

**JUDICIAL COUNCIL MEETING**  
**Minutes of October 26, 2001, Meeting**

The Judicial Council of California business meeting began at 8:30 a.m. on Friday, October 26, 2001, at the Administrative Office of the Courts in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

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

**Absent:** Associate Justice Marvin R. Baxter; Senator Martha Escutia; Assembly Member Darrell Steinberg; and Mr. John J. Collins.

**Others present included:** Mr. William C. Vickrey, Ms. Jemini Blawer, Ms. Amedee L. Bradbury, Judge Terence L. Bruiniers, Mr. Michael Case, Mr. Jim Daby, Ms. Ann Epstein, Judge Judith Donna Ford, Ms. Beth Jay, Ms. Jessica Moss, Mr. Robert Naylor, Mr. Frederick Ohlrich, Associate Justice Joanne C. Parrilli, Ms. Judy Peterson, Ms. Carole Prescott, Mr. Victor Rowley, Mr. Jeff Sievers, Mr. Marc Wolf; **staff:** Ms. Shireen Advani, Ms. Heather Anderson, Mr. Jonathan Bae, Mr. Christopher Belloli, Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. James Carroll, Ms. Donna Clay-Conti, Mr. Douglas Coffee, Ms. Donna Cortes, Ms. Lesley Duncan, Ms. Jane Evans, Ms. Audrey Evje, Mr. Michael Fischer, Ms. Susan Goins, Ms. Sheila Gonzalez, Ms. Charlene Hammitt, Ms. Lynn Holton, Ms. Bonnie Hough, Ms. Melissa Johnson, Ms. Camilla Kieliger, Ms. Allison Knowles, Ms. Shawn Landry, Mr. Ray LeBov, Mr. Douglas Miller, Mr. Frederick Miller, Ms. Suzanne Murphy, Mr. Lyle Nishimi, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Maryl Olivera, Ms. Eraina Ortega, Ms. Sonya Smith, Ms. Pat Sweeten, Ms. Marcia Taylor, Ms. Nancy Taylor, Ms. Linda Theuriet, Ms. Karen Thorson, Mr. Courtney Tucker, Mr. Jack Urquhart, Mr. Jim Vesper, Mr. Alla Vorobets, Ms. Julia Weber, Mr. Joshua Weinstein, Mr. Jim Whitsett, Mr. Alan Wiener, Ms. Pat Yerian; **media representatives:** Ms. Shennen Jiffe, *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 October 26, 2001, which was sent to members in advance of the meeting.)

**Special Comment:**

Chief Justice Ronald M. George welcomed members of the council and others in attendance, and extended a special thanks to outgoing council member Mr. Michael Case, acknowledging his outstanding contributions to the Judicial Council.

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

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

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

The council approved the minutes of the meeting of August 24, 2001.

## **Judicial Council Committee Presentations**

### *Executive and Planning Committee*

Associate Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee had met several times since the council's August meeting—once to finalize appointments to the council's various advisory committees and several times to set the agenda for the council's current meeting.

### *Policy Coordination and Liaison Committee*

Associate Justice Richard D. Aldrich, vice-chair, reporting in Associate Justice Marvin R. Baxter's absence, stated that the Policy Coordination and Liaison Committee had not met since the council's August meeting, pending the start of the Legislature's 2001–2002 session, which convenes in January 2002. He reported that the final 2001 legislative status chart, which details Judicial Council–sponsored legislation and positions on other bills taken on behalf of the council by the Policy Coordination and Liaison Committee, has been posted on the judicial branch Web site. The policy committee has reviewed more than 50 bills, and the Office of Governmental Affairs (OGA) achieved the desired outcome on most of them. Furthermore, the council sponsored 11 bills that were all signed by the Governor. Significant among these bills are Assembly Bill 223, which makes important changes to the Trial Court Funding Act of 1997; Senate Bill 475, which requires private arbitrators to comply with ethical standards and disclosure requirements that will be developed by the Judicial Council; Assembly Bill 1099, which makes several important changes to the Judges' Retirement System laws; and Senate Bill 1112, which establishes Caesar Chavez Day as a court holiday beginning in 2002.

Associate Justice Aldrich reported that the policy committee will be reviewing proposals for 2002 Judicial Council–sponsored legislation at its meeting on October 29, 2001, and will present its recommendations to the council in November<sup>1</sup>. He also stated that OGA is preparing the *Court News* 2001 Legislative Summary to be published in November. Furthermore, acting on behalf of the Chief Justice, OGA is once again arranging annual liaison meetings with the State Bar, the California District Attorneys Association, the California Attorneys for Criminal Justice, the California State Association of Counties, the Consumer Attorneys of California, and the California Defense Counsel. These meetings enhance the council's working relationship with the Legislature and identify areas of common interest. Associate Justice Aldrich also reported that early next year,

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<sup>1</sup>The November meeting at which this report was to take place was subsequently moved to December 2001.

the Judicial Council will host the Eighth Annual Judicial-Legislative-Executive Forum at the State Capitol. This event will take place in conjunction with the Chief Justice's State of the Judiciary address to the Legislature. The date of the forum will be announced later.

#### *Rules and Projects Committee*

Judge Ronald B. Robie, chair, reported that the Rules and Projects Committee met on September 25, 2001, to review the proposals currently before the council. The committee also met on October 25, 2001, to discuss items deferred from the previous meeting and to review a letter from the Civil Justice Association of California, which requested that the Judicial Council develop rules for class action certification standards. The Civil Justice Association of California's request was referred to the Civil and Small Claims Advisory Committee to develop a proposal for rules or a statute containing the criteria for certification of class actions. Judge Robie informed the members that a proposal on uniform statewide class action rules appears on the council's current agenda as item D8.

The Rules and Projects Committee also reviewed item D2 on the current agenda, which relates to the Governing Committee of the Center for Judicial Education and Research (CJER). The Executive and Planning Committee had directed AOC staff to analyze rule 6.50 of the California Rules of Court and to suggest revisions to make it more consistent with other rules on advisory committees to the council. After discussion, staff was directed to find a means for preserving reference to the historical relationship between the California Judges Association (CJA), the council, and CJER, which is addressed in rule 6.50(a). The committee will review staff proposals on this matter at a meeting to be held in November.

#### *Discussion*

Associate Justice Richard Aldrich asked for additional information about the Civil Justice Association of California. Judge Robie responded that the association's membership includes attorneys involved primarily in class action proceedings. Justice Aldrich reported that the association was formerly known as the California Coalition for Tort Reform, a special interest group. Judge Robie indicated that prior to the Civil Justice Association's request, the Rules and Projects Committee had already taken up the matter of possible rules for class action certification standards.

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

Judge William C. Harrison reported on a recent visit to the Superior Court of Siskiyou County. Council members Judge Ronald B. Robie and Ms. Christine Patton accompanied Judge Harrison on the visit. Also participating in the visit were Mr. Michael Roddy, Ms. Pat Sweeten, and Ms. Shawn Landry of the Administrative Office of the Courts (AOC).

Judge Harrison reported that the Superior Court of Siskiyou County faces serious facility issues. The court has five facilities, some of them located in former commercial establishments. Furthermore, the county's main courthouse in Yreka provides few security features. Judges are closely quartered with court clerical staff, and the jury assembly room does double duty as the holding cell for arraignments on the criminal calendar.

Judge Harrison informed the council that Siskiyou is the fifth largest county in the state and that winter weather poses significant transportation problems for the four judges and one commissioner who must travel between court locations.

The court experiences staffing shortages because of pay inequities. Many court employees have resigned their positions in order to accept higher paying positions offered by the county. The court retains the services of only two part-time court reporters and one Spanish-speaking court interpreter. If interpreters for other languages are needed, the court must obtain them from Sacramento or San Francisco at a rate of \$600 to \$1,000 per day, which places a serious strain on the court's budget.

Judge Harrison reported that the court has entered into a collaborative project with the Superior Court of Modoc County to share court facilities.

### **Signing of Resolution**

The Chief Justice signed a resolution proclaiming November to be Court Adoption and Permanency Month. The Chief Justice praised the resolution for drawing attention to a very worthy effort and commended the state courts for their efforts in furthering the cause of permanency for children.

## **CONSENT AGENDA**

The Chief Justice was informed that item A14 on the Consent Agenda had been removed to the Discussion Agenda.

### **ITEM A RULES, FORMS, AND STANDARDS**

#### **Item A1 Defining the Words of Authority in the California Rules of Court (amend Cal. Rules of Court, Introductory Statement) (Action Required)**

The Introductory Statement to the California Rules of Court was first approved by the Judicial Council in 1992. It appears at the beginning of all published versions of the rules and provides definitions for basic terms that are used pervasively throughout the rules, standards, and orders promulgated by the council. The Rules and Projects Committee has determined that the Introductory Statement needs to be updated to reflect, among other

things, the council’s recent policy decision regarding the use of “must” in place of the ambiguous “shall” in mandatory rules provisions and recent amendments to rule 981.1 regarding preemption of local rules of court.

*Council action:*

Effective January 1, 2002, the Judicial Council amends the Introductory Statement to the California Rules of Court to:

1. Reflect a recently adopted council policy on the use of “must” instead of “shall” in new and amended rules, effective January 1, 2001;
2. Clarify that local rules declaring optional council forms to be mandatory are preempted by rule 981.1;
3. Clarify and reinforce the distinction between forms “adopted” for mandatory use and those “approved” for optional use; and
4. Incorporate other necessary technical amendments.

**Item A2      New and Amended Rules on Rule Making (amend Cal. Rules of Court, rule 6.20; adopt rules 6.21 and 6.22) (Action Required)**

Rule 6.20 of the California Rules of Court sets out the procedure by which proposals for new or amended rules, standards, and forms are processed. The rule addresses proposals from members of the public, task forces, and advisory committees but not proposals from the Administrative Office of the Courts (AOC) or from the Judicial Council’s internal committees. Although such proposals are unusual, they do occur on occasion. In addition, the rule does not provide for any exceptions to the normal procedure, which sometimes have proved to be necessary when a rule or form change needs to be expedited.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 6.20 of the California Rules of Court and adopts rules 6.21 and 6.22, clarifying how proposals are submitted and recommendations made to the council for rule and form changes and allowing for exceptions to the normal process under compelling circumstances.

**Item A3      Appellate Advisory Committee: Membership Changes (amend Cal. Rules of Court, rule 6.40) (Action Required)**

The State Public Defender has historically been a member of the Appellate Advisory Committee. However, rule 6.40 of the California Rules of Court—the rule that establishes the Appellate Advisory Committee and lists the membership categories for that committee—does not specifically designate the State Public Defender as a member.

Also, existing rule 6.40(c)(9), which created a membership category for a “member of the Attorney General’s appellate group,” needs clarification. The Attorney General’s Office has no attorney division known as its “appellate group,” and the rule does not specify whether the member must be an appellate attorney.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 6.40 of the California Rules of court to:

1. Make the State Public Defender a separate membership category of the Appellate Advisory Committee; and
2. Clarify that the committee member from the Attorney General’s Office must be an appellate attorney.

