JUDICIAL COUNCIL MEETING
Minutes of the December 10, 2004, Meeting
San Francisco, California

Chief Justice Ronald M. George, Chair, called the meeting to order at 8:45 a.m. on Friday, December 10, 2004, at the Administrative Office of the Courts (AOC) in San Francisco, California.

Judicial Council members present: Chief Justice Ronald M. George; Justices Marvin R. Baxter, Candace D. Cooper, Richard D. Huffman, and Laurence Donald Kay; Judges J. Stephen Czuleger, Eric L. DuTemple, Michael T. Garcia, Suzanne N. Kingsbury, Jack Komar, Douglas P. Miller, Heather D. Morse, William J. Murray, Jr., Michael Nash, and Richard E. L. Strauss; Mr. Rex S. Heinke, Mr. James E. Herman, Mr. David J. Pasternak, Ms. Ann Miller Ravel, and Mr. William C. Vickrey; **advisory members:** Judges Frederick Paul Horn and James M. Mize; Commissioner Patricia H. Wong; Ms. Tamara Lynn Beard, Ms. Tressa S. Kentner, and Mr. Alan Slater.

Absent: Assembly Member Ellen M. Corbett and Senator Martha M. Escutia.

Others present included: Justice Ming W. Chin; Judges Clifford R. Anderson III, Terence L. Bruiniers, Brad R. Hill, Gary D. Hoff, Robert H. Oliver, Gary R. Orozco, Edward Sarkisian, Jr., and M. Bruce Smith; Ms. Robin Allen, Mr. Michael W. Boggs, Ms. Beth Jay; **staff:** Ms. Elizabeth Ashford, Mr. Michael Bergeisen, Mr. Dennis Blanchard, Ms. Jeanne Caughell, Ms. Kim K. Davis, Ms. Penelope Davis, Mr. Robert Emerson, Ms. Nina Erlich-Williams, Mr. Bob Fleshman, Ms. Denise Friday, Ms. Shelly Glapion, Ms. Susan Goins, Mr. Ruben Gomez, Ms. Sheila Gonzalez, Ms. Charlene Hammitt, Ms. Christine M. Hansen, Ms. Lynn Holton, Ms. Bonnie Hough, Ms. Kathleen T. Howard, Mr. Richard Kai, Mr. Kenneth Kann, Mr. Melvin Kennedy, Ms. Stephanie Leonard, Ms. Ruth McCreight, Mr. Frederick Miller, Mr. Lee Morhar, Ms. Vicki Muzny, Mr. Stephen Nash, Mr. Roland Nelson, Mr. Patrick O'Donnell, Mr. Ronald G. Overholt, Ms. Christine Patton, Mr. Daniel Pone, Mr. Michael M. Roddy, Ms. Gabrielle Selden, Ms. Sonya Smith, Ms. Pat Sweeten, Ms. Marcia M. Taylor, Ms. Karen M. Thorson, Ms. Julia Weber, Mr. Tony Wernert, Mr. Michael Wright, Ms. Patricia M. Yerian, and Ms. Shaun Young; **media representatives:** Ms. Jill Duman, *The Recorder*.

Report to Council on 2005 Issues Meeting Topics

Senior Attorney Sonya Smith reported the results of an internal Judicial Council poll on topics to be discussed at the council's 2005 issues meetings. These topics will be used to guide staff's preparation of presentations and materials to be given to the council for its review and long-range study.

The following three topics were selected by the council for discussion at its 2005 issues meetings: (1) politicization of judicial elections; (2) caseload statistics and trends; and (3) temporary judges. The discussion of caseload statistics and trends will touch on decreases

in civil filings and trials, changing demographics, and the increase in self-represented litigants and possibly will include recent increases in collaborative justice courts.

Visitors From the Superior Court of California, County of Fresno

Chief Justice Ronald M. George welcomed former council member Presiding Judge Brad R. Hill, of the Superior Court of Fresno County, to the meeting, who introduced five of his colleagues from Fresno: incoming Assistant Presiding Judge Gary R. Orozco, incoming Presiding Judge Edward Sarkisian, Jr., former Juvenile Presiding Judge M. Bruce Smith, former Presiding Judge Gary D. Hoff, and Judge Robert H. Oliver.

Public Comment Related to Trial Court Budget Issues

Chief Justice George introduced Michael W. Boggs, the president of the American Federation of State, County, and Municipal Employees (AFSCME) Local 910 in Los Angeles, and invited him to address the council regarding trial court budget issues. Mr. Boggs addressed two issues in his comments. First, he made a request that Mr. William C. Vickrey consider appointing one or more representatives of organized labor to the Trial Court Budget Working Group. Second, he addressed several concerns relating to local disagreements between the management of the Superior Court of Los Angeles County and labor unions that represent workers in that court.

Approval of Minutes of October 15, 2004

The council unanimously approved the minutes of its October 15, 2004, business meeting.

