General Fund revenue forecast for the major revenue sources decreased by \$5.4 billion for the past and current year combined. It is expected that revenue growth will resume in the 2002-2003 budget year and be up \$6.3 billion from 2001-2002, reaching \$74.0 billion.

Taxpayers are also anticipating less non-wage income, primarily in the area of capital gains; this situation has eroded estimated tax payments. Nonetheless, growth is expected to resume by midyear 2002, although noticeable acceleration in revenue growth will not be seen until 2003.

The preliminary data on personal income taxes indicate that capital gains in the 2000 tax year increased 30 percent from the 1999 tax year. The DOF forecast, in light of the weakness in the stock market, assumes that capital gains will decline by 45 percent in 2001 from the prior year's level before returning to positive growth of 12.5 percent in 2002. Corporate tax revenues and taxable profits are estimated to decline by 1 percent in 2002 before rebounding to 10 percent growth in 2003.

Ms. Yee addressed the point raised by the Legislative Analyst's Office on how optimistic the DOF's outlook is with regard to capital gains and stock option income. Capital gains and stock options are extremely volatile revenue sources since they are difficult to predict and don't necessarily track the stock market directly. Personal income tax revenues are always a challenge.

The DOF forecast for growth rate is somewhat more optimistic for 2001 and slightly more conservative than for the following year. The level of gains in 2002 is above the Legislative Analyst's because the DOF is using a higher base, and the DOF stock option forecast is higher than that of the Legislative Analyst. The combination of those different factors accounts for the difference in DOF's forecast for personal income tax.

With respect to cash to date, withholding receipts appear to be running above expectations, which would indicate that DOF estimates for stock options are reasonable. The estimated payments received through December and the first part of January have been weak. This would indicate that capital gains were lower than expected but much of the capital gains revenue is received with the final return filed by taxpayers in April, so the picture for capital gains will remain unclear for several months yet.

Income sources such as stock options and bonuses that are offered to employees as part of their compensation are concentrated in California in six high-wage industries: the drug industry, computers, electronic components, communication equipment, finance brokerages, and computer services. When all these high-wage industries are affected by slumping stock market prices, the impact is felt in the state's whole personal income tax revenue picture.

The most significant financial factor influencing the State Budget in 2002–2003 is the volatility of stock market–related income. Over the last three years the NASDAQ soared to unprecedented levels, resulting in capital gains and stock option income creating a surge in state tax revenues. In 2001, the steep decline in the stock market, capital gains, and stock option income, coupled with the effects of September 11, produced the most precipitous decline in revenues since World War II.

Two years ago revenue from stock options and capital gains made up nearly 25 percent of the total General Fund revenue. In the 2001–2002 budget, those two revenue sources make up about 12 percent of total General Fund revenue, so this is a significant decline in those revenue sources.

The Governor has engaged in prudent budgeting practices over the last several years. Good portions of the additional General Fund resources were programmed for one-time rather than for ongoing program expenditures. The DOF worked with the Legislature on building up the current budget year reserve to the level of \$2.6 billion, and early actions were taken to curb 2001–2002 spending.

The Senate has passed the so-called November revision reduction bill and moved it on to the Assembly. The Governor and Legislature have taken steps this early to address a significant budget shortfall. All departments have been asked to curb current year spending. The Governor proposes to adhere to a number of principles as he built the budget for the budget year. He maintained funding and did not propose any new increases in the following areas:

- Education, K-12
- Maintaining public safety
- Protecting children
- Shielding local government
- Protecting taxpayers

The best way to characterize the administration's view of the \$12.5 billion gap is that it is a revenue shortfall problem. The \$12.5 billion problem is a two-year problem over the current year and the budget year. The solutions in the November revision, currently on the Assembly floor, appear to contribute about \$42.9 billion, and the proposed budget year strategy will yield another \$9.5 billion.

The DOF proposes to securitize a portion of the tobacco settlement funds to generate \$2.4 billion into the General Fund in the budget year. For all special funds with excess balances for which there would not be a programmatic call, a federal tax conformity issue and other sources have been identified and are proposed to be allocated to the General Fund.

Several special funds have also been borrowed from—funds such as the Traffic Congestion Relief Fund, loans, and deferral of General Fund payments to the State Teachers Retirement System (STRS) and the Public Employees' Retirement System (PERS)—to generate \$2.13 billion. The two proposals concerning STRS and PERS payments are likely to be rescinded.