**Item A4 Interlocutory Appeals of Bifurcated Issues in Family Law Cases (amend Cal. Rules of Court, rule 1269.5) (Action Required)**

Rule 1269.5 provides a set of procedures for interlocutory appeals from decisions of certain bifurcated issues in family law cases. However, the rule is unclear about whether a party’s failure to make use of these procedures will preclude review of the bifurcated issues on appeal from the final judgment in the case. One widely used treatise advises parties to exhaust all steps to obtain a certificate of probable cause and permission to appeal for each bifurcated issue, even if they do not need or want immediate appellate review, in order to preserve the issue for review on appeal from the final judgment.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 1269.5 of the California Rules of Court to clarify that a party’s failure to move for certification or for permission to appeal a bifurcated issue does not preclude review of that issue after a final judgment.

**Item A5 Appellate Rules: Preparation of Pretrial Records in Death Penalty Cases (amend Cal. Rules of Court, rule 39.52) (Action Required)**

Rule 39.52 of the California Rules of Court provides for uniform record preparation procedures in death penalty cases prior to trial. The current version of the rule addresses the preparation of the record of municipal court proceedings. The rule has not been updated in light of trial court unification and does not make sense in a unified court.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 39.52 of the California Rules of Court to implement amendments made necessary by unification of the courts.

**Item A6      Civil Forfeiture in Drug Cases: Form for Opposing Forfeiture (revise form MC-200, *Claim Opposing Forfeiture*) (Action Required)**

Form MC-200, *Claim Opposing Forfeiture*, is a Judicial Council–approved form used in forfeiture proceedings arising under Health and Safety Code section 11488. Under that section, police may seize property used to facilitate certain Health and Safety Code violations; certain persons with an interest in the seized property may challenge forfeiture by use of form MC-200. There is no filing fee in those proceedings if the value of the seized property is \$5,000 or less. (Health & Saf. Code, § 11488.5(a)(3).) However, there is no space on the current version of the form to specify the value of the property, making it difficult for clerks to determine whether to charge a filing fee.

*Council action:*

Effective January 1, 2002, the Judicial Council approves revisions to form MC-200, *Claim Opposing Forfeiture*, so that it specifies the value of the seized property.

**Item A7      Notice of Appeal Form in Felony Cases (revise form CR-120, *Notice of Appeal—Felony (Defendant)*) (Action Required)**

Judicial Council form CR-120, *Notice of Appeal—Felony (Defendant)*, is confusing because it does not track the statutory requirements for obtaining a certificate of probable cause for appeal following a guilty plea or an admission of a probation violation.

*Council action:*

Effective January 1, 2002, the Judicial Council revises form CR-120, *Notice of Appeal—Felony (Defendant)*, to track the relevant statutory language.

**Item A8      Family Law: Forms to Establish Parental Relationship and Child Support in Title IV-D Cases (revoke forms 1298.01, 1298.02, 1298.08, 1298.10, 1298.11, and 1298.12) (Action Required)**

More recently adopted forms that serve the same functions have superseded forms 1298.01, 1298.02, 1298.08, 1298.10, 1298.11, and 1298.12. The older versions were not previously revoked to allow time for resolution of cases that had been filed using them.

*Council action:*

Effective January 1, 2002, the Judicial Council revokes family law forms 1298.01, 1298.02, 1298.08, 1298.10, 1298.11, and 1298.12 because they have been superseded by more recently adopted forms that serve the same functions.

**Item A9      General Family Law Forms and New Change-of-Address Form (revise forms 1296.70, 1296.75, 1285, 1285.10, and 1285.60; approve forms FL-585 and MC-040) (Action Required)**

Currently there are no forms available to complete an action initiated by form 1296.80, *Petition for Custody and Support of Minor Children*; to challenge registration of an out-of-state custody decree; or to register a change of address with the court. These are all procedures with which self-represented litigants often require assistance.

*Council action:*

The Judicial Council adopts the recommendations of the Family and Juvenile Law Advisory Committee as follows:

1. Effective July 1, 2002, form 1296.70 is revised (newly numbered as FL-230), *Declaration for Default or Uncontested Judgment (Uniform Parentage, Custody and Support)*; form 1296.75 is revised (newly numbered as FL-250), *Judgment (Uniform Parentage, Custody and Support)*, to allow their use with a custody or support proceeding initiated by form 1296.80, *Petition for Custody and Support of Minor Children*.
2. Effective July 1, 2002, form FL-585, *Request for Hearing Regarding Registration of Out-of-State Custody Decree*, is approved for optional use. The form allows litigants who wish to respond to such a registration to request a hearing.
3. Effective January 1, 2002, form MC-040, *Notice of Change of Address and Telephone Number*, is approved for optional use. The form provides a simple way for litigants to properly notify the court, the opposing party, and counsel of a new address for service and notification.
4. Effective January 1, 2002, form 1285, *Order to Show Cause (Family Law—Uniform Parentage)*, is revised to correct a technical error and restore the line allowing the courts to (1) order the parties to attend custody mediation services and (2) add address information for custody mediation services.
5. Effective January 1, 2002, forms 1285.10, *Notice of Motion (Family Law—Uniform Parentage)*, and 1285.60, *Order to Show Cause and Affidavit for Contempt (Family Law—Domestic Violence Prevention—Uniform Parentage—Governmental)* are revised to reflect the correct deadline for filing responsive pleadings.

**Item A10      Family Law: Renumbering All Forms (renumber forms 1281–1299, forms commencing with DV and OMB, and form MC-150) (Action Required)**

This proposal would renumber all family law forms including domestic violence, governmental support, uniform parentage, and required federal forms in order to increase the ability to locate needed forms. Certain clerical and technical changes would be made to conform to changes in the law and to increase uniformity in the forms.



*Council action:*

Effective July 1, 2002, the Judicial Council adopts a new numbering system for family law forms as set forth by the Family and Juvenile Law Advisory Committee in the chart attached at Tab A10, pages 4–10, of the Judicial Council of California, Reports and Recommendations binder for October 26, 2001, and effective July 1, 2002, approves certain technical changes so that the forms conform to current law as set forth in the chart attached at pages 11–12 of the same binder.

**Item A11      Governmental and Family Law Forms for Initiating and Processing Child Support Cases (revise forms 1298.09, 1299.01, and 1299.04; approve forms 1285.66 and 1296.32; and adopt form 1299.02) (Action Required)**

The enactment of Family Code section 17200 transferred the duties of Title IV-D child support enforcement from the local district attorneys' offices to the Department of Child Support Services. This change required technical language changes to the forms. The Judicial Council has a legislative mandate to provide simplified forms for use in Title IV-D child support actions. The new forms provide an efficient format for drafting various pleadings and orders that are specific to Title IV-D actions.

The proposed revised forms would reflect minor changes such as replacing all references to "district attorney" with "local child support agency." The proposed new forms would expedite entry of orders after hearing (including orders regarding contempt) and create a specialized notice and acknowledgment of receipt for governmental forms.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Revises the *Notice of Motion (Governmental)* (form 1298.09) to add "Other Parent" to the caption, replace references to "blood testing" with "genetic testing," and add an order shortening time;
2. Revises the *Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (Governmental)* (form 1299.01) to replace all references to "district attorney" with "local child support agency," replace references to "blood testing" with "genetic testing," update code references, and modify the Statement of Rights and Responsibilities to include situations in which the father has applied for the services of the local child support agency in order to obtain a paternity judgment;
3. Revises the *Answer to Complaint or Supplemental/Amended Complaint Regarding Parental Obligations (Governmental)* (form 1299.04) to replace all references to "district attorney" with "local child support agency," replace references to "blood testing" with "genetic testing," and update code references;
4. Approves for optional use in any kind of family law-related or governmental contempt proceeding the new *Findings and Order After Contempt Hearing (Family*

*Law—Domestic Violence Prevention—Uniform Parentage—Governmental*) (form 1285.66) to accompany the *Order to Show Cause and Affidavit for Contempt* (form 1285.60);

5. Approves for optional use the new *Short Form Order After Hearing (Governmental)* (form 1296.32) to provide a simplified order after hearing for cases that have been continued for further hearing; and
6. Adopts for mandatory use the new *Governmental Notice and Acknowledgment of Receipt (Governmental)* (form 1299.02) to provide a specialized notice and acknowledgment for governmental actions.

**Item A12 Domestic Violence Training Standards for Court-Appointed Child Custody Investigators and Evaluators (amend Cal. Rules of Court, rule 1257.7) (Action Required)**

Rule 1257.7 of the California Rules of Court became effective January 1, 1999. The rule currently requires that court-appointed child custody evaluators obtain 16 hours of advanced training, 12 of which must be in-person classroom instruction. No person or entity approves or certifies the training or training providers. After meeting the threshold requirement, evaluators are required every year to receive another 4 hours of in-person classroom instruction designed to update attendees about both changes in law and research related to domestic violence.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 1257.7 of the California Rules of Court, to:

1. Eliminate the requirement that the 12-hour advanced training be limited to “in-person classroom instruction”;
2. Require Administrative Director of the Courts’ approval of training that fulfills the 12-hour requirement; and
3. Add an additional content component to the 12-hour advanced training that gives evaluators information about the importance of discouraging participants in child custody evaluations from blaming victims of domestic violence or minimizing allegations of violence or child abuse.

**Item A13 Court-Connected Child Custody Mediation: Written Notice of Limitations on Confidentiality (amend Cal. Rules of Court, rule 1257.1) (Action Required)**

Rule 1257.1 of the California Rules of Court became effective July 1, 2001. The rule provides standards for court-connected mediators working with the parties in contested child custody proceedings. The rule as written and implemented requires that information be provided to the parties regarding the limitations on confidentiality. However, the rule did not require that notice of those limitations be provided to the parties in writing. This proposal seeks to amend the rule to require that notification of the limits of confidentiality be provided to the parties in writing so that litigants are more likely to be informed of the circumstances under which information they provide to mediators may be disclosed to third parties.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 1257.1 of the California Rules of Court to require court-connected mediation programs to provide written notice of the limitations on confidentiality to the litigants they serve.

**Item A14 Family Court Services: Domestic Violence Protocol(adopt Cal. Rules of Court, rule 1257.2) (Action Required)**

This item was moved to the Discussion Agenda.

**Item A15 Juvenile Joinder (adopt Cal. Rules of Court, rule 1434; adopt form JV-540) (Action Required)**

The proposed joinder rule would provide protocols for joinder of government agencies and private service providers in juvenile court proceedings where the agency or service provider is alleged to have failed to meet a legal obligation to provide services to a child under the juvenile court's jurisdiction. The proposed mandatory form is intended to facilitate notice of the joinder hearing to the party to be joined.

*Council action:*

Effective January 1, 2002, the Judicial Council adopts rule 1434 of the California Rules of Court and mandatory form JV-540, *Notice of Hearing on Joinder—Juvenile*. The rule and form provide a procedure for notice and conduct of a joinder hearing in juvenile court proceedings.