Judicial Council Committee Presentations

Executive and Planning Committee

Justice Richard D. Huffman, chair of the Executive and Planning Committee (E&P), reported that the committee had met three times since the October 15, 2004, Judicial Council meeting, primarily to develop the agenda and approve materials for the December council meeting, including responding to Mr. Boggs's request to address the council.

The committee also reviewed and ultimately approved the request for sabbatical of a judge of the Superior Court of Los Angeles County. The process of reviewing this sabbatical request called the committee's attention to the need to work with the council's Judicial Service Advisory Committee to clarify the criteria for appropriate uses of a judicial sabbatical. The Executive and Planning Committee plans to request that the Judicial Service Advisory Committee include this issue in its 2005 work plan.

Policy Coordination and Liaison Committee

Justice Marvin R. Baxter, chair of the Policy Coordination and Liaison Committee (PCLC), reported that the committee had met twice since the October 15, 2004, Judicial Council meeting. The committee reviewed and adopted recommendations for council-sponsored legislation for the 2005–2006 Legislative Session for consideration by the full council. Justice Baxter noted that the council would hear from Office of Governmental Affairs staff later in the meeting regarding potential legislative proposals, current proposals that are in conflict with one another, and a process for expediting the approval of fully developed legislative proposals.

Justice Baxter also reported that liaison meetings with outside groups that were organized by the Office of Governmental Affairs staff with California's Attorney General, the State Bar, the California State Sheriffs' Association, the California State Association of Counties, California Attorneys for Criminal Justice, the California District Attorneys Association, Consumer Attorneys of California, California Civil Defense Council, and the County Counsels' Association have helped to forward the council's legislative agenda.

Last, Justice Baxter called attention to the council's upcoming role as host of the 11th Annual Judicial-Legislative-Executive Forum at the State Capitol in March 2005. He requested the attendance of council members at the event, which will take place in conjunction with Chief Justice George's State of the Judiciary address to the Legislature.

Rules and Projects Committee

Justice Laurence Donald Kay, chair of the Rules and Projects Committee (RUPRO), reported that the committee met five times since the council's October 15, 2004, meeting. Topics included developing a new form that would have been used had Proposition 66 been approved by voters on November 2nd (it did not pass); reviewing rules and forms for this (the December 10th) council meeting; reviewing rules and forms, to be taken up by the council in the winter 2005 rules cycle, for public circulation; and reviewing proposed changes to the council's uniform bail and penalty schedules. Justice Kay noted that the committee recommended approval of all rules and forms to be taken up by the council later in the meeting.

Justice Kay reviewed specific changes to the uniform bail and penalty schedules, which were also highlighted in the accompanying report to the council. Due to late changes to the proposal, the council was asked to consider and vote on the schedules via circulating order. The proposal was mailed to council members on December 10, 2004, with all votes to be returned via fax by December 17, 2004; if approved, the changes to the schedules would go into effect on January 1, 2005.

CONSENT AGENDA

ITEM 1 JUDICIAL COUNCIL–SPONSORED LEGISLATION

Item 1A Trial Court Facilities Act of 2002: Cleanup (Gov. Code, §§ 76100, 70312, and 70325)

This item was removed from the agenda because staff identified an area in the Trial Court Facilities Act of 2002 requiring further revision. The item will be resubmitted at the February council meeting.

Item 1B Juvenile Law: Court Protective Orders (Welf. & Inst. Code, § 213.5)

The Policy Coordination and Liaison Committee and the Family and Juvenile Law Advisory Committee recommend sponsoring legislation to amend Welfare and Institutions Code section 213.5(a) to allow the court to issue ex parte protective orders for parents and caregivers of children under its jurisdiction regardless of whether the court is issuing an order to protect the child.

> ***Council action***
> The Judicial Council voted to sponsor legislation to amend section 213.5 of the Welfare and Institutions Code to allow the court to issue ex parte protective orders for parents and caregivers of children under its jurisdiction regardless of whether the court is issuing an order to protect the child.

Item 1C Family Law: Temporary Custody and Visitation Orders Prior to Venue Change (Code Civ. Proc., § 396b(c))

The Policy Coordination and Liaison Committee and the Family and Juvenile Law Advisory Committee recommend sponsoring legislation to expand the court's authority under Code of Civil Procedure section 396b to make temporary orders in Uniform Parentage Act proceedings, and orders for custody and visitation of children.

> ***Council action***
> The Judicial Council voted to sponsor legislation to expand the court's authority under Code of Civil Procedure section 396b to make temporary orders in Uniform Parentage Act proceedings, and orders for custody and visitation of children.

Item 1D Civil Settlements: Written Acceptance of Offers (Code Civ. Proc., § 998)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend Code of Civil Procedure section 998 to require that acceptances of offers be in writing in order to reduce uncertainty and the number of appeals related to ambiguous acceptances of settlement offers.