Other funding sources have been identified through federal funding increases to provide relief for the state in the following areas:

- Medi-Cal offset (FMAP)
- Child support system penalty relief
- Federal funding for Health and Human Services programs
- Federal stamps for post–August 22, 1996, immigrants
- Undocumented felon incarceration (SCAAP)
- Security/bioterrorism funding

In conclusion, Ms. Yee stated that the budget proposes a General Fund reserve of \$511 million in the budget year. The current fiscal year's \$2.6 billion reserve will be fully depleted at the end of the current year. The DOF believes the state will end up with

about \$12 million in the state coffers at the end of this current year. And, with some positive economic activity beginning to surface midyear 2002, we will see some relief going into the 2002–2003 budget year.

Discussion

Mr. William C. Vickrey mentioned meetings with legislators and questions from the press and asked Ms. Yee about the reaction that she is getting on internal discussions in the DOF.

Ms. Yee said there are a number of philosophical differences in the approach they are taking. In the several caucus meetings she has participated in with legislators it has been interesting to see that, because of term limits, many of the members have not experienced this kind of budget before. The debate, even within members of the same caucus, is over whether tax increases should be part of the solution; the sense is that ultimately a tax increase proposal will never see the light of day since the Governor does not advocate any tax increases. Mr. Vickrey mentioned the Judicial Council's commitment to reduce spending by approximately \$35 million and asked if we should continue with our plan to achieve those savings by year-end.

Ms. Yee said she thought that was correct and that she did not think we would see much improvement in the May revision relative to revenues. There is currently a dispute as to whether the Proposition 98 funding commitment might need to be increased by \$900 million in the May revision. If that is the case, additional cuts may need to be made.

Mr. Vickrey asked Ms. Yee if she had any sense of whether projections are likely to be refined by early summer. He said the council will be setting some general parameters for the 2003–2004 budget development process at the end of February 2002 and will then approve the budget that will go to the DOF in August 2002.

Ms. Yee said there should be updated projections because part of the May revision will be an updated forecast. The Legislative Analyst's updated forecast is done in late February when they release their analysis of the Governor's budget. By the May revision the DOF should have a much better idea of where we are going and should be able to guide the council with respect to 2003–2004.

Ms. Yee stated that the Governor has tremendous respect and gratitude for the judicial branch and the commitments it has made and expressed her gratitude for the offer by the council and the judicial branch as a whole to participate in solving this problem.

Announcement

The Chief Justice announced that Ms. Christine Patton, currently Executive Officer of the Superior Court of Santa Cruz County, will be joining the Administrative Office of the Courts as the Director of the Bay Area/Northern Coastal Regional Office. She will not

finalize her departure from Santa Cruz until July 2002, and she will be participating as a member of the Judicial Council until then.

Judicial Council Committee Presentations

Executive and Planning Committee

Associate Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee had met twice since the December 2001 meeting. The committee met by conference call earlier this month to set the agenda for this meeting. The committee also met at length today to discuss a number of issues that will be coming back to the council. Ms. Christine Hansen, Director of the AOC's Finance Division, made a presentation about the budget process that is under way with the assistance of the presiding judges, executive officers, and judges to help determine budget priorities on which the council will vote at the end of February. Also under way is the process of making recommendations to the Chief Justice for appointments to the newly created Judicial Branch Budget Advisory Committee. Requests for nominations have gone out, and the Executive and Planning Committee will be meeting in conjunction with the Planning Meeting to make recommendations to the Chief Justice.

The committee has spent considerable time structuring the Planning Meeting set for February 28–March 1, 2002. Neither the Strategic Plan nor the Operational Plan are up for revision, so the committee views this as the time to engage the council in discussing some of the policy issues the council faces now and in the future. Justice Huffman emphasized that members might be called upon to facilitate some of the discussions. The intent is for the meeting to be interactive and to invite participation to help the branch formulate decisions on moving forward with the AOC Business Plan.

The ongoing issue regarding the Southern California court technology plan was also addressed. With the assistance of Judge Robert A. Dukes and Presiding Judge James A. Bascue, the presiding judges, and executive officers of the ten Southern Region counties, the plan is coming together. Over time the plan may become a model for the process of developing ways to deal with statewide issues while maintaining the maximum degree of local independence.