**Item A16 Juvenile Dependency: Health and Education Information (amend Cal. Rules of Court, rule 1441) (Action Required)**

Legislation in 1999 amended Welfare and Institutions Code section 16010 to provide: "The Judicial Council shall create a form for the purpose of obtaining health and

education information from the child’s parents or guardians at the initial hearing [on a juvenile dependency petition].” In response to that legislation, the council adopted form JV-225, *Health and Education Questionnaire (Juvenile Dependency)*, for mandatory use effective January 1, 2001.

Although the form was adopted pursuant to the legislation, the statute provides no guidance regarding when and how the form is to be completed and distributed.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 1441 of the California Rules of Court to require each parent or guardian present at an initial hearing to complete Judicial Council form JV-225, *Health and Education Questionnaire (Juvenile Dependency)*, or to provide the information necessary to complete the form, and to specify that the social worker assigned to the dependency matter must provide the child’s attorney with a copy of the completed form.

**Item A17     Juvenile Dependency: *Modification Petition Attachment* (revise form JV-180) (Action Required)**

The proposed revisions to form JV-180, *Modification Petition Attachment*, clarify the juvenile court’s orders and findings related to a Welfare and Institutions Code section 388 modification by (1) including additional details in the “findings and orders” section of the form, and (2) rewording and renumbering items. This clarification is necessary because nonattorneys such as parents, guardians, social workers, CASA volunteers, and tribal representatives can, and often do, file the form.

*Council action:*

Effective January 1, 2002, the Judicial Council revises optional form JV-180, *Modification Petition Attachment*, regarding Welfare and Institutions Code section 388 modifications.

**Item A18     Juvenile Law: *Caregiver Information Form* (approve form JV-290) (Action Required)**

California Welfare and Institutions Code section 366.21(b) requires that foster parents and relative caregivers receive notice of juvenile dependency status review hearings. They may attend the hearings or submit any information they deem relevant to the court in writing.

*Council action:*

Effective January 1, 2002, the Judicial Council approves for optional use form JV-290, *Caregiver Information Form*.

**Item A19 Traffic: Mandatory Statewide Form, *Continuation of Citation* (adopt form TR-108) (Action Required)**

Correctable traffic violations may be cited on one of two Judicial Council–approved forms: the TR-140, *Notice to Correct Violation*, or the TR-130, *Notice to Appear*. For notice to appear citations with more than four violations, the citing officer may execute a form TR-106, *Continuation of Notice to Appear*. However, because of differences in procedural requirements and instructions for a notice to correct violation and a notice to appear, the current form TR-106, *Continuation of Notice to Appear*, cannot be used with the form TR-140, *Notice to Correct Violation*.

The California Highway Patrol (CHP) recently requested approval of a continuation form that could be used with either a notice to appear or a notice to correct violation. A multipurpose continuation form was developed for the CHP that is substantially similar to the proposed form TR-108.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Adopts form TR-108, *Continuation of Citation*, as an alternative to form TR-106 for use by all law enforcement agencies; and
2. Adopts a policy allowing the California Highway Patrol to continue to use its own continuation form for one year from the effective date of form TR-108.

**Item A20 Probate Forms: Technical Revisions (revise forms GC-310, GC-340, GC-348, DE-147, DE-350, GC-100, EA-120, and EA-125) and Approval of Instructions on Petitions for Elder Abuse Prevention (approve form EA-150) (Action Required)**

Several probate forms need to be revised to conform to recent legislation, and others require some technical changes or corrections. In addition, the public would benefit from having basic instructions on how to file or respond to a petition for an order to prevent elder or dependent adult abuse.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Revises *Petition for Appointment of Probate Conservator* (form GC-310);
2. Revises *Order Appointing Probate Conservator (Probate Conservatorship)* (form GC-340);
3. Revises *Duties of Conservator and Acknowledgement of Receipt of Handbook (Probate Conservatorship)* (form GC-348);
4. Revises *Duties and Liabilities of Personal Representative (Probate)* (form DE-147);
5. Revises *Petition and Order for Appointment of Guardian Ad Litem Under the Probate Code (Probate Law, Conservatorships, Guardianships, Trusts)* (form DE-350, GC-100);
6. Revises *Order to Show Cause and Temporary Restraining Order (Elder or Dependent Adult Abuse)* (form EA-120)
7. Revises *Application and Order for Reissuance of Order to Show Cause (Elder or Dependent Adult Abuse)* (form EA-125); and
8. Approves for optional use the *Instructions on Petition for a Protective Order to Prevent Elder or Dependent Adult Abuse* (form EA-150).

**Item A21     New and Amended Probate Rules on Trusts, Bonds, and Screening Forms (adopt Cal. Rules of Court, rule 7.902 and amend rules 7.201, 7.1001, and 7.1050) and Amendment of Probate Rules to Conform to the Policy Favoring Plain Language (amend rules 7.2, 7.101, 7.102, 7.150, 7.202, 7.203, 7.204, 7.205, 7.206, 7.250, 7.301, 7.401, 7.402, 7.403, 7.451, 7.452, 7.453, 7.501, 7.650, 7.901, 7.1002, and 7.1051) (Action Required)**

The Probate and Mental Health Advisory Committee is in the process of developing the probate rules in Title Seven of the California Rules of Court. Petitions and accounts involving trusts would be improved by the adoption of a new statewide rule requiring that all such petitions and accounts state the names and addresses of all vested or contingent beneficiaries.

A rule adopted previously on the waiver of bond needs to be amended for consistency with statute. Two other rules requiring that proposed guardians and conservators submit confidential screening forms should be amended to provide certain exceptions.

The current probate rules use “shall” rather than “must” to indicate that an act is mandatory.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Adopts rule 7.902 (Beneficiaries to be listed in petitions and accounts) of the California Rules of Court requiring that all petitions and accounts involving trusts must state the names and last known addresses of all vested or contingent beneficiaries;
2. Amends rule 7.201 (Waiver of bond in will) to eliminate the provision that a petition need not specify the character and value of the property of the estate or the probable income unless the personal representative lives out of state;
3. Amends rules 7.1001 and 7.1050 (on screening forms), which require that proposed guardians and conservators submit confidential screening forms, to indicate that these requirements do not apply to public guardians or to banks and other entities entitled to conduct the business of a trust company; and
4. Amends the probate rules to conform to the policy favoring the use of plain language, including the use of “must” instead of “shall” (amend rules 7.2, 7.101, 7.102, 7.150, 7.202, 7.203, 7.204, 7.205, 7.206, 7.250, 7.301, 7.401, 7.402, 7.403, 7.451, 7.452, 7.453, 7.501, 7.650, 7.901, 7.1002, and 7.1051).

**Item A22     Minors’ Compromises and Blocked Accounts: New Rules and Mandatory Forms (adopt Cal. Rules of Court, rules 378 and 7.950–7.954; repeal rule 241; adopt forms MC-350, MC-351, MC-355, MC-356, MC-357, and MC-358) (Action Required)**

Current rule 241 on proceedings involving the settlement of claims of minors and incompetent persons provides inadequate guidance for parties seeking to compromise such cases and insufficient information to the courts.

Although there are some local forms for petitions to compromise claims of minors and incompetent persons and for dealing with blocked accounts, there are presently no uniform statewide forms.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Repeals rule 241 of the California Rules of Court and adopts rules 378, 7.950, 7.951, 7.952, 7.953, and 7.954 to provide a comprehensive set of rules on the compromise of claims of minors and incompetent persons and on blocked accounts;
2. Adopts *Petition to Approve Compromise of Claim* (form MC-350);
3. Adopts *Order Approving Compromise of Claim* (form MC-351);
4. Adopts *Order to Deposit Money Into Blocked Account* (form MC-355);
5. Adopts *Receipt and Acknowledgment of Order for the Deposit of Money Into Blocked Account* (form MC-356);

6. Adopts *Petition for Withdrawal of Funds From Blocked Account* (form MC- 357); and
7. Adopts *Order for Withdrawal of Funds From Blocked Account* (form MC-358).

**Item A23     *Application and Order for Reissuance of Order to Show Cause and Temporary Restraining Order (approve form 982(a)(30)) (Action Required)***

Code of Civil Procedure section 527(d)(5) authorizes the court to reissue any temporary restraining order previously issued upon the filing of an affidavit by the applicant that the opposing party could not be served within the time required under the statute. The Judicial Council has adopted forms for the reissuance of temporary restraining orders for particular types of cases. But there is no general form for applying for the reissuance of an order to show cause and temporary restraining order.

*Council action:*

Effective January 1, 2002, the Judicial Council approves form 982(a)(30) for optional use by litigants applying for the reissuance of temporary restraining orders.

**Item A24     *Civil Procedure: Amendments to and Amended Pleadings (amend Cal. Rules of Court, rule 327) (Action Required)***

Rule 327 of the California Rules of Court, which concerns amended pleadings, does not presently address the problem of the late filing of amendments. The Civil and Small Claims Advisory Committee proposes amending rule 327 to include several new provisions based on former rule 9.19 of the Local Rules of the Superior Court of Los Angeles County. A major purpose of these amendments would be to clarify that late amendments, which may result in trial postponement, can be made only on a proper showing of the reasons why the amendments could not have been made earlier.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 327 of the California Rules of Court to specify in greater detail:

1. The required contents of the declaration or declarations supporting a motion to amend pleadings; and
2. The form of amendment.



**Item A25    *Memorandum of Costs on Appeal* (adopt form MC-013)  
(Action Required)**

The Judicial Council has previously adopted forms for parties to use to apply for most pre- and postjudgment costs in the trial courts. However, there is no Judicial Council form for parties to use in applying for costs on appeal.

*Council action:*

Effective January 1, 2002, the Judicial Council adopts the *Memorandum of Costs on Appeal* (form MC-013) for mandatory use by parties applying for costs on appeal.

**Item A26    *Summary Judgment* (amend Cal. Rules of Court, rules 342, 343, and 345)  
(Action Required)**

Rule 342 of the California Rules of Court requires that the party bringing a motion for summary judgment must file a separate statement. The separate statement identifies the causes of action, claims, issues, or affirmative defenses to be decided; the undisputed material facts; and the evidence that supports those facts. The statement is sometimes complicated and lengthy. The party opposing a motion for summary judgment must prepare its own separate statement. This statement generally must reproduce all the text in the initial separate statement.

The rules on summary judgment currently use the word “shall” rather than “must” to indicate that an act is mandatory.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Amends rule 342 of the California Rules of Court to include a new subdivision (i), which requires a party, upon request, to provide to any other party or the court within three days an electronic version of its separate statement; and
2. Amends rules 342, 343, and 345 to replace “shall” with “must” to conform the rules to council policy favoring the use of plain language.

**Item A27    *Form Interrogatories—Economic Litigation* (revise form FI-129) (Action Required)**

The form interrogatories used in economic litigation contain obsolete terms stating that the form may be “used in municipal courts,” which is confusing to the public.