Council action
The Judicial Council voted to sponsor legislation to amend section 998 of the Code of Civil Procedure to require that acceptances of settlement offers be in writing.

Item 1E Small Claims: Motion to Correct or Vacate Judgment (Code Civ. Proc., § 116.725)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend cosponsoring legislation with the California Judges Association to amend Code of Civil Procedure section 116.725 to provide that a small claims motion to correct an error or vacate the judgment may be made (1) on the court's own motion at any time or (2) on a party's motion that must be filed within 30 days after the clerk mails notice of entry of the judgment to the parties, with only one motion allowed per party.

Council action
The Judicial Council voted to cosponsor legislation with the California Judges Association to amend Code of Civil Procedure section 116.725 to provide that a small claims motion to correct an error or vacate a judgment may be made (1) on the court's own motion at any time, or (2) on a party's motion that must be filed within 30 days after the clerk mails notice of entry of the judgment to the parties, with only one motion allowed per party.

Item 1F Small Claims: Proof of Service of Claim and Order (Code Civ. Proc., § 116.340)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to require that proof of service of the claim and notice of hearing be filed with the small claims court at least five days before the hearing in order to help courts manage their small claims trial calendars.

Council action
The Judicial Council voted to sponsor legislation to require that proof of service of a small claim and notice of hearing be filed with the small claims court at least five days before the hearing.

Item 1G Small Claims: Time for Scheduled Hearing (Code Civ. Proc., § 116.330)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend Code of Civil Procedure section 116.330 to replace the code's three time periods for scheduling a small claims hearing with a single provision that all small claims hearings must be scheduled no less than 20 days but not more than 70 days from the date the order was issued.

Council action
The Judicial Council voted to sponsor legislation to amend Code of Civil Procedure section 116.330 to replace the code's three time periods for scheduling a small claims hearing with a single provision that all small claims hearings must be scheduled no sooner than 20 days but not more than 70 days from the date the order to appear is issued. This would (1) give the plaintiff a wider choice of hearing dates and more time to serve the order to appear on the defendant, (2) reduce requests for continuances, and (3) save the courts processing time and costs.

Item 1H Small Claims: Transfer of Judgment After Appeal (Code Civ. Proc., § 116.780)

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to repeal the 10-day time period before the small claims appeal and judgment can be transferred to the small claims court for enforcement proceedings under Code of Civil Procedure section 116.780(d).

Council action
The Judicial Council voted to sponsor legislation to repeal the 10-day time period before the small claims appeal and judgment can be transferred to the small claims court for enforcement proceedings under Code of Civil Procedure section 116.780(d). This delay period is no longer necessary now that the trial court system has been unified statewide, and the proposed repeal would allow enforcement proceedings to commence immediately.

Item 2 Criminal Procedure: Subpoena in Criminal and Juvenile Cases (revise form 982(a)(16))

The proposed revision to the *Subpoena (Criminal or Juvenile),* form 982(a)(16) would delete check box 2d. Check box 2d allows the subpoenaing party to obtain a copy of records directly, rather than having the documents reviewed by the court. In recent statutory amendments, the Legislature has clarified that the type of subpoenaing provided for in check box 2d does not apply in criminal cases. Therefore, the form should be revised to delete that provision.

Council action
The Judicial Council, effective January 1, 2005, revised form 982(a)(16), *Subpoena (Criminal or Juvenile)* to delete former check box 2d.

Item 3 Child Support Withholding: Revised Order/Notice to Withhold and Related Instructions (adopt forms FL-195/OMB No. 0970-0154 and FL-196/OMB No. 0970-0154)

AOC staff recommends minor technical changes to the *Order/Notice to Withhold Income for Child Support,* which is a federally mandated standard form, as well as to its instruction

sheet. These minor revisions are being implemented to conform to federally mandated changes.

Council action
The Judicial Council, effective January 1, 2005, adopted *Order/Notice to Withhold Income for Child Support* (FL-195/OMB No. 0970-0154) and *Instructions to Complete Order/Notice to Withhold Income for Child Support* (FL-196/OMB No. 0970-0154) in order to comply with Family Code section 5208 and federal law.

Item 4 Access to Visitation Grant Program: Redistribution of Grant Funds for Fiscal Year 2004–2005

AOC staff recommends the approval of a redistribution of $8,642, representing additional federal Access to Visitation Grant funds resulting from one court program's closure. The recommendation is to redistribute the funds to two existing grantees: the Superior Court of Mendocino County and the Superior Court of Shasta County. The funds would be divided equally between the two superior courts. The Judicial Council is charged with administering and distributing the federal Child Access and Visitation Grant funds from the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement. Under established provisions contained in the standard contract agreement with each superior court, the Judicial Council may redistribute funds among grant recipients to ensure that all available funds are used and spent.