Policy Coordination and Liaison Committee

Associate Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee met by conference call on January 24, 2002. The committee reviewed and adopted a recommendation for council-sponsored legislation that would give the AOC the authority to establish a workers' compensation program for the trial courts and their employees. Assembly Bill 1698, another piece of council-sponsored legislation about the conversion of subordinate judicial officers (SJOs) to judgeships, is moving through the Legislature. The bill has passed the Assembly policy and fiscal committees and is now on the Assembly floor. The legislation, which is receiving solid support, is intended to help the courts achieve an appropriate balance between judges and SJOs and will enable courts to assign judges to do the work of judges.

Justice Baxter also mentioned the State of the Judiciary address to the Legislature scheduled for March 12, 2002. The Chief Justice will be addressing the Legislature at 5:00 p.m.

The liaison meetings are proceeding on schedule. The committee has met with the State Sheriffs' Association and the Consumer Attorneys of California. Additional meetings have been scheduled in the Chief Justice's chambers with the State Bar, California State Association of Counties (CSAC), Association of Defense Counsel on the civil side, California District Attorneys' Association, Criminal Defense Bar, and the Attorney General. Council members interested in attending the liaison meetings should contact Justice Baxter, Mr. Ray LeBov, or Ms. Kathleen Howard.

Rules and Projects Committee

Associate Justice Ronald B. Robie, chair, reported that the Rules and Projects Committee met once by conference call to review proposals recommended for circulation for comment that will be on the short cycle in July 2002. Four proposals have been circulated:

- Ethics standards for contractual arbitrators (these will accompany the mediator standards that are out already)
- Mediator standards
- Rules and forms for filing false claims actions under seal
- Interim report of the Probation Services Task Force
- Guidelines for the design of court facilities

These proposals will return to the committee in April and be submitted to the council at its April 19, 2002, meeting for an effective date of July 3, 2002.

Judicial Council Court Visit Report

Mr. Alan Slater reported on a recent visit to the Superior Courts of Sutter and Yuba Counties. Judges William C. Harrison and Barbara A. Zúñiga accompanied Mr. Slater on the visit. Also participating in the visit were members of the AOC staff. The visit began in Yuba County and participants then had a joint lunch with judges from both Yuba and Sutter Counties. Both counties face challenges relating to the court-county transition, facilities needs, staffing needs and salaries, court reporter and interpreter concerns, and budgetary constraints. The two counties occasionally share resources, including staff. Highlights of issues and areas of concern are described below.

Superior Court of Sutter County

In Sutter County the team met with Presiding Judge Robert H. Damron and Executive Officer Len LeTellier.

Facilities/Security:

The major issue facing the Sutter court is lack of facilities. There is only one real courtroom in the courthouse; the second, smaller courtroom used to be a meeting room for the board of supervisors. The Task Force on Court Facilities had rated the Sutter courthouse “functionally deficient.” They do not have adequate facilities for jury assembly, for children’s waiting rooms, or for their court staff, which has grown from 26 to 44. Sutter is one of the 19 courts that is currently included in the AOC court facilities master planning effort. The Sutter courthouse is also challenged in providing adequate security. Transportation of prisoners from the jail facility is a challenge since the sheriff’s department must transport inmates. The court feels it does not have an adequate base budget that supports basic resources. They do not have a research attorney, and it is difficult for them to get court reporters and interpreters when needed. It was suggested that perhaps the new AOC Northern/Central Regional Office might provide a core of services that could be used by the smaller courts.

Yuba County

In Yuba County the team met with Presiding Judge James L. Curry and Executive Officer Steve Konishi and some of the management staff.

The Superior Court of Yuba County has started some innovative projects, such as document imaging.

The court had concerns about the impact of state budget reductions, particularly on the staff’s negotiated salary increase. Nearly 40 percent of the court’s judicial officer positions are vacant. The court has been using assigned judges to make up that gap but it is still a major challenge. The court has significant facilities issues. A broken pipe resulted in a flood in the clerk’s office, and the damage required relocation. It will be 12 to 18 months before the clerk’s office will have suitable facilities. Ms. Pauline W. Gee commented that the records that had been in the flooded basement were moved up to the law library, and as a result there is no longer a law library accessible to the public.

The Yuba court is also looking forward to working with the AOC and the regional office in the areas of general support services, human resources, and financial systems. Judge Zúñiga expressed admiration for the dedication and devotion of the staff for serving the public despite the difficult situation. Judge Harrison said that although the flood was in June 2001, no work has been done on the damaged floor. The Chief Justice asked whether the team members thought perhaps the county felt that since they were on the way out they would not keep up the facilities and were waiting for the state to take over. Team members concurred.

CONSENT AGENDA

The Chief Justice informed the council that no items from the Consent Agenda had been moved to the Discussion Agenda.