*Council action:*

Effective January 1, 2002, the Judicial Council revises form FI-129, *Form Interrogatories—Economic Litigation*, by deleting references to “municipal courts” and “superior courts” and substituting “limited civil cases” and “unlimited civil cases,” respectively, for those terms, and to revise the instructions to be more user friendly.

**Item A28 Civil Judgment Form (approve form JUD-100) (Action Required)**

Courts throughout the state have developed local forms for entry of default and other judgments. Some courts require the parties to use the court’s local judgment forms. Many local forms use traditional legal language that the parties may not readily understand.

*Council action:*

Effective January 1, 2002, the Judicial Council approves a new optional form, *Judgment* (form JUD-100), to be used in simple civil cases for either a clerk’s judgment or a court judgment: (1) after default, (2) on stipulation of the parties, or (3) after a court trial.

**Item A29 Civil Case Cover Sheet (amend Cal. Rules of Court, rule 982.2) (Action Required)**

There have been difficulties with rule 982.2, which requires that a *Civil Case Cover Sheet* (form 982.2(b)(1)) be filed with each civil case. The main problem derives from the refusal of some clerks to file an initial pleading because it is not accompanied by a cover sheet or the sheet is somehow defective. See *Maginn v. City of Glendale* (1999) 72 Cal.App.4th 1102, 1106 (“the clerk, especially upon being informed that immediate filing of the complaint and issuing of summons were necessary to satisfy the applicable limitations statute, should have filed the complaint and issued summons..., and simply required counsel to provide the cover sheet later”).

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 982.2 of the California Rules of Court to specify that if a party fails to file a *Civil Case Cover Sheet* with its first papers, the clerk must file the papers. The amended rule further specifies that the failure of a party or the party’s counsel to file a cover sheet may subject that party, its counsel, or both, to sanctions.

**Item A30 Civil Rules: Technical Amendments (amend Cal. Rules of Court, rules 200, 201, 301, and 363) (Action Required)**

Rules 200 and 301 of the California Rules of Court contain obsolete references to “municipal courts.” Rule 201 (on captions) does not reflect the new amended statutes on the reclassification of civil cases. Rule 363 refers to the optional use of certain civil harassment and workplace violence forms that were recently made mandatory.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Amends rules 200 and 301 of the California Rules of Court to eliminate obsolete references to “municipal courts”;
2. Amends rule 201 to provide that the caption of pleadings and the title of stipulations must indicate a case has been reclassified under Code of Civil Procedure section 403.020, 403.030, or 403.050; and
3. Amends rule 363 to eliminate the phrase “if the petition and the application for temporary restraining orders are submitted on a form approved by the Judicial Council.”

**Item A31 Enforcement of Judgments (revise and renumber form 982(a)(1); and revise forms EJ-150, and EJ-190) (Action Required)**

Most of the Judicial Council forms for the enforcement of judgments have not been revised in a number of years. Because of recent legislation on the enforcement of judgments, the forms need to be revised. Commentators have recommended other technical or formatting changes to the forms.

*Council action:*

Effective January 1, 2002, the Judicial Council revises the following enforcement of judgment forms:

1. *Abstract of Judgment (Civil)* (form 982(a)(1), renumbered as form EJ-001);
2. *Notice of Levy (Enforcement of Judgment)* (form EJ-150); and
3. *Application for and Renewal of Judgment* (form EJ-190).

The revisions bring the forms into conformity with recent legislation and make technical changes recommended by commentators.

**Item A32    Preemption of Local Rules: Retain Exception for Eminent Domain Law (amend Cal. Rules of Court, rule 981.1) (Action Required)**

Rule 981.1 preempts local court rules in most civil pretrial proceedings. This rule provides a temporary exception, until January 1, 2002, for local rules in three kinds of cases: class actions, receivership proceedings, and eminent domain proceedings. If the council adopts new or amended rules on class actions and receiverships, effective January 1, 2002, the temporary exceptions for local rules in these areas should be repealed.

In the area of eminent domain law, a different course of action is appropriate. There is no significant interest in, or support for, statewide rules in this area at this time. However, at least one court, the Superior Court of Los Angeles County, benefits substantially from having local rules for eminent domain cases.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 981.1 of the California Rules of Court to:

1. Eliminate subdivision (c), which provided temporary exceptions for certain local rules while statewide rules were being developed; and
2. Retain an exception for local rules for eminent domain cases in subdivision (b).

**Item A33    Receivership Rules and Forms (amend and renumber Cal. Rules of Court, rules 349, 351, and 353; adopt rules 354 and 1903–1908; and approve forms RC-200, RC-210, RC-300, and RC-310) (Action Required)**

When rule 981.1 (Preemption of local rules) initially went into effect, it would have preempted all local rules and forms in the area of receiverships. However, at the request of the Superior Court of Los Angeles County, the Judicial Council authorized a partial, temporary exception to preemption in this area until January 1, 2002, to allow for the development of statewide rules and forms on receiverships.

*Council action:*

Effective January 1, 2002, the Judicial Council:

1. Amends and renumbers rules 349, 351, and 353 of the California Rules of Court as rules 1900, 1901, and 1902;
2. Adopts rules 354 and 1903–1908; and
3. Approves four new forms for optional use: (1) *Ex Parte Order Appointing Receiver and Order to Show Cause and Temporary Restraining Order—Rents, Issues, and Profits (Receivership)* (form RC-200), (2) *Order Confirming Appointment of Receiver and Preliminary Injunction—Rents, Issues, and Profits (Receivership)* (form RC-210), (3) *Order to Show Cause and Temporary Restraining Order—Rents, Issues, and*

*Profits (Receivership)* (form RC-300), and (4) *Order Appointing Receiver After Hearing and Preliminary Injunction—Rents, Issues, and Profits (Receivership)* (form RC-310).

These rules and forms provide improved procedures for the appointment of receivers and for the conduct of receiverships, and provide standard form orders for optional use in appointing, and confirming the appointment of, receivers in rents, issues, and profits receiverships.

## **Item B California Drug Court Projects Under 2001 Budget Act (Action Required)**

The Budget Act for fiscal years 1999–2000 and 2000–2001 designated five drug courts to receive funding that totaled \$1 million from the California Drug Court Projects (0250-101-0001 Schedule (2) 30.20). This year, the specific language designating five drug courts was omitted, thereby allowing funding for a broader spectrum of drug courts.

Therefore, authorization is requested to fund \$378,500 for family treatment courts, with the remaining funds designated for collaborative justice courts focusing on substance abuse.

In spring 1999, the Oversight Committee for the California Drug Court Project recommended that the Judicial Council approve the following criteria for Drug Court Mini-Grant Awards. These same criteria were used to determine the Drug Court Projects funding under the Budget Act of 2001–2002.

- Viability of the program and its current level of financial need;
- Consistency with the California Standards of Judicial Administration and other drug court guidelines;
- Involvement of a local steering committee;
- Successful completion of statistical and financial reporting requirements for previous mini-grant funding periods (if applicable); and
- Completeness and comprehensiveness of the application.

### *Council action:*

The Judicial Council approves using 2001 Budget Act funds for the California Drug Court Projects funding for the following two purposes:

1. Fourteen family treatment courts in Butte, Contra Costa, Fresno, Nevada, Placer, Sacramento, San Diego (North and Central), San Joaquin, Santa Clara (two courts), Solano, Stanislaus, and Ventura Counties. The individual grants range from \$9,000 to a maximum of \$30,000 for each court. The family treatment court grant requests total \$378,500.
2. Implementation and enhancement of collaborative justice courts including community

courts, domestic violence courts, homeless courts, mental health courts, re-entry courts, and victim offender reconciliation programs that focus on substance abuse issues. These grants will be awarded from \$25,000 to a maximum of \$100,000 for each court.

## DISCUSSION AGENDA

### **ITEM C      Achieving Permanence for Children in California: A Resolution for the Courts (Action Required)**

This item, addressed via signing of a resolution for the courts earlier in the proceedings, required no discussion.

### **ITEM D      RULES, FORMS, AND STANDARDS**

#### **Item D1      Court Clerks Office: Signage (approve form MC-800) (Action Required)**

Ms. Bonnie Hough reported that as many as 80 percent of the cases currently filed in California's family law courts are filed by people who do not have representation of counsel. In response to this, the Family and Juvenile Law Advisory Committee and the Task Force on Self-Represented Litigants have been considering ways to provide a modicum of assistance to those appearing in court without counsel. Ms. Hough informed the council that the role of court clerks in assisting self-represented litigants is a matter of some controversy. In fact, in many California courts there is currently signage indicating that it is inappropriate for court clerks to respond to any kind of legal question.

Ms. Hough informed the council that the Family and Juvenile Law Advisory Committee is recommending that the Judicial Council approve for optional use *Court Clerks Office: Signage* (form MC-800), to better inform court users about the services and assistance that court clerks can and cannot provide. The state's court clerks have already been receiving training on this issue, and many have indicated that the proposed signage would be extremely helpful.

#### *Discussion*

Mr. Arthur Sims indicated that while most court executives and court clerks would probably support the proposed signage, he was concerned that it might possibly communicate a negative message to court. He stated that courts should focus attention on the services they can provide and not on those that they cannot.

Judge Leonard P. Edwards indicated his support for the proposal and reported that his personal experience of working with court clerks confirms the usefulness of the proposed signage. He also suggested that the signage be made available in other languages.

Ms. Pauline W. Gee agreed that the signage should be made available in other languages as soon as possible and suggested that courts with sufficient resources to do so should be encouraged to cover the cost of translation until such time as the Administrative Office of the Courts (AOC) could do so.

Ms. Diane Nunn informed the council that AOC staff is currently seeking funding to cover the cost of translating the signage into several languages so that camera-ready copies could eventually be made available to the courts.

The Chief Justice suggested that for purposes of efficiency, the final translations should be disseminated to the courts in one complete package.

Associate Justice Richard D. Huffman moved for approval of staff recommendations. The motion was seconded. Associate Justice Huffman observed that the proposed signage is optional; thus, courts that find the signage to be inconsistent with their customer service practices are not obligated to use it. However, he indicated that it is often as helpful to tell laypeople what services the court *cannot* provide, as it is to tell them what services can be offered. Such information, he maintained, can be useful in reducing customer frustration.

Ms. Christine Patton expressed her support for the signage and asked if it could be made available to the courts electronically so that it could be customized.

Ms. Diane Nunn responded that the form signage could be made available electronically. Ms. Bonnie Hough reiterated that significant staff training is being undertaken on the role of court clerks, including a video broadcast being developed by the Center for Judicial Education and Research (CJER).

*Council action:*

Effective January 1, 2002, the Judicial Council approves new form MC-800 *Court Clerks Office: Signage*. This form is intended for optional display at the court clerk's office in lieu of any other notices pertaining to the topics of information or advice that court staff may or may not provide.

The motion passed.