Council action
The Judicial Council approved the redistribution of $8,642, representing available federal Access to Visitation Grant funds resulting from one court program's closure, to be divided equally between two existing grantees: the Superior Courts of Mendocino and Shasta Counties.

The additional funds reflect the amount allocated to the Superior Court of Madera County as part of the initial approval of grantees made in August 2003 by the Executive and Planning Committee, on behalf of the Judicial Council, for fiscal years 2003–2004 and 2004–2005.

Item 5 Equal Access Fund: Distribution of Funds for Partnership Grants

The Legal Services Trust Fund Commission of the State Bar has prepared a report requesting approval of an allocation of $950,000 in Equal Access Funds for distribution to legal services providers for programs conducted jointly with courts to provide legal assistance to self-represented litigants (partnership grants). The Budget Act authorizing the Equal Access Fund provides that the Judicial Council must approve the commission's recommendations if the council determines that the awards comply with statutory and other relevant guidelines. The report demonstrates that the commission has complied with those guidelines.

Council action

The Judicial Council approved allocation of $950,000 in Equal Access Fund partnership grants to the State Bar Legal Services Trust Fund Commission for distribution to legal services providers for programs conducted jointly with the courts to provide legal assistance to self-represented litigants as follows:

Bay Area Legal Aid–San Mateo County	
Domestic Violence Emergency Orders Clinic	$70,000
Central California Legal Services, Inc.	
Domestic Violence Rural Access Partnership	45,000
Greater Bakersfield Legal Assistance, Inc.	
Pro Se Guardianship Project	40,000
Inland Counties Legal Services	
Banning Civil Legal Access Project–Riverside County	60,000
Proyecto Ayuda Legal–San Bernardino County	65,000
Law Center for Families	
Alameda County Family Law Cooperative	40,000
Legal Aid Foundation of Los Angeles	
Inglewood Self-Help Legal Access Center	68,000
Legal Aid Foundation of Santa Barbara County	
Self-Represented Litigant Resource Center	80,000
Legal Aid of the North Bay	
Legal Self-Help Center of Marin	35,000
Legal Aid Society of Orange County	
Compton Self-Help Center	70,000
Legal Aid Society of San Diego	
Conservatorship Clinic at the Probate Court	35,000
Unlawful Detainer Assistance Program	60,000
Legal Services of Northern California	
Shasta Pro Per Project	50,000
Unlawful Detainer Mediation Project	40,000
Los Angeles Center for Law and Justice	
Default Judgment Assistance Project	45,000

Neighborhood Legal Services of Los Angeles County	
Antelope Valley Self-Help Legal Access Center	80,000
Public Counsel	
Pro Per Guardianship Legal Clinics	14,000
San Diego Volunteer Lawyer Program	
Domestic Violence Prevention Project	53,000
TOTAL	$950,000

Item 6 Homicide Trials: Reimbursement of Associated Extraordinary Costs (adopt Cal. Rules of Court, rule 6.711)

AOC staff recommends adopting this rule establishing a process for courts in counties with populations of 300,000 or less to seek reimbursement for the extraordinary costs of homicide trials. Adoption of a new rule is necessary to comply with provisional language in the Budget Act of 2004 (Stats. 2004, ch. 208) that requires that the Judicial Council adopt a rule of court to establish a process by which courts may seek reimbursement for this purpose.

Council action
The Judicial Council, effective January 1, 2005, adopted rule 6.711 of the California Rules of Court to establish a process by which courts in counties with populations of 300,000 or less may seek reimbursement for extraordinary costs of homicide trials.

Item 7 Judicial Branch Budget: Delegation Authority (amend Cal. Rules of Court, rule 6.101)

The proposal will make permanent, as part of the California Rules of Court, the annual council delegation to the Chief Justice and Administrative Director of the Courts of authority to make technical changes as appropriate to the proposed budget and also to enter into negotiations with members of the executive and legislative branches and make changes in the budget proposal in response to those negotiations. The Chief Justice and the Administrative Director of the Courts would also be authorized by the council to allocate the non–trial court budget on behalf of the council. The proposal would save the council from having to make this delegation on an annual basis.

Council action
The Judicial Council, effective January 1, 2005, amended rule 6.101 of the California Rules of Court to authorize the Chief Justice and the Administrative Director of the Courts to make technical changes and negotiate changes to the judicial branch budgets consistent with council goals and priorities, to authorize them to allocate funding appropriated in the annual State Budget to the non–trial

court entities, and to require the Administrative Director of the Courts to report to the council, after the end of each fiscal year, the actual expenditures from the budgets of the Supreme Court, the Courts of Appeal, the trial courts, the Judicial Council, and the Habeas Corpus Resource Center.