ITEM 1 Drug Court Partnership Act Report (Action Required)

The Drug Court Partnership Act of 1998 requires the Department of Alcohol and Drug Programs (ADP) and the Judicial Council to develop a report to be submitted to the Legislature by March 1, 2002. Staff from the AOC, members of the Collaborative Justice Courts Advisory Committee, and staff from ADP have jointly drafted the report, which now requires council approval so that it can be submitted to the Legislature in accordance with statute. The report evaluates the cost-effectiveness of the participating drug courts. The results show that participants showed significant improvement in the quality of their lives and positive involvement in their communities. There was also less criminal activity and greater involvement in positive social and familial relations.

Council action:

The Judicial Council approved the Drug Court Partnership Act report for submission to the Legislature.

ITEM 2 Authorize Modification of Purpose for Which Funds Appropriated to the Trial Court Transactional Assistance Program May Be Used (Action Required)

At the July 13, 2001, Judicial Council meeting, the council approved a suballocation from the Trial Court Improvement Fund (TCIF) in an amount not to exceed \$750,000 for fiscal year 2001–2002, for the Trial Court Transactional Assistance Program, with the understanding that the AOC’s Office of the General Counsel would retain and manage the work of outside counsel funded by this allocation to provide trial courts with legal services in reviewing, drafting, and negotiating contracts, and with advice on contract and procurement matters. The AOC now requests that the purposes for which this fund was approved be expanded to include legal assistance to the trial courts on issues affecting judicial administration.

Council action:

The Judicial Council approved expansion of the use of funds previously allocated to the Trial Court Transactional Assistance Program from the Trial Court Improvement Fund to include legal assistance to the trial courts on issues affecting judicial administration.

DISCUSSION AGENDA

Item 3 Fiscal Year 2000–2001 Annual Trial Court Expenditures (Quarterly Financial Statements) and Annual Allocations From the Trial Court Trust Fund (TCTF), Trial Court Improvement Fund (TCIF), and Judicial Administration Efficiency and Modernization Fund (Mod Fund) (No Action Required)

Ms. Christine Hansen, Director, AOC Finance Division, presented the report.

Fiscal year (FY) 2000–2001 was the first year trial courts began to collect and report financial information using the Program Element Component Task (PECT) format. Given state funding of trial courts, the PECT format was developed as part of the general goal of integrating the judicial branch’s budget process with that of the executive branch. Trial courts reported statewide Trial Court Trust Fund expenditures of \$1,731,242,821 and non–Trial Court Trust Fund expenditures of \$183,231,694.

In addition, the Budget Unit of the Finance Division of the AOC is presenting the FY 2000–2001 Year-End Financial Report for Trial Court Funding. The report is based on the official record of trial court revenues and expenditures maintained by the State Controller’s Office. The report consists of the Fund Condition Statements for the Trial Court Trust Fund, the TCIF, and the Mod Fund.

Discussion

Justice Huffman asked how the courts are billed for court security—that is, are bills received from the counties for sheriff’s services? He also asked what controls the council has over what courts are billed for security. Ms. Hansen responded that bills are received from counties for sheriff’s services but she deferred to council members to answer the question about controls.

Ms. Christine Patton indicated that the Superior Court of Santa Cruz County has a flat-rate contract with a capped rate that is renegotiated each year so the court knows it will not exceed that rate. The bills are submitted quarterly and reviewed prior to payment. Although in previous years Santa Cruz has not spent its cap, this year it probably will.

Justice Richard D. Aldrich said that courts in his court have a negotiated budget each year, and a memorandum of understanding (MOU) that is signed as a result of those negotiations. The court does not have the funds to provide the level of service the county and the sheriff’s office agree should be provided. Once the budget is finalized, the figure previously noted on the MOU is adjusted down to be in line with what the budget will allow.

Judge Leonard P. Edwards stated that he feels too much is spent on security. Local judges dealt with security issues prior to trial court funding and had problems with the efficiencies of the sheriff's department. He asked whether the council could study the security provided and make recommendations about how we should be addressing the issue on a county-by-county basis. His perception is that we are currently paying bills that are presented but do not have sufficient input as to what we should be getting for the money we are spending.