**Item D2      Amendment of Rule 6.50 on the Governing Committee of the Center for Judicial Education and Research (amend Cal. Rules of Court, rule 6.50) (No Action Required)**

Ms. Karen Thorson informed the council that item D2 had been placed on the Discussion Agenda so that the council could review the proposed recommendations of the Executive and Planning Committee relative to rule 6.50 of the California Rules of Court *without taking action*. Pending the outcome of the discussion, Ms. Thorson indicated that the council could consider including this item on the Consent Agenda for its November 30, 2001,<sup>2</sup> meeting.

Ms. Thorson explained that the Executive and Planning Committee requested that staff analyze the rule on the Governing Committee of the Center for Judicial Education and Research (Cal. Rules of Court, rule 6.50) and suggest revisions to the rule to make it more consistent with other rules on advisory committees to the council.

She explained that in addition to issues of consistency, the rule contains several provisions that no longer apply since they do not reflect the current practice of the committee.

*Consistency issues*

Ms. Thorson pointed out that under the current provisions of the rule (see rule 6.50(d)), members of the committee are appointed for “two-year staggered terms and may serve for two successive terms.” She indicated that these term limits restrict the Chief Justice’s exercise of discretion in appointing leadership and members of the Governing Committee and are not in keeping with the general rule for advisory committee membership, which provides for appointments by the Chief Justice for three-year staggered terms with no express limit on the number of terms. (Rule 6.31(b).)

*Outdated provisions*

Ms. Thorson informed the council that prior to 1993, the Governing Committee functioned as a semiautonomous entity and was more directly involved with budget issues and staff activities. In 1993 CJER became a division of the AOC and the Governing Committee became an advisory committee to the council. However, as currently written rule 6.50 still reflects some of the pre-1993 roles of the committee.

*Revision strategies*

In revising the rule, staff used rule 6.53, the Court Technology Advisory Committee (CTAC) rule, as a model. Ms. Thorson indicated that this rule was selected because the CTAC is a nonjurisdictional committee and because the rule addresses policy direction. Staff allowed for a brief review and comment period on the suggested revisions. Comments were solicited from the Governing Committee, the Administrative Presiding Justices of the Courts of Appeal, the Clerks/Administrators of the Courts of Appeal, the

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<sup>2</sup> The November meeting referenced here was subsequently moved to December 2001.



Trial Court Presiding Judges, the Trial Court Executive Officers, and the president and executive director of the California Judges Association. Further comment is expected from the president of the California Judges Association after October 26, 2001.

### *Discussion*

Judge Stephen D. Bradbury stated that the proposed revisions would be discussed at the California Judges Association's (CJA) next Executive Board meeting. He thanked the members of the Rules and Projects Committee for their previous discussions on this matter and indicated that a written response from CJA's board would be forthcoming.

Associate Justice Richard Huffman reported that rule 6.50 came to the attention of the Executive and Planning Committee because of the committee's role in making advisory committee nominations to the Chief Justice, who then makes appointments from those nominations. The rule has posed several difficulties because its term limit provisions appear to entitle appointees to two consecutive terms. In all other committees, the Chief Justice makes the decision about consecutive terms of service. In addition, rule 6.50 is inconsistent with other rules affecting advisory committees because the CJER Governing Committee is the only committee for which an outside entity (the California Judges Association (CJA)) has the right to nominate a slate from which the Chief Justice is required to choose appointees.

Associate Justice Huffman urged the council to consider an additional revision to rule 6.50 that would recognize CJA's long relationship with the Governing Committee and CJER. He proposed a revision to provide that CJA may submit nominations for appointments through the Executive and Planning Committee, which is charged with screening all nominations.

The Chief Justice commended the California Judges Association for its valuable role in the education process.

Judge Ronald B. Robie voiced his support for the proposed revisions to rule 6.50 and indicated that the Rules and Projects Committee has scheduled a meeting to review the comments of CJA's Executive Board on this matter, as well as staff's recommendations.

Associate Justice Norman L. Epstein commented on the proposed revisions to rule 6.50(a) that address the historical background on the Governing Committee's area of focus. Associate Justice Epstein indicated that given CJA's special role in the creation of formal judicial education in California, it seemed appropriate to recognize that role in the revised rule or, preferably, in a comment to the rule.

The Chief Justice indicated that the matter of proposed revisions to rule 6.50 of the California Rules of Court would be added to the council's November agenda.

**Item D3      Family Law Information Centers and Family Law Facilitator Offices:  
Guidelines for Operation (adopt Division V of the Appendix to the  
California Rules of Court) (Action Required)**

Ms. Bonnie Hough reported that Family Code section 15010(f) directs the Judicial Council to “promulgate guidelines for the operation of the family law information center in accordance with the Rules of Professional Conduct.” In drafting the guidelines, the Family and Juvenile Law Advisory Committee analyzed the Rules of Professional Conduct to determine those that would apply to family law information centers and family law facilitator offices, and also examined the Code of Judicial Ethics and rules relating to court employees. This analysis was followed by extensive discussions with facilitators and staff of the family law information centers. The committee also engaged in discussions with State Bar staff, particularly attorneys whose area of expertise is ethics and professional competence.

Draft guidelines were then circulated for comment with a request that commentators indicate if they believed the guidelines should apply to family law facilitators and other court-based self-help centers. Based on the comments, the committee decided that the guidelines should be extended to the facilitators, but their application to other self-help centers should be deferred pending the gathering of additional comment.

Ms. Hough drew the council’s attention to comments received in a letter dated October 25, 2001, from Judge David M. Rothman (Retired) expressing concerns about the role of the Family Information Center attorney and family law facilitator.

Ms. Hough reported that attorneys with family law facilitators and family law information centers receive regular training on ethical issues. She indicated that the Family and Juvenile Law Advisory Committee does not believe itself in a position to define the practice of law as part of the proposed guidelines. Staff recommended that the committee consider developing a complaint procedure for family law facilitator offices or direct the local courts to do so.

*Discussion*

Associate Justice Richard D. Huffman raised a process issue with regard to Judge Rothman’s letter of comment. Justice Huffman reported that the Executive and Planning Committee occasionally receives requests from individuals wishing to appear and address the council on various issues or on matters of dispute. The Executive and Planning Committee is charged with ruling on these requests but has been reluctant to open council meetings to the kind of debate the requests might entail. Rather, Justice Huffman explained that the Executive and Planning Committee prefers to process matters for council review through the advisory committees—a process that allows staff to solicit a full range of comment on the issues and that allows for staff review and analysis before matters come to the council. Justice Huffman suggested that it might be appropriate at some point for the council to consider rule changes that specifically afford opportunities

for individuals to make presentations and raise disputes at the advisory committee level. This would provide a process more analogous to the legislative process, which involves testimony at committee hearings and primarily only member debate in sessions of the full senate or assembly.

Justice Huffman indicated that he had examined Judge Rothman's letter and remains confident that staff's recommendations are an important step in addressing the issue of guidelines for operation of the family law information centers and family law facilitator offices. Justice Huffman moved for approval of staff recommendations. The motion was seconded.

Judge Ronald B. Robie reported that the Rules and Projects Committee has asked staff to prepare suggestions for providing appropriate public access at the advisory committee level.

Judge Donna J. Hitchens expressed concern that guideline number 10 of the proposed Division V guidelines appears to allow judges to render decisions based on factual information that is not provided in open court.

A lengthy discussion on the language of guideline number 10 ensued. Participants included Judges Stephen D. Bradbury, Aviva K. Bobb, Ronald M. Sabraw, and Donna J. Hitchens; Associate Justices Norman L. Epstein and Richard D. Huffman; and Ms. Pauline W. Gee.

#### *Initial Action*

An initial council vote on the pending motion, with amendments to guideline 10, passed with "No" votes from Associate Justices Richard D. Aldrich and Norman L. Epstein and Judges Leonard P. Edwards, Brad R. Hill, Ronald B. Robie, and Ronald M. Sabraw.

#### *Revisitation of Item D3*

Item D3 was subsequently revisited and alternate language for guideline 10 was agreed upon by the council.

Associate Justice Huffman moved that the previous council action on item D3 be rescinded and proposed adoption of the recommended guidelines, including revisions to guideline number 10. The motion was seconded.

#### *Council action:*

Effective January 1, 2002, the Judicial Council adopts Division V of the Appendix to the California Rules of Court to provide guidelines for the operation of family law information centers and family law facilitator offices with the following revision to paragraph 10:

10) (*Communications with bench officers*) An attorney working in a family law information center or family law facilitator office and his or her staff should avoid all ex parte communications with a bench officer, except as provided in accordance with Family Code section 10005. In addition, an attorney should avoid all communications with a bench officer in which he or she offers an opinion on how the bench officer should rule on a pending case. Communications about purely procedural matters or the functioning of the court are allowed and encouraged.

The motion passed.

**Item D4      Juvenile Dependency: Voluntary Surrender of Custody (amend Cal. Rules of Court, rule 1456) (Action Required)**

Item D4 was removed from the agenda.

**Item A14      Family Court Services: Domestic Violence Protocol (adopt Cal. Rules of Court, rule 1257.2) (Action Required)**

Item A14 was originally on the council's Consent Agenda; however, Commissioner Bobby R. Vincent requested that it be moved to the Discussion Agenda.

Ms. Julia Weber informed the council that California Family Code section 3170(b) states that "[d]omestic violence cases shall be handled by Family Court Services in accordance with a separate written protocol approved by the Judicial Council." The Family and Juvenile Law Advisory Committee developed proposed rule 1257.2 in response to this legislative mandate. The proposed rule covers the varied services provided by family court services programs, including mediation, assessment, investigation, child custody evaluation, parent education, and child custody recommendations.

*Discussion*

Commissioner Bobby R. Vincent informed the council that recent action by the Legislature to amend the definition of domestic violence had broadened that definition to include everything addressed under Family Code section 6320, with the result that due process concerns might well be ignored in some domestic violence cases. He also expressed concern that some provisions of the proposed rule imposed an additional workload on family court services staff that would distract them from their already formidable responsibilities. Commissioner Vincent cited the following provisions of the proposed rule and suggested that they be revised or deleted: 1257.2(c)(7), 1257.2(d)(4), 1257.2(g)(1), and 1257.2(d)(2)(A).

Judge Leonard P. Edwards expressed his support for the proposed rule as written. He suggested that the rules would ensure that mediation could continue in a fair context. Judge Edwards moved that the rule be adopted as presented. The motion was seconded.

*Council action:*

Effective January 1, 2002, the Judicial Council adopts rule 1257.2 of the California Rules of Court to provide a protocol for family court services programs' handling of domestic violence cases.

The motion passed.