Item 8 Enforcement of Agreements: Petitions (Gov. Code, §§ 71639.5 and 71825.2) (amend Cal. Rules of Court, rule 2211)

AOC staff recommends that the council amend rule 2211 to narrow the scope of claims eligible to be heard under the previously established writ petition and hearing procedure and to conform to the new code sections applicable to the writ process. Originally, the council adopted rule 2211 to provide a hearing and appeal mechanism for disputes between trial courts and recognized employee organizations involving both unfair practices and enforcement of labor agreements. Senate Bill 1102 recently amended the Trial Court Employment Protection and Governance Act and the Trial Court Interpreter Employment and Labor Relations Act, placing all unfair practice disputes under the jurisdiction of the Public Employment Relations Board (PERB). Because the agreement enforcement procedure is now separate from unfair practice dispute resolution under the new statutory provisions, the council should amend rule 2211 to conform to SB 1102.

Council action
The Judicial Council, effective December 10, 2004, amended rule 2211 of the California Rules of Court to establish the procedure for petitions filed under Government Code sections 71639.5 and 71825.2 for enforcing agreements reached between trial courts (or regional court interpreter employment relations committees) and recognized employee organizations. The rule, as amended, no longer would address unfair labor practices, now under the jurisdiction of the Public Employment Relations Board (PERB).

Item 9 Court Administration: Dissolution of the Judicial Branch Budget Advisory Committee and Establishment of the Trial Court Budget Working Group (amend Cal. Rules of Court, rules 6.11 and 6.620 and repeal and adopt rule 6.45)

The proposal will replace the Judicial Branch Budget Advisory Committee with a newly established Trial Court Budget Working Group to advise the Administrative Director of the Courts on trial court budget issues. Membership of the working group would include trial court judicial officers and executive officers and may include others selected by the Administrative Director of the Courts. The new working group would avoid overlap, facilitate expeditious resolutions of critical trial court budget–related matters, and provide for broader representation of courts statewide.

Council action
The Judicial Council, effective January 1, 2005, amended rules 6.11 and 6.620 and repealed and adopted rule 6.45 of the California Rules of Court to dissolve the

Judicial Branch Budget Advisory Committee and establish the Trial Court Budget Working Group to facilitate expeditious resolutions of critical trial court budget–related matters and provide broader representation of courts statewide.

Item 10 Trial Court Improvement Fund: Allocation of Revenues (adopt Cal. Rules of Court, rule 6.105)

Government Code section 77205(a) requires the Judicial Council, by rule of court, to allocate 80 percent of the amount of fee, fine, and forfeiture revenue deposited into the Trial Court Improvement Fund in each fiscal year that the amount of revenue deposited exceeds the amount of fee, fine, and forfeiture revenue deposited in fiscal year 2002–2003.

The adoption of proposed rule 6.105 would set forth the use of the increased fee, fine, and forfeiture revenue. The proposed rule also would require the Administrative Office of the Courts to establish budget procedures to implement the allocation mandated by the statute and the rule. These procedures will be issued as a Finance Memo and posted on the Serranus Web site.

Council action
The Judicial Council, effective January 1, 2005, adopted rule 6.105 of the California Rules of Court to meet the requirements set forth under Government Code section 77205(a) to provide the Judicial Council with the authority to allocate certain revenue deposited into the Trial Court Improvement Fund.

Item 11 Revision of Appellate Rules: Technical Changes to Fourth Installment (repeal Cal. Stds. Jud. Admin., §§ 6.5 and 20)

As part of the fourth installment of its revision of the appellate rules, the Judicial Council amended rule 60(e) of the California Rules of Court to incorporate the substance of section 6.5 of the Standards of Judicial Administration and amended rule 76.5(b)–(c) to incorporate the substance of section 20(a)–(b) of the standards. The council had previously amended rule 76.6 to incorporate the substance of section 20(c) of the standards. Each of the cited sections of the standards should have been repealed as no longer needed, but through oversight the repeal was not effectuated. The sections should now be repealed.

Council action
The Judicial Council, effective January 1, 2005, repealed sections 6.5 and 20 of the Standards of Judicial Administration, because the substance of these standards has been adopted in rules 60(e), 76.5(b)–(c), and 76.6 of the California Rules of Court.

Item 12 Appellate Procedure: Indexes of Sealed Records (amend Cal. Rules of Court, rules 31.2 and 34.1)

Rule 31.2(b)(5) requires the superior court clerk to prepare an index of all confidential materials in the appellate record and send a copy of the index to all parties. In appeals from

judgments of death, rule 34.1(d) requires the clerk's and reporter's transcripts to contain indexes separately listing all sealed documents and sealed transcripts they include. Penal Code section 987.9(a) authorizes a defendant in a capital trial to request funds for preparation of the defense, but specifies that the contents of the request and the fact that it was made must be kept confidential. The proposal would correct the rule to conform to the statute, by clarifying that rules 31.2(b)(5) and 34.1(d) do not apply to materials relating to a request for funds under Penal Code section 987.9(a).

Council action
The Judicial Council, effective January 1, 2005, amended rules 31.2(b)(5) and 34.1(d) to conform to Penal Code section 987.9(a).