Mr. Vickrey responded that the provisions for negotiations of security contracts and payment of those costs is unsatisfactory to the courts. We do not have a lot of room for negotiating since the courts are required by law to pay the sheriff's departments for security. Neither is it satisfactory from the sheriffs' perspective because they are not reimbursed for what they view as all of their costs. They are not reimbursed for overhead; definitions of rule 810 are not clear about the level of supervision provided for, among other things. The counties say the sheriff's department should collect the money from the courts, not the county. In cooperation with the California State Sheriffs' Association, the Court Security Working Group has been established to clarify the terms and definitions of court security and to come up with an agreement on legislation that would provide the stability and clarity that the sheriffs would like in order to end the frustration with the counties about costs and to provide the courts with some flexibility and a better position to negotiate with the sheriffs for security. Mr. Michael M. Roddy and a number of judges and court executives are representing the judicial branch, working with representatives from the sheriffs' association, to determine how to make the system clearer and more predictable. The working group hopes to come up with a proposal that will return to the council through the PCLC and that will provide a statutory foundation for these issues.

Under Assembly Bill 233 the assumption was that the state would pick up certain limited responsibilities for paying for security (bailiffs in the courtroom, personnel necessary for perimeter security, etc.) but that generally the responsibility for public safety would still fall on the sheriff's department and thus on the counties. Rule 810 was crafted in the early 1990s and is not a model of clarity.

Mr. Vickrey concurred with Judge Edwards's assessment that security issues need study and stated that ultimately there is a need for a statutory resolution to the current structure due to the continued increasing costs of security.

Judge Edwards said he would like to see other security models, perhaps from other states, that examine the structural issues. Given the numbers involved, he feels we have an obligation to examine different ways of providing security.

Mr. Vickrey said that the working group is looking at different options in the level of security provided and in the quality, level of service, and cost of service provided when the interest of the sheriff in providing security is not present. There may be other providers available to the courts. The working group has been grappling with these

important issues. Once we have legislation proposed by the council and a decision has been made to go ahead with it or not, we will know if we need to go further. The council should keep emphasizing this issue.

Justice Huffman asked if the working group will be working on standards for the desirable minimum level of security. The numbers vary wildly among courts, so that county X may be paying \$50 million for something that county Y with more judges might be paying \$25 million for. So, as a council, we seem to pay whatever the sheriff demands. Setting an agreed-upon set of standards could help explain these kinds of differences.

Mr. Vickrey said that the costs that are passed on by the sheriff's department do in fact represent the staffing patterns established. The sheriffs would argue that they are impacted by the demands or requests of individual judges. The objective is to have the council set standards for the elements of a security plan and actually have authority for the courts to promulgate the security plan so we can see what is driving the cost differences. Differences in salary levels of deputies in different geographic areas have a significant effect as well. The courts obviously do not make any of the judgments on sheriffs' salary and benefit negotiations. Often the courts do not participate in determining sheriffs' level of personnel. That is what the working group is attempting to resolve.

Commissioner Bobby R. Vincent commented that both the sheriff's and the marshal's departments have provided security over the years. The responses received from these departments have differed greatly.

The Chief Justice said he thought many courts have had the same experience but that that battle had been fought and lost. During the Wilson administration there was legislation about which road would be taken, and it was decided to go with the sheriff's department. It is more appropriate for an independent branch of government to have its officers who are beholden only to the court rather than to an elected official.

Judge Stephen D. Bradbury asked whether, for the Trial Court Trust Fund expenditures, the AOC's Finance Division collected non-state trial court funding balance information from the courts. Ms. Hansen said, yes, they had collected this information and although she did not have it at the meeting, it is available.

Justice Norman L. Epstein asked whether the security cost matter might be considered for an Issues Meeting in the near future.

Judge Harrison replied that Mr. Michael Bergeisen and the AOC's Office of the General Counsel provide each county with advice and assistance in negotiating their contract with the sheriff, and in any negotiations with the sheriff the county has to be present. There is vast need for clarification of what is the obligation of the court. As Judge Edwards pointed out, a full study should be secured.

Council action:

No action was taken.

Item 4 Trial Court Improvement Fund (TCIF) and Judicial Administration Efficiency and Modernization Fund (Mod Fund) Guidelines (Action Required)

Ms. Christine Hansen presented the report. Ms. Hansen stated that Government Code section 77209(g) allows the Judicial Council, with appropriate guidelines, to delegate to the AOC the administration of the Trial Court Improvement Fund (TCIF). Government Code section 77213(b) allows the council, with appropriate guidelines, to delegate to the AOC the administration of the Judicial Administration Efficiency and Modernization Fund (Mod Fund). Under the current economic situation, the approval of appropriate guidelines and the subsequent delegation of the administration of both funds will allow critical needs of the courts to be met on a timely basis and will enable staff to commit funding in a situation where the Legislature might otherwise redirect funds for other uses.