**Item D5      Rules Governing Habeas Corpus Proceedings in the Superior Court  
(amend and renumber Cal. Rules of Court, rule 4.500; adopt rules  
4.550 and 4.552; and amend rule 201) (Action Required)**

Mr. Joshua Weinstein informed the council that habeas corpus proceedings in the superior court are currently governed by rules of court, statute, and case law. Mr. Weinstein stated that the statutes governing habeas corpus (Pen. Code, § 1473 et seq.) were enacted in 1872 and have not been substantially revised. The rule of court governing habeas corpus is rule 4.500, which in its current form sets forth six short paragraphs on the procedures of habeas corpus in superior court. Recognizing that several important procedures are not addressed in the rule and that others are difficult to find or follow, the Criminal Law Advisory Committee undertook the task of developing a comprehensive set of rules to set forth habeas corpus procedures in a clear and cogent manner. There were few substantive changes to the rules, but two were highlighted by Mr. Weinstein. First, the ex parte communication provision in current rule 4.500(d) would be deleted and replaced with the informal response procedure available to the appellate courts. Second, a transfer procedure would be added. Under that section, the court may transfer a petition to a more appropriate court in specific circumstances prior to determining whether to issue an order to show cause.

The committee's proposal sets forth three rules governing habeas corpus proceedings in the superior court. They are rules 4.550, 4.551, and 4.552.

*Discussion*

Associate Justice Norman L. Epstein moved for approval of staff recommendations. The motion was seconded.

Judge Ronald M. Sabraw pointed out a typographical error on page 8, line 37. Mr. Weinstein noted two other typographical errors on page 7, at line 28, and at line 34.

The Chief Justice indicated that action on the motion before the council would include correction of the noted typographical errors.

Judge Stephen D. Bradbury voiced his support for the proposed rules.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 201 of the California Rules of Court, amends and renumbers rule 4.500 as rule 4.551, and adopts rules 4.550 and 4.552 to outline superior court habeas corpus proceedings in a logical and understandable format.

The motion passed.

*Special Note:*

The rules attached to the Judicial Council report on this item erroneously did not reflect the deletion of current rule 4.500(d), the ex parte communication procedures. A corrected version of the rule with that deletion was forwarded to the publisher, as that deletion was specifically acknowledged at the council meeting and in the written report. A copy of the corrected rules is attached to these minutes at *Appendix A*.

**Item D6      *Judicial Determination of Factual Innocence of Identity Theft Victim (adopt rule 4.601 and form CR-150, Certificate of Identity Theft: Judicial Determination of Factual Innocence) (Action Required)***

Mr. Joshua Weinstein informed the council that the item under consideration is a form and a rule proposal developed by the Criminal Law and Advisory Committee. The form is required under Penal Code section 530.6, and the rule is to make the form confidential.

Penal Code section 530.6 requires the Judicial Council of California to adopt a form for “identity theft” victims. That section allows a victim of identity theft to obtain a judicial determination of factual innocence. An identity-theft victim may seek a judicial finding of innocence where a person—other than the identity-theft victim—has been arrested for or convicted of a crime under the victim’s identity or where the victim’s identity has been mistakenly associated with a record of criminal conviction. (Pen. Code, § 530.6(b).) If the court finds the person to be factually innocent, the court is to “issue an order certifying this determination.” (*Ibid.*)

Mr. Weinstein advised the council that the proposed form should be confidential because it contains precisely the kind of information an identity thief seeks.

## *Discussion*

Associate Justice Norman L. Epstein moved for adoption of the committee's recommendations. The motion was seconded.

Mr. Thomas J. Warwick, Jr. asked how outside parties would be able to verify a determination of factual innocence for victims of identity theft.

Mr. Weinstein indicated that all court proceedings would be public and the clerk's minutes would reflect the finding of factual innocence. Furthermore, the victim of identity theft would receive a certified copy of the finding of factual innocence, which could be used to verify the court's determination to interested parties.

### *Council action:*

Effective January 1, 2002, the Judicial Council adopts rule 4.601 of the California Rules of Court and confidential form CR-150, *Certificate of Identity Theft: Judicial Determination of Factual Innocence*.

The motion passed.

## *Special Comment*

Associate Justice Epstein, outgoing chair of the Criminal Law Advisory Committee, expressed his appreciation for the consistently outstanding work Mr. Joshua Weinstein has performed for the committee. Justice Epstein noted that Mr. Weinstein has initiated many of the efforts undertaken by the committee, demonstrating at all times the highest level of staff performance.

The Chief Justice noted that in addition to his excellent work for the Criminal Law Advisory Committee, Mr. Weinstein also provides outstanding staff assistance to the California State-Federal Judicial Council.

After a short break the council considered the remainder of its agenda.

### **Item D7      Public Access to Electronic Trial Court Records (adopt Cal. Rules of Court, rules 2070–2077; repeal Cal. Standards Jud. Admin., § 38) (Action Required)**

Judge Judith Donna Ford, outgoing chair of the Court Technology Advisory Committee, thanked the Chief Justice and the council for the opportunity to serve on the committee.

Judge Ford informed the council that Code of Civil Procedure section 1010.6(b) requires the Judicial Council, by January 1, 2003, to adopt uniform rules for electronic filing and

service of documents in the trial courts. The rules must include statewide policies on vendor contracts, privacy, and access to public records.

By way of background, Judge Ford provided the council with an overview of the committee's extensive efforts in developing these policies over several years, including solicitation of extensive comment from the public and the council's advisory committees. She asked the council to consider the proposed rules 2070–2077, which set forth statewide policies on vendor contracts, privacy, and access to public records. Judge Ford expressed confidence that the proposed rules would enhance public access to court documents by setting forth the rules for remote electronic access. Furthermore, they are consistent with the council's previous approaches in this area and balance the privacy and access issues of both those who use the courts to resolve disputes, as well as those who seek remote public access to court documents.

Judge Ford informed the council that the Court Technology Advisory Committee would soon finalize its proposed rules for electronic filing and service.

### *Discussion*

Judge Ronald B. Robie informed the council that previous discussions had raised policy issues with regard to the proposals under consideration and suggested that the council defer voting on the proposed rules to a subsequent meeting.

Mr. William C. Vickrey concurred with Judge Robie. Mr. Vickrey offered that in view of the complexity of the issues—many of which are relatively new to the council—deferral of a council vote would give council members an opportunity to identify, consider, and discuss the various issues, as well as solicit additional information from staff. He suggested that the council might wish to consider policy concerns, legal issues, technology ramifications, and the judicial branch's long-term goals for public access before bringing the rule proposals to a vote.

The Chief Justice observed that Mr. Vickrey's suggestion might well be the most efficient manner of proceeding in the matter at hand.

Judge William C. Harrison asked if the council's primary concern was proposed rule 2074(b).

Mr. Vickrey indicated that proposed rule 2074(b) is a major concern; however, there are other issues, such as privacy issues, and those provisions of the rule that would require courts to provide access to civil materials subject to the availability of court resources (rule 2074(d)). He indicated that the proposed rules have raised important questions about funding priorities, about the courts' ability to provide access, and about the clarity of the proposed exemption provisions. Mr. Vickrey indicated that by gaining clarification on these issues in consultation with representatives of the Court Technology Advisory



Committee, the council would be in a better position to consider any amendments to the proposed rules.

Associate Justice Joanne C. Parrilli, incoming chair of the Court Technology Advisory Committee, stated that many of the issues mentioned by Mr. Vickrey were the same ones that had concerned the committee over the course of its deliberations. Associate Justice Parrilli assured the council that the committee would be happy to provide the council with additional briefing and background.

The Chief Justice inquired if there was any council objection to deferring this item to a later meeting. As there was none, the Chief Justice invited the council to voice their questions and concerns about the proposed rules or to forward them in writing to staff for the committee's attention.

Associate Justice Richard D. Aldrich asked the committee to provide additional clarification on the information that would be contained in databases eventually accessed by the public, particularly with regard to electronic compilations.

Judge Gail A. Andler asked the committee to determine whether rule 2074(c) and rule 2075 are duplicative.

Judge Leonard P. Edwards asked that staff revisit the "case by case" clause in rule 2073(b) and provide the council with a rationale for the current language.

Mr. Thomas J. Warwick, Jr., asked the committee to consider the possibility of applying any rules eventually adopted to civil records only on a trial basis before expanding them to other areas of access.

The Chief Justice asked if civil documents would be accessible under the proposed rules.

Judge Ford responded that civil documents would be accessible under the proposed rules.

Judge Donna J. Hitchens commended the committee for its exhaustive work and suggested that the committee consider staging another educational background session for the council.

Judge Ronald M. Sabraw asked the committee to consider if documents accessible by the public in the written pleadings, documents, and court files would also be accessible by the public via e-filings.

Judge Ronald B. Robie asked the committee to consider the advisability of a pilot project for testing the proposed rules.

The Chief Justice suggested that staff consider preparing and circulating additional materials for the council's consideration prior to its next meeting. The Chief Justice then

commended Judge Ford for her leadership on the Court Technology Advisory Committee and welcomed Associate Justice Parrilli as incoming chair.

**Item D8      Uniform Statewide Rules for Class Actions (adopt Cal. Rules of Court, rules 1850–1859 and 1861; amend and renumber rule 365) (Action Required)**

Ms. Susan Goins, counsel to the Civil and Small Claims Advisory Committee's Subcommittee on Complex Litigation, informed the council that the 12 proposed rules in the set under consideration represent the first statewide rules for class actions in California. She informed the council that several counties have local rules for class actions. However, rule 981.1 of the California Rules of Court, which became effective July 1, 2000, preempts all local court rules in civil cases in the field of pleadings, demurrers, ex parte applications, motions, discovery, provisional remedies, and the form and format of papers. The rule contains a temporary exemption for local rules relating to class actions, among other rules, which will expire on January 1, 2002. The need for rules pertaining to class actions arises from the complexity of handling such cases and the absence of specific procedures in the relevant California statutes.

Ms. Goins indicated that an initial set of draft rules was created following review of the local rules, the two statutes authorizing class actions in California, rule 23 of the Federal Rules of Civil Procedure, and case law. All 15 judges in the Complex Civil Litigation Pilot Program, as well as class action practitioners around the state, then reviewed the draft rules. Their input was considered by the subcommittee and is reflected in changes to the rules.

Ms. Goins reported that the rules address, among other things, case conferences and conference orders, who may move to certify a class, the content of the notice of certification, discovery from unnamed class members, and notice to class members of various steps in the proceedings, including certification, settlement, dismissal, and judgment. Ms. Goins indicated that comments had been received on several provisions of the proposed rules and specifically acknowledged comments received in a letter from the Civil Justice Association of California. She indicated that the association's letter had been referred to the Civil and Small Claims Advisory Committee and assured the council that the committee would give consideration to the referral and take appropriate action.

*Discussion*

Judge Ronald M. Sabraw referenced the comments received from the Civil Justice Association of California regarding representative actions under the Unfair Competition Law (Bus. & Prof. Code, §17200 et seq.). Judge Sabraw acknowledged that there is considerable debate on this matter and asked that the Civil and Small Claims Advisory Committee endeavor to clarify this issue in the rules of court.

Associate Justice Richard D. Huffman moved for approval of the committee's recommendations. The motion was seconded.

*Council action:*

Effective January 1, 2002, the Judicial Council adopts rules 1850–1859 and 1861 of the California Rules of Court and amends and renumbers (as rule 1860) rule 365, to provide uniform statewide rules for class actions.