Item 13 ***Report to the Legislature on Electronic Recording Equipment Purchased or Leased by the Superior Courts***

AOC staff provides for consideration of the council a report to the Legislature as required by the Budget Act of 2004 (Stats. 2004, ch. 227). The Budget Act requires that the council report on purchases and leases of electronic recording equipment that will be used to record superior court proceedings. This report covers the period between August 16 and September 17, 2004. This report is to be submitted to the Legislature by December 31, 2004. Hereafter, reports will be required on a semiannual basis.

Council action
The Judicial Council approved for submission to the Legislature the *Report to the Legislature on Electronic Recording Equipment Purchased or Leased by the Superior Courts (Chapter 227, Statutes of 2004).*

DISCUSSION AGENDA

ITEM 14 JUDICIAL COUNCIL–SPONSORED LEGISLATION

Item 14A Judges' Retirement: Modification of Allowance—Benefit Factor Defined for Judicial Retirement System II (Gov. Code, § 75522(a))

Ms. Kathleen T. Howard presented this item with the participation of Mr. Roland Nelson.

The Policy Coordination and Liaison Committee and the Judicial Service Advisory Committee recommend sponsoring legislation to amend section 75522 of the Government Code to provide that a judge will be eligible to receive a monthly retirement allowance (defined benefit) or, in the alternative at the judge's option, monetary credits (defined contribution) upon attaining both 63 years of age and 10 or more years of service, in lieu of the current requirement that the judge attain both 65 years of age and 20 or more years of service.

Council action
The Judicial Council voted to sponsor legislation to amend section 75522 of the Government Code to provide that a judge will be eligible to receive a monthly retirement allowance (defined benefit) or, in the alternative at the judge's option, monetary credits (defined contribution) upon attaining both 63 years of age and 10 or more years of service, in lieu of the current requirement that the judge attain both 65 years of age and 20 or more years of service.

Item 14B Uniform Civil Fees

Ms. Kathleen T. Howard and Ms. Christine M. Hansen presented this item.

Numerous issues led to the formation by the Chief Justice of the Court Fees Working Group (CFWG) last year. In April 2004, the CFWG reached unanimous recommendations on a statewide uniform civil fee structure. In the ensuing months, extensive negotiations have gone on with interested and affected groups, including counties, law libraries, civil attorneys, local dispute resolution programs, court representatives, employee representatives, and others. The Uniform Civil Fee (UCF) proposal will streamline and vastly simplify the civil fee structure, provide for uniformity across the state, address the funding shortfall under the current fee structure, and provide significantly improved financial stability, accountability, and predictability. The UCF is proposed for council sponsorship in 2005 as an urgency bill so that the new fee structure can take effect on July 1, 2005.

Council action
The Judicial Council voted to sponsor urgency legislation in 2005 that will establish a uniform civil fee structure, effective July 1, 2005.

The council also directed
1. Office of Governmental Affairs (OGA) staff to immediately seek an author for the uniform civil fee proposal and to request that a "spot" bill be introduced as a placeholder for the proposal;
2. Administrative Office of the Courts (AOC) staff to circulate the uniform civil fee proposal for public comment on an expedited basis during December 2004; and
3. The Policy Coordination and Liaison Committee, together with the chair of the Executive and Planning Committee and the chair of the Rules and Projects Committee, to review and approve the full legislative proposal as soon as is practical after conclusion of the public comment period.

Item 14C Civil Law: Use of Denials and Admissions (Code Civ. Proc., § 2033)

Mr. Patrick O'Donnell presented this item.

The Policy Coordination and Liaison Committee and the Civil and Small Claims Advisory Committee recommend sponsoring legislation to amend the Civil Discovery Act to clarify the admissibility at trial of admissions and denials of requests for admissions.

Council action
The Judicial Council voted unanimously against sponsoring legislation to amend the Civil Discovery Act to clarify the admissibility at trial of admissions and denials of requests for admissions.

Item 14D Court Appointed Special Advocates (CASAs): Funding Awards (Welf. & Inst. Code, § 100)

Ms. Stephanie Leonard presented this item with the participation of Mr. Lee Morhar. Ms. Robin Allen, Executive Director of the California CASA Association, also participated.

The Policy Coordination and Liaison Committee (PCLC) and the Family and Juvenile Law Advisory Committee recommend sponsoring legislation amending Welfare and Institutions Code section 100 to modify the funding allocation methodology for California CASA programs so that program awards are no longer linked to county size and are based instead upon outcome- and performance-based criteria.

Council action
The Judicial Council directed staff, in conjunction with the AOC's Office of the General Counsel and Center for Families, Children & the Courts, to further research this issue to determine what authority the council currently has under existing statutes. The council delegated to the PCLC and the chairs of RUPRO and E&P the authority to receive staff's report and take action on the proposal on behalf of the council.