Ms. Hansen reviewed the guidelines and noted the many similarities in the guidelines that members are being asked to approve. She pointed out that the guidelines have limited use in that the funds can only be used to benefit the trial courts. The AOC cannot use any of these funds for the AOC, appellate courts, or the Supreme Court. Both funds can be used to support technology and have been used for that purpose when the General Fund has not provided money for technology.

Trial Court Improvement Fund

Ms. Hansen indicated that AOC staff is working on making recommendations regarding legislative changes since a percentage of the TCIF funds is restricted to use for court coordination. With all the courts unified, this restriction is no longer applicable. Another portion is reserved for statewide projects and is used for existing annual obligations such as the Litigation Management Program, judicial insurance, and the judicial conduct report. The TCIF is continuously appropriated, which means that if all of the money is not spent in a given year then the remaining money rolls over to the next year.

The TCIF does receive revenues from 2 percent automation funds and 50/50 excess fines split in addition to a 1 percent reserve from the Trial Court Trust Fund. Together, these sources provide annual revenues of approximately \$74 million. Plans have already been made to use some of the prior year carryover of reserves to cover some of the budget reductions.

Modernization Fund

Use of Mod Fund funds is limited to one-time programs that benefit the courts. It is used mostly for innovative technology, trial court education programs, and pilot projects. The

Mod Fund is appropriated on a yearly basis and funded from a General Fund transfer. The current budget is \$44 million, including a carryover of technology money that was not used.

Action Plan

The goal is that each year proposed program areas and the overall budget for each of these funds will be submitted to the council for review and approval no later than the August Judicial Council meeting each year. Another objective is for the council to delegate the authority to the Administrative Director of the Courts to approve specific allocations within council-approved program areas and budget in order to respond in a timely and efficient manner to the courts' needs.

Under current economic conditions the approval of the guidelines and delegation of authority will allow the AOC to meet critical needs of the courts in a timely basis. We may also be able to commit funding in situations where the Legislature may redirect the funding for other uses.

Discussion

Justice Huffman stated that the Executive and Planning Committee had spent considerable time with Ms. Hansen, Mr. Vickrey, and Mr. Overholt reviewing the guidelines. He thought the guidelines were sound and represented the appropriate delegation by the council while maintaining policy control.

Justice Huffman moved for approval of the guidelines as recommended. The motion was seconded.

Council action:

The Judicial Council, effective February 1, 2002:

1. Approved the internal guidelines of the Judicial Administration Efficiency and Modernization Fund and the Trial Court Improvement Fund.
2. Delegated authority to the Administrative Director of the Courts to approve as necessary allocations that comply with the approved guidelines.

Item 5 Status Report: AOC Follow-Up on the Work of the Task Force on Court Facilities (No Action Required)

Administrative Presiding Justice Daniel J. Kremer and Mr. Robert Lloyd, manager of the AOC's Facilities Unit, presented the report of the Task Force on Court Facilities.

On October 1, 2001, the Task Force on Court Facilities issued its final report to the Governor, Legislature, and Judicial Council. The AOC is undertaking several initiatives to follow up on the work of the task force. Three initiatives were presented in the status report: Trial Court Facilities Legislation Working Group, Master Plans for Trial Courts, and Facility Design Guidelines. The report summarizes the actions on each initiative.

Mr. Lloyd said the task force examined 451 trial court buildings with 2,136 courtrooms, and just over 10 million square feet of usable space. A current need was identified for renovation, alteration, or expansion of current facilities to meet current needs of \$2.8 billion. In addition, the task force identified the need to invest \$2.1 billion over the next 20 years to meet growing needs of the courts.

The counties spend about \$168 million a year supporting existing facilities. The task force recommended that the responsibility for facilities transfer to the state over a three-year period between January 2003 and December 2005. A key component of the recommendation is that the counties continue to pay their historical operating and maintenance costs to the state under maintenance-of-effort obligations and that new or enhanced revenue sources be created so that at some point in the future capital investment in court facilities will not have to rely on the state General Fund. The recommendations are to standardize the contributions to the courthouse construction fund at \$5 for every \$10 in criminal fines, fees, and forfeitures, which currently range from \$0 to \$5 depending on the county. The task force also recommends extending civil filing fees statewide and setting the rate at \$50 per filing. Currently three counties—San Francisco, San Bernardino, and Riverside—collect them. Making those revenue adjustments would increase overall revenue to \$179 million per year.