The motion passed.

**Item D9 Making Judicial Assignments: Factors to Consider (amend Cal. Rules of Court, rule 6.603) (Action Required)**

Judge Wayne L. Peterson informed the council that the focus of the proposed rule change is to set forth criteria that presiding judges could apply in making judicial assignments. Rule 6.603(c)(1)(A) of the California Rules of Court currently requires the presiding judge to “designate a judge to preside in each department” and to “designate a supervising judge for each division, district, or branch court,” but does not identify any factors or considerations to use in making such assignments. Some courts have based assignments on factors such as the best interests of the public and the court and the strengths of the court's judges, while other courts have based assignments primarily on a seniority system.

A number of presiding judges have requested more guidance in fulfilling their responsibility to make judicial assignments and have suggested that a list of factors for the presiding judge to take into account would be a useful tool for the management of their courts. In addition, several presiding judges noted that basing assignments solely or primarily on seniority can result in the inefficient use of judicial resources, such as when a judge has expertise in a particular area but lacks sufficient seniority to obtain an assignment in that area.

Judge Peterson indicated that Trial Court Presiding Judges Advisory Committee is confident that the proposal under consideration gives a presiding judge appropriate guidance and direction in making judicial assignments.

*Discussion*

Associate Justice Richard D. Huffman moved for approval of the committee's recommendations. The motion was seconded.

Judge Ronald M. Sabraw spoke in opposition to the motion, noting that existing rule 6.603 already gives presiding judges the authority and the duty to assign judges to departments. Judge Sabraw stated he does not believe the existing rule requires

elaboration. Furthermore, he stated that the proposed rule's de-emphasis on seniority was unnecessary and might well be viewed by the courts as micromanagement. He suggested that the correct repository for the comments contained in the proposed rules is the Standards of Judicial Administration.

With regard to Judge Sabraw's comments about micromanagement, the Chief Justice asked Judge Peterson for verification that the Trial Court Presiding Judges Advisory Committee was convinced that the proposed rule would enhance local court management.

Judge Peterson confirmed that the committee believes the proposed rule would help to minimize criticism—particularly the specific criticism that judicial assignments are made without structure. He assured the Chief Justice and the council that the proposals under consideration were, in fact, undertaken because of concerns expressed by the state's presiding judges.

Judge Gail A. Andler expressed her support for the proposed rule and stated that her concerns about micromanagement had been neutralized. She stated that she is convinced the state's presiding judges support the proposal.

Mr. Rex Heeseman expressed his support for the proposal.

Judge William C. Harrison also expressed support for the proposal, stating that the rule would help to attract and retain the best judicial officers. In addition, he opined that the proposal would provide presiding judges with a valuable management tool.

*Council action:*

Effective January 1, 2002, the Judicial Council amends rule 6.603 of the California Rules of Court to add factors that the presiding judge must take into account in making judicial assignments, specify that assignments must not be based solely or primarily on seniority, clarify that the authority to make judicial assignments rests with the presiding judge, and specify that the presiding judge of the court must designate a presiding judge of the juvenile division.

The Chief Justice noted one "No" vote cast by Judge Ronald M. Sabraw.

The motion passed.

**Item D10     Judicial Branch Budget Process (repeal and adopt Cal. Rules of Court, rule 6.45; and amend rules 6.11, 6.34, 6.601, 6.700, and 6.701) (Action Required)**

Mr. Michael A. Fischer reported that in response to a statutory change removing the requirement of a Trial Court Budget Commission, staff has prepared proposed changes in the rules of court that:

1. Remove the provision in the rules for the Trial Court Budget Commission;
2. Establish a new Judicial Branch Budget Advisory Committee with a specified membership and specified duties; and
3. Make changes in the trial court budget procedures and policies both to conform them to existing practice and to provide greater credibility to the judicial branch budget process.

The Rules and Projects Committee submitted the proposed rules for comment in a special circulation.

### *Discussion*

Associate Justice Richard D. Huffman moved for approval of the recommendations. The motion was seconded.

### *Council action:*

Effective January 1, 2002, the Judicial Council repeals and adopts rule 6.45 of the California Rules of Court and amends rules 6.11, 6.34, 6.601, 6.700, and 6.701 to:

1. Establish a Judicial Branch Budget Advisory Committee; and
2. Change the rules concerning trial court budgets and allocations to reflect new processes already in use.

The motion passed.

## **Item E      Statewide Assessment of Judicial Needs (Action Required)**

Mr. Christopher Belloli informed the council that at its August meeting, the council directed staff to provide follow-up on the matter of statewide judicial needs assessment. He reminded the council that at that meeting the council approved the final set of judicial workload standards developed from the California Judicial Needs Assessment Project. By way of background, Mr. Belloli stated that in developing the standards, staff had consulted with experts from the National Center for State Courts, and 11 project courts had participated over a period of 18 months.

Mr. Belloli stated that at its August meeting, the council specifically directed staff to conduct a statewide assessment of judicial needs using the workload standards and to report the results at today's meeting. The assessment was based on the Judicial Council-approved recommendation for an initial three-year plan for obtaining additional judgeships to be followed by subsequent two-year plans.

Mr. Belloli summarized the assumptions on which the statewide assessments are based, stating that an important component in the assessment methodology is the judge-year value, which is the amount of time judicial officers have available to hear cases in a given year. This value sets an average of 215 days per year for case resolution. Furthermore, on a given day, judicial officers are assumed to spend six hours on case-related activities and two hours on non-case-related administration, community activity, travel, and other duties. Mr. Belloli informed the council that these values were developed from the Judicial Needs Assessment Project and are consistent with the values established by other states as part of their judicial needs assessment process. He assured the council that this approach is not intended to dictate how judicial officers spend their time on a given workday or on a particular case. It is also not intended to dictate to a court how judicial assignments should be made. Rather, the methodology is intended to measure the overall workload of the court. Within that workload the courts would continue to find the best practices for case management and judicial assignments given local needs.

#### *Results of assessment*

Mr. Belloli presented the following assessment results to the council:

- Based on the revised filings data provided by the trial courts, the judicial needs assessment methodology suggests a statewide need for 2,269 judicial officers, slightly higher than the total presented to the Judicial Council in August 2001.
- This represents a 12 percent increase from the current number of judicial positions used statewide (as measured by Judicial Position Equivalent, or JPE) and a 19 percent increase from the current number of authorized judicial officers (as measured by Authorized Judicial Positions, or AJP).
- There are 34 superior courts that show a need for at least one additional judicial officer, ranging in size from Los Angeles County to Del Norte County, which has a two-judge court.
- Sixteen courts currently have a sufficient number of judicial officers as implied by the workload standards.
- There are 8 courts, several of which are small two-judge courts, that currently have more judicial officers than they currently need based on the assessment results.

#### *Ranking methodology for prioritizing list of new judgeships*

Mr. Belloli reported that the ranking methodology is based in part on the Equal Proportions Method, which has been used by other states in their assessment of judicial needs and is also used by the United States Congress to determine how a fixed number of seats should be assigned in the House of Representatives after a new census is taken. Some minor adjustments to the Equal Proportions Method have been made to provide consideration for courts with the greatest need relative to their current complement of judicial officers, as well as to ensure improved access to courts for the greatest number of

the public. He summarized some of those adjustments for the council and presented the council with a table showing the number of new judicial officers recommended by county based on their priority ranking for fiscal years 2002–2003, 2003–2004, and 2004–2005 (the initial three-year plan for requesting additional judgeships).

### *Discussion*

Mr. William C. Vickrey reminded the council that the issue being considered has been one of the council's major objectives for the last eight years and that it has also been an item of great concern to the Governor and the Legislature. He reiterated the importance to the judicial branch of being able to present credible long-term indications of statewide judicial needs. The ability to do so, Mr. Vickrey stated, would also facilitate the judicial branch's ability to address urgent facilities issues with the administration and leadership at the executive and legislative levels. In addition, Mr. Vickrey addressed the need for the development of standards for the assessment of systemwide performance and suggested that the process might begin with a council discussion of options and choice-points for the development of policy direction.

Associate Justice Norman L. Epstein concurred with Mr. Vickrey's comments. He expressed concern about committing to the need for 150 judges in the absence of standards and measurements for systemwide performance.

Judge Brad R. Hill commended Mr. Belloli and Mr. Frederick Miller for their work in developing the standards and administering the assessment. He stated that he believes staff's recommendations can be easily documented and supported to the executive and legislative branch leadership. Furthermore, he indicated that it is worth noting that very few judges have been appointed in the state during the past 15 years. Thus, the branch is attempting to address a problem that has been decades in the making. He recommended that the council approve staff's recommendations.

Associate Justice Richard D. Huffman stated his support for the initial 50 judges recommended for year one of the initial three-year plan. However, he stated that he shares Justice Epstein's concerns about the absence of credible standards to address how any additional judicial resources would be used and assigned, or to measure outcomes and performance.

Justice Huffman moved for approval of staff recommendations with the understanding that staff would prepare a council issues session for the discussion of standards and measurements. The motion was seconded.

Judge Leonard P. Edwards asked staff to determine both how each court currently divides its judicial resources and how those allocations compare to the standards set by the study.

Associate Justice Richard D. Aldrich asked if staff had factored in projected increases in population in calculating the workload component in future years.

Mr. Belloli responded that staff had used current filings data in assessing needs. Mr. Frederick Miller stated that needs projections for future years could be adjusted as new filings data is provided.

Associate Justice Aldrich pointed out that given the use of current filings data, the assessment of judgeship needs projected for future years would be conservative.

Mr. Vickrey remarked that with regard to recommendation 3, staff would need to give additional attention to the process for updating the standards from year to year. Radical adjustments on a yearly basis would be very undesirable.

Judge Wayne L. Peterson remarked that changes in the way the courts process civil matters, in the courts' use of technology, and in other dynamics also affect judgeship needs. He stressed the need for the development of standards and measurement of outcomes and performance.

*Council action:*

The Judicial Council:

1. Approves the results of the statewide assessment of judicial needs as implied by the judicial workload standards, including the ranked list of 150 recommended new judgeships for the initial three-year plan, contingent on the courts' ability to provide adequate facilities for additional judges and their complement of support staff;
2. Approves the first 50 judgeships on the ranked list of 150 recommended new judgeships for the initial three-year plan but defers the decision to sponsor legislation in fiscal year 2002–2003 until the Chief Justice and Administrative Director of the Courts can meet with the Governor and the legislative leadership. A final recommendation concerning new judgeships for fiscal year 2002–2003 will be based on these discussions, and this recommendation will be presented to the Judicial Council for their approval;
3. Directs staff to convene a working group made up of representatives from the trial courts that will meet on an annual basis to update specific workload standards and refine the overall judicial needs assessment process; and
4. Directs staff, with guidance from the working group, to prepare a Judicial Council issues meeting agenda to seek discussion of the following issues:
  - A. Options for courts with more judicial officers than are currently needed based on the assessment results;
  - B. Possibility of establishing expected outcomes for courts that receive additional judgeships (e.g., time standards, other qualitative standards); and
  - C. Options to put additional resources in areas within courts (e.g., family and juvenile) that have not been adequately served in the past.