Item 14E 2005–2006 Legislative Agenda: Conceptual Proposals

Ms. Kathleen T. Howard presented this item.

The Judicial Council has established critical and broad-ranging objectives in its current operational and strategic plans. In many instances, these objectives require legislative action in order to be carried out. In addition to the specific proposals for sponsored legislation that the council is considering at this meeting, additional critical legislative proposals are in development. The Policy Coordination and Liaison Committee recommends that the council approve these proposals in concept, and direct the Office of Governmental Affairs to coordinate expedited council review and approval of individual proposals when they are fully developed.

Council action
The Judicial Council approved the proposals in concept and directed staff to incorporate a systemic budget change permitting the Supreme Court, Courts of

Appeal, and the AOC to submit their budgets directly to the Legislature at the same time they are submitted to the Governor.

Item 15 Facilities Planning: Update of the Trial Court Five-Year Capital Outlay Plan

Ms. Kim K. Davis and Mr. Robert Emerson presented this item.

Four policies related to the Five-Year Capital Outlay Plan were proposed and acted upon.

Council action
The Judicial Council directed staff to implement the following regarding development of the updated capital outlay plan:

1. Eliminate the separate list of demonstration projects previously proposed as part of the capital outlay plan and report back to the council regarding the demonstration project concept;
2. Return the eight previously proposed demonstration projects, which were not funded, to the ranked list at their previous ranking, and report to the council the results of the study phase for these projects;
3. Shift projects requested for fiscal year 2005–2006 funding to fiscal year 2006–2007 funding, except for any projects that may be funded in fiscal year 2005–2006; and
4. Allow ranked projects to be reordered (within each superior court) to reflect master plan or superior court priorities, logical phasing, or exceptional circumstances.

Item 16 Trial Court Improvement Fund: Methodology and Allocation of Revenue Pursuant to Rule 6.105 Implementing Government Code Section 77205(a)

Ms. Christine M. Hansen presented this item with the participation of Mr. Ruben Gómez.

AOC staff recommends approval of a methodology for allocating 50/50 Excess Fines Split Revenue and a one-time allocation of these revenues for distribution in January 2005.

Council action
The Judicial Council approved
1. The methodology for allocating 80 percent of the 50/50 Excess Fines Split Revenue deposited into the Trial Court Improvement Fund;
2. The specific amounts to be allocated for fiscal year 2003–2004, including 20 percent ($1,785,868) to be distributed to the trial courts located in counties that contributed to the 50/50 Excess Fines Split Revenue; 30 percent ($2,678,802) to

be distributed to the Trial Court Trust Fund; and 30 percent ($2,678,802) to be retained in the Trial Court Improvement Fund; and
3. The delegation of authority to the Administrative Director of the Courts to make any needed corrections if adjustments are made by the State Controller's Office to the 50/50 Excess Fines Split Revenue deposited into the Trial Court Improvement Fund prior to distribution.

Item 17 Juvenile Dependency Proceedings: Authorization to Allocate Funding to Pay for Actual Court-Appointed Counsel Expenditures in These Proceedings

Ms. Christine M. Hansen presented this item.

AOC staff requests that the Administrative Director of the Courts be given the authority to provide sufficient Trial Court Trust Fund monies beyond the established baseline level to address actual expenditures for court-appointed counsel in juvenile dependency proceedings. These costs for court-appointed counsel services are being incurred by the courts, but they currently cannot be paid in full without the authority to utilize funding beyond the court-appointed counsel base. These are important services that need to be funded in order to ensure the continued provision of high-quality representation for the parties involved.

Council action
The Judicial Council approved allocations for court-appointed counsel costs in juvenile dependency proceedings for fiscal years 2002–2003 and 2003–2004 that exceed the level of funding already allocated for this purpose, and delegated authority to the Administrative Director of the Courts to make technical adjustments to this allocation if necessary.

Item 18 Budget Act of 2004: Allocation of Trial Court Staff Negotiated Salary Increases (NSIs) and Health Benefits and Contract Security Salary and Benefits Funding[1]

Mr. Stephen Nash presented this item.

The Budget Act of 2004 provided new funds for trial courts for court staff salary and benefit increases and contract security salary and benefit increases. The funding was based on budget proposals submitted at the direction of the council at its August 29, 2003, meeting. Allocation of these funds was deferred at the council's July 7, 2004, meeting to allow for further work by staff. Recommendations on allocation are now presented to the council for consideration.

Council action
The Judicial Council authorized

[1] This item was heard out of order, following the presentation of Item 20.