The Trial Court Facilities Legislation Working Group, chaired by Mr. Ronald Overholt, with representation from the AOC, trial courts, and the state Department of General Services, has been formed since the release of the report. The working group will translate the task force recommendations into proposed legislation to be introduced in the current legislative session, with the aim of establishing a judicial branch governance structure and to establish new revenue sources. The working group's draft bill is expected to mirror the recommendations of the task force but before presenting it to the council, the group will make adjustments based on practical, political, and economic considerations.

The working group has also chartered a subgroup to examine the organization, staffing, and policy necessary to implement the legislation. Another goal is to develop a permanent organization for managing facilities responsibilities and for making the transition from the current county responsibility to state responsibility. Responsibilities at all levels of the judicial branch will be examined. The working group is developing estimates of fiscal impacts so that when a bill does go forward the necessary funds for the structure and the transition staff may be put in place.

The AOC has increased its facilities staff over the last year, with 10 positions dedicated to trial court facilities support, 8 of which are filled. AOC staff is helping the trial courts identify and program their facilities needs, doing functional reviews of existing spaces, reviewing design and construction documents for functionality, and providing technical assistance in a variety of areas.

Mr. Robert Emerson of the Facilities Unit indicated that the master plans develop a plan for facilities in each of the trial courts, building on the broad options that were outlined by the task force, to the level required to estimate capital expenditures. The current master planning effort looks ahead 10 years, and the task forces' detailed projections are being used to define future need.

AOC staff will be identifying the need, in greater detail than did the task force, for upgrading of existing facilities and for new facilities. More specific court facilities master plans will look at the timing for developing various facilities. The master planning effort involves the participation of court executive officers, judges, AOC staff, representatives from the county, and outside planning consultants. Plans for 19 counties are expected to be completed during this fiscal year. The plan is to complete all counties within 5 years or sooner, depending on available funding and to update the master plans on a 5-year cycle.

Justice Kremer reviewed the history of the development of facilities standards or guidelines. In November 1991 the council adopted trial court facilities standards, and the California Standards of Judicial Administration state that the trial courts should consider those standards in constructing or renovating court facilities. But the 1991 standards were basically shelved and observed in the breach, if at all.

The task force was charged by Assembly Bill 233 to assess the condition of all court facilities in the state; about 10 million square feet in 451 facilities. The legislation also instructed the task force to propose court facilities standards as a benchmark for evaluating existing facilities. The task force developed new guidelines, which were in effect facilities standards, for trial and appellate facilities as well as guidelines for courthouse technology. The appellate facilities guidelines were the first in the nation for state appellate court facilities. The trial court guidelines were based on the 1991 standards, which were substantially revised and updated following a review of guidelines of the federal administrative office facilities, the National Center for State Courts, and state court facilities.

The guidelines were extensively circulated for review and comment to justice agencies and related agencies. The task force revised the guidelines based on comments received. The guidelines are currently being used by trial and appellate courts and counties for master planning, facilities planning, and design. The appellate court guidelines were incorporated into the Budget Act as the template for appellate court construction proposed for Fresno and Santa Ana.

A proposed rule of court, rule 6.150, addressing court facilities guidelines, has been drafted and is pending circulation. It proposes that the AOC be responsible for developing and maintaining guidelines or standards for court facilities construction and renovation and that those guidelines or standards be presented to the council for adoption. The facilities guidelines developed by the Task Force on Court Facilities are a likely candidate for adoption as those guidelines in substantial part. A major change proposed by the rule is that the courts be required to use the guidelines in the review of court renovation and construction projects. The current standards of judicial administration can only recommend, not require. The rule is likely to come before the council at its April 19, 2002, meeting.

Mr. Lloyd pointed out that the courts would also be required to report any deviations from those guidelines so that the AOC had a history of where there were problems with the guidelines, where they needed to be adjusted, or where counties failed to build court facilities that complied with them.

Justice Kremer said the task force did not consider the proposed rule at all. The issue of whether or not facilities standards should be mandatory or discretionary was raised but was irrelevant to what the task force was doing because it was drafting the guidelines only to be used to inform the field surveys. The question of their administrative use, either in a county or state environment, is one for the council, and the task force deliberately expressed no opinion.