The motion passed.



**Circulating and Appointment Orders Approved**

**Circulating Orders:**

**Circulating Order—CO-01-08: Emergency Rule E of the California Rules of Court  
for Extending Appellate Deadlines**

For information only; no action necessary.

**Appointment Orders:**

**Correction, Appointment Order: Disabilities Subcommittee of the Judicial Council  
Access and Fairness Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Executive and  
Planning Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Rules and Projects  
Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Policy Coordination  
and Liaison Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Litigation Committee**

For information only; no action necessary.

**Appointment Orders: Appointments of members of the Judicial Council of California as Liaisons to the following advisory committees and task forces: Access and Fairness Advisory Committee; Administrative Presiding Judges Advisory Committee; Appellate Advisory Committee; Civil and Small Claims Advisory Committee; Center for Education and Research Governing Committee; Collaborative Justice Courts Advisory Committee; Court Executives Advisory Committee; Court Interpreters Advisory Committee; Court Technology Advisory Committee; Criminal Law Advisory Committee; Family and Juvenile Law Advisory Committee; Probate and Mental Health Advisory Committee; Traffic Advisory Committee; Trial Court Presiding Judges Advisory Committee; Appellate Process Task Force; Jury System Improvement Task Force; Task Force on Judicial Service; Task Force on Self-Represented Litigants**

For information only; no action necessary.

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

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Access and Fairness Advisory Committee**

For information only; no action necessary.

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

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Appellate Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Civil and Small Claims Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Collaborative Justice Courts Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Court Executives Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Court Interpreters Advisory Panel**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Court Technology  
Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Family and Juvenile  
Law Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Criminal Law  
Advisory Committee**

For information only; no action necessary.

**Appointment Orders: Appointments to the Legal Services Trust Fund Commission**

For information only; no action necessary.

**Appointment Orders: Appointments to the Judicial Council Probate and Mental  
Health Advisory Committee**

For information only; no action necessary.

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

For information only; no action necessary.

**Appointment Orders: Appointments to the 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 1:10 p.m.

Respectfully submitted,

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William C. Vickrey  
Secretary

## *Appendix A*

### **Rule 4.550. Habeas corpus application and definitions**

- (a) **[Application]** This rule applies to habeas corpus proceedings in the superior court under Penal Code section 1473 et seq. or any other provision of law authorizing relief from unlawful confinement or unlawful conditions of confinement.
- (b) **[Definitions]** In this rule, the following definitions apply:
- (1) A “petition for writ of habeas corpus” is the petitioner’s initial filing that commences a proceeding.
  - (2) An “order to show cause” is an order directing the respondent to file a return. The order to show cause is issued if the petitioner has made a prima facie showing that he or she is entitled to relief; it does not grant the relief requested. An order to show cause may also be referred to as “granting the writ.”
  - (3) The “return” is the respondent’s statement of reasons that the court should not grant the relief requested by the petitioner.
  - (4) The “denial” is the petitioner’s pleading in response to the return. The denial may be also referred to as the “traverse.”
  - (5) An “evidentiary hearing” is a hearing held by the trial court to resolve contested factual issues.
  - (6) An “order on writ of habeas corpus” is the court’s order granting or denying the relief sought by the petitioner.

*Rule 4.550 adopted effective January 1, 2002.*

### **Rule 4.50051 Habeas corpus proceedings**

- (a) **[Petition; ~~order to show cause form and court ruling~~]** ~~Unless a petition for a writ of habeas corpus is sooner denied for reasons stated as required by subdivision (e), the court shall, within 30 days after the petition is filed or received on transfer, issue the writ or order the respondent to show cause why the relief sought in the petition should not be granted.~~
- (1) Except as provided in subdivision (2), the petition must be on the form approved by the Judicial Council, *Petition for Writ of Habeas Corpus* (form MC-275), and must be served as required in Penal Code section 1475.
  - (2) For good cause, a court may also accept for filing a petition that does not comply with subdivision (a)(1). A petition submitted by an attorney need not be on the Judicial Council form. However, a petition that is not on the Judicial

Council form must comply with Penal Code section 1474 and must contain the pertinent information specified in form MC-275, including the information required regarding other petitions, motions, or applications filed in any court with respect to the conviction, commitment, or issue.

- (3) Upon filing, the clerk of the court must immediately deliver the petition to the presiding judge or his or her designee. The court must rule on a petition for writ of habeas corpus within 30 days after the petition is filed. If the court fails to rule on the petition for writ of habeas corpus within 30 days of its filing, an order to show cause will be deemed to have issued under subdivision (c).
- (4) For the purposes of subdivision (a)(3), the court rules on the petition by:
  - (A) Issuing an order to show cause under subdivision (c);
  - (B) Denying the petition for writ of habeas corpus; or
  - (C) Requesting an informal response to the petition for writ of habeas corpus under subdivision (b).
- (5) The court must issue an order to show cause or deny the petition within 45 days after receipt of an informal response requested under subdivision (b) of this rule.

*(Subd (a) amended effective January 1, 2002; adopted effective January 1, 1982.)*

**(b) [Informal response]**

- (1) Before passing on the petition, the court may request an informal response from:
  - (A) The respondent or real party in interest; or
  - (B) The custodian of any record pertaining to the petitioner's case, directing the custodian to produce the record or a certified copy to be filed with the clerk of the court.
- (2) A copy of the request must be sent to the petitioner. The informal response, if any, must be served upon the petitioner by the party of whom the request is made. The informal response must be in writing and must be served and filed within 15 days. If any informal response is filed, the court must notify the petitioner that he or she may reply to the informal response within 15 days from the date of service of the response upon the petitioner. If the informal response consists of records or copies of records, a copy of every record and document furnished to the court must be furnished to the petitioner.
- (3) After receiving an informal response, the court may not deny the petition until the petitioner has filed a timely reply to the informal response or the 15-day period provided for a reply under subdivision (b)(2) has expired.

*(Subd (b) adopted effective January 1, 2002.)*

**(c) [Order to show cause]**

- (1) The court must issue an order to show cause if the petitioner has made a prima facie showing that he or she is entitled to relief. In doing so, the court takes petitioner's factual allegations as true and makes a preliminary assessment regarding whether the petitioner would be entitled to relief if his or her factual allegations were proved. If so, the court must issue an order to show cause.
- (2) Upon issuing an order to show cause, the court must appoint counsel for any unrepresented petitioner who desires but cannot afford counsel.
- (3) An order to show cause is a determination that the petitioner has made a showing that he or she may be entitled to relief. It does not grant the relief sought in the petition.

*(Subd (c) adopted effective January 1, 2002.)*

~~(d) **[Ex parte communications; service on parties]** If the court communicates ex parte with any person other than petitioner regarding the allegations of the petition, it shall set the matter for hearing unless (1) the relief sought in the petition is granted, or (2) the court finds, after affording petitioner an opportunity to respond, that the matter has become moot. In addition, the court shall give each party written notice of any ex parte oral communication received by the court and a copy of any written communication sent or received by the court unless the writing is accompanied by proof of service on each party.~~

**(d) [Return]** If an order to show cause is issued as provided in subdivision (c), or if the court fails to rule on the petition in a timely manner as required in subdivision (a)(3), the respondent may, within 30 days thereafter, file a return. Any material allegation of the petition not controverted by the return is deemed admitted for purposes of the proceeding. The return must comply with Penal Code section 1480 and must be served on the petitioner.

*(Subd (d) repealed and adopted effective January 1, 2002.)*

**(b)(e) [Return; dDenial]** Within 30 days after service and filing of a return to an order to show cause, the petitioner may serve on respondent and file a denial. Any material allegation of the petition not controverted by the return, and any material allegation of the return not denied shall is be deemed admitted for purposes of the proceeding. Any denial must comply with Penal Code section 1484 and must be served on the respondent.

*(Subd (e) amended and relettered effective January 1, 2002; adopted as subd (b) effective January 1, 1982.)*

**(e)(f) [Evidentiary hearing; when required]** Within 30 days after the filing of any denial or, if none is filed, after the expiration of the time for filing a denial, the court shall must either grant or deny the relief sought by the petition or order notice to be given



of an evidentiary hearing. An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the ~~interests of justice require the petitioner's presence at a hearing~~ petitioner's entitlement to relief depends on the resolution of an issue of fact. The petitioner must be produced at the evidentiary hearing unless the court, for good cause, directs otherwise.

*(Subd (f) amended and relettered effective January 1, 2002; adopted as subd (c) effective January 1, 1982.)*

**(e)(g) [Reasons for denial of petition]** Any order denying a petition for a writ of habeas corpus ~~shall~~ must contain a brief ~~recital~~ statement of the reasons for the denial. An order only declaring the petition to be "denied" is insufficient.

*(Subd (g) amended and relettered effective January 1, 2002; adopted as subd (e) effective January 1, 1982.)*

**(f)(h) [Extending or shortening time]** On motion of any party or on the court's own motion, for good cause stated in the order, the court may shorten or extend the time for doing any act under this rule. A copy of the order ~~shall~~ must be mailed to each party.

*(Subd (h) amended and relettered effective January 1, 2002; adopted as subd (f) effective January 1, 1982.)*

*Rule 4.551 amended and renumbered effective January 1, 2002; adopted as rule 260 effective January 1, 1982; previously renumbered as rule 4.500 effective January 1, 2001.*

## **Rule 4.552 Habeas corpus jurisdiction**

**(a) [Proper court to hear petition]** Except as set forth in subdivision (b)(2), the petition must be heard and resolved in the court in which it is filed.

**(b) [Transfer of petition]**

(1) The superior court in which the petition is filed must determine, based on the allegations of the petition, whether the matter should be heard by it or in the superior court of another county.

(2) If the superior court in which the petition is filed determines that the matter may be more properly heard by the superior court of another county, it may nonetheless retain jurisdiction in the matter or, without first determining whether a prima facie case for relief exists, order the matter transferred to the other county. Transfer may be ordered in the following circumstances:

(A) If the petition challenges the terms of a judgment, the matter may be transferred to the county in which judgment was rendered.

(B) If the petition challenges the conditions of an inmate's confinement, it may be transferred to the county in which the petitioner is confined. A change in the institution of confinement that effects a change in the conditions of confinement may constitute good cause to deny the petition.

(3) The transferring court must specify in the order of transfer the reason for the transfer.

(4) If the receiving court determines that the reason for transfer is inapplicable, the receiving court must, within 30 days of receipt of the case, order the case returned to the transferring court. The transferring court must retain and resolve the matter as provided by these rules.

(c) **[Single judge must decide petition]** A petition for writ of habeas corpus filed in the superior court must be decided by a single judge; it must not be considered by the appellate division of the superior court.

*Rule 4.552 adopted effective January 1, 2002.*