- Allocation of the court staff NSIs and benefits funding contained in the Budget Act of 2004, utilizing a methodology that will provide funding to each court for each filled Trial Court Trust Fund position (excluding grant-funded positions), as of July 1, 2004, with a 0.9389 percent increase in salary and an estimated annual increase of $686 per filled FTE for health benefit costs;
- Allocation, on a one-time basis for fiscal year 2004–2005, of $24.439 million of the contract court security funding included in the Budget Act of 2004; and
- Directed AOC staff to continue to collect updated current-year security salary and benefit needs information from the courts over the next few months and, working with the standards developed by the Court Security Working Group, develop recommendations to be presented to the council no later than the April 22, 2005, business meeting for the allocation of the remainder of the security funding in the Budget Act of 2004 and any additional current-year security funding that is received through the deficiency process.

Item 19 Deficiency Funding Request: Superior Court of Lake County[2]

Mr. Stephen Nash presented this item.

This item would provide $480,000 in one-time emergency funding from the Trial Court Improvement Fund for support of the Superior Court of Lake County. The increase would be used to fund a shortfall in the court's normal ongoing operations and thereby enable it to maintain its prior year's level of service. A permanent solution is currently being considered through the regular budget process. Pursuant to Judicial Council policy, the funding cannot be provided without the council's approval.

Council action

The Judicial Council approved one-time deficiency funding of $458,000 from the Trial Court Improvement Fund for the Superior Court of Lake County. The funding is to be used to partially repay an advance of $480,000 that was provided to the court in October 2004, pending Judicial Council approval of the court's deficiency funding request. A one-time reduction of $22,000 will be posted in the January funding distribution to offset the difference between what was advanced to the court and the revised estimate of its need.

Item 20 Revision of the Operating Guidelines and Directives for Budget Management in the Judicial Branch

Ms. Christine M. Hansen presented this item.

This proposal includes revisions to the Operating Guidelines and Directives for Budget Management in the Judicial Branch initially approved by the council in August 2003. These amendments, which were predicated by dynamic changes in the judicial branch budget process, recognize significant progress in critical areas covered by the guidelines

[2] This item was heard out of order, following the presentation of Item 20.

and directives, such as the implementation of new and statewide fees and the establishment of an enhanced collections program.

Council action
The Judicial Council
1. Directed staff to
   a. Replace the word "shall" with the word "must" throughout the Operating Guidelines and Directives for Budget Management in the Judicial Branch;
   b. Replace the phrase "trial court system" at the top of page two of the Operating Guidelines and Directives with "superior court"; and
   c. Include in the cover memo that accompanies the Operating Guidelines and Directives the clarifying comment that the guidelines' intent is not to change options employees have within their optional benefits packages;
2. Approved the revised Operating Guidelines and Directives for Budget Management in the Judicial Branch, with the changes noted above; and
3. Delegated authority to the Administrative Director of the Courts to act upon provisions in the guidelines and directives that require council consultation and/or approval.

Item 21 Prisoner Hearings: Guidelines for Reimbursement of Costs

Mr. Stephen Nash presented this item.

AOC staff provides recommendations regarding guidelines for a process by which courts may obtain payment for costs of prisoner hearings. The Budget Act of 2004 (Stats. 2004, ch. 208) appropriates $2.556 million to reimburse courts for these costs under Penal Code sections 4750–4755 and 6005.

Council action
The Judicial Council approved the proposed guidelines for reimbursement of prisoner hearing costs.

Item 22 Homicide Trials: Guidelines for Reimbursement of Associated Extraordinary Costs

Mr. Stephen Nash presented this item.

AOC staff provides recommendations regarding guidelines for a process by which trial courts may obtain payment for extraordinary costs of homicide trials. The Budget Act of 2004 (Stats. 2004, ch. 208) appropriates $254,000 for reimbursement of these extraordinary costs, as specified in Government Code section 15200.

Council action
The Judicial Council approved the proposed guidelines for reimbursement of extraordinary costs of homicide trials.

Item 23 Public Access to Electronic Trial Court Records

Judge Terence L. Bruiniers and Justice Ming W. Chin presented this item with the participation of Ms. Charlene Hammitt.

The Court Technology Advisory Committee recommends that the Judicial Council receive the progress report on the implementation of the rules of court on public access to electronic trial court records (Cal. Rules of Court, rules 2070–2077), and direct the committee to continue monitoring and reporting on the progress of the courts in implementing these rules. Continued monitoring will ensure that, as the California case management system is developed and electronic filing standards are established, the courts are able to expand public access to court electronic records.

> ***Council action***
> The Judicial Council approved the report, *Public Access to Electronic Trial Court Records: A Progress Report on the Implementation of Rules 2070–2077 of the California Rules of Court* and directed the Court Technology Advisory Committee to continue monitoring and reporting on the progress of the courts in implementing the rules and to propose amendments if necessary.

Circulating Orders

No circulating orders have been approved since the last business meeting.

Appointment Orders

Copies of appointment orders are for information only; no action was necessary.

There being no further public business, the meeting was adjourned at 1:15 p.m.

Respectfully submitted,

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William C. Vickrey
Administrative Director of the Courts and
Secretary of the Judicial Council