Mr. Vickrey said his recommendation to staff, as discussed with Justice Kremer, was that this become a rule of court and that it be mandatory that the guidelines be utilized, with a requirement to provide information to the Judicial Council on why a court intends to deviate from the guidelines, "Without these tools and a feedback mechanism, we will lose the ability to keep them up to date and to find out why compromises are being made, even in cases where they are necessary. We must move forward on the assumption that the state will assume responsibility for the facilities and that the Judicial Council will be responsible for oversight of the facilities. We need to have in place a system of accountability that begins the flow of information. There is no way for the council to enforce that as it relates to the counties, but we have to have some way to start the process or we will have spent three years producing a report that will do just what the last one did, which is to lie on a shelf."

Council action:

No action was taken.

Approval of Judicial Council Meeting Minutes

The Chief Justice reminded the council that the minutes of the December 18, 2001, meeting needed to be approved before the close of the meeting.

Justice Huffman moved that the minutes be approved.

Discussion

Judge Edwards pointed out that he had not participated in the December 18, 2001, meeting. With that correction noted, the council approved the minutes of the meeting.

New Business

Justice Edwards moved that the Judicial Council pass a resolution to the U.S. Congress recommending continuation of funding for the State Justice Institute so that it can continue its work on behalf of the state courts. The SJI has been phased out by congressional act over the next two years. The National Council of Juvenile and Family Court Judges and the Conference of Chief Justices have taken a position to ask Congress to extend funding. The SJI has greatly benefited the judicial branch and the services we provide.

The Chief Justice asked the Executive and Planning Committee to prepare a resolution for this purpose. He stated, for informational purposes, that he and the other Chief Justices feel that it would be a great loss if this organization were to be defunded and to go out of existence. The SJI has stopped taking any new projects because of this and has been left with only enough funding until the end the year.

Justice Huffman seconded the motion.

Council action:

The Judicial Council voted to have the Executive and Planning Committee prepare the resolution in support of the State Justice Institute to come from the Judicial Council.

The Chief Justice asked that staff transmit copies of the final resolution to the SJI, the National Center for State Courts, and the Conference of Chief Justices so those groups will be aware of the council's action and can make appropriate use of that in conjunction with their own efforts.

Judge Edwards mentioned that President George W. Bush signed an extension of the court improvement program, which benefits the juvenile courts of the nation and has benefited the California courts significantly. Judge Edwards asked that the council be advised of federal activities that benefit the state courts. He proposed that AOC staff

report back to the council at a convenient meeting a way in which the council can monitor federal legislation that would benefit California. Several pieces of legislation have passed that contain benefits for the judiciary but currently there isn't a way for the council to know whether it is receiving those benefits. Judge Edwards proposed that AOC staff provide the council with information on potential financial opportunities in that area.

The Chief Justice agreed and directed staff to start with the National Center for State Courts as well as the staff to the Conference Chief Justices.

Judge Edwards referred to an e-mail from Mr. Vickrey that outlined what the Conference of State Court Administrators (COSCA) does. It was an excellent summary of all of the legislative activity in Congress and would be a good starting place for this effort.

Council action:

The Chief Justice directed staff to research and report back to the council on the possibility of monitoring federal legislation to keep track of activities that benefit the state courts to ensure that California gets its fair share of federal benefits to which it is entitled. The Chief Justice directed staff to:

1. Contact the National Center for State Courts and the Conference of Chief Justices for information on their tracking systems for monitoring legislation.
2. Follow up on Judge Edwards's suggestion that COSCA's outline summarizing all of Congress's legislative activity would be an excellent source of information.

Circulating and Appointment Orders Approved

Circulating Orders:

Circulating Order—CO-01-09: Revise Uniform Bail and Penalty Schedules

For information only; no action necessary.

Appointment Orders: Appointment to the Judicial Council

For information only; no action necessary.

Appointment Orders: Appointments to the Judicial Council’s Blue Ribbon Panel of Experts on Arbitrator Ethics

For information only; no action necessary.

Appointment Orders: Appointments to the Judicial Council’s Trial Court Presiding Judges Advisory Committee

For information only; no action necessary.

Appointment Orders: Appointments to the Executive Committee of the Judicial Council’s Trial Court Presiding Judges Advisory Committee

For information only; no action necessary.

Appointment Orders: Appointments to the Judicial Council’s Rules and Projects Internal Committee

For information only; no action necessary.

Appointment Orders: Appointments to the Judicial Council’s Governing Committee of the Center for Judicial Education and Research

For information only; no action necessary.

There being no further business, the meeting was adjourned at 4:45 p.m.

Respectfully submitted,

William C. Vickrey
Secretary