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Legislative Calendar

August 15, 2005
Legislature reconvenes

August 26, 2005
Last day for Fiscal Committees to meet and report bills to Floor

Judicial Branch Budget Update

On Monday, July 11, 2005, the Governor signed the 2005-2006 state budget (SB 77 (Committee on Budget and Fiscal Review), Stats. 2005, ch. 38). The budget sent to the Governor included the following for the judicial branch:

- Approved $130.7 million in new funding for the trial courts pursuant to the State Appropriations Limit (SAL) adjustment formula.
- Approved $92.6 million for the budget year continuation of Provision 8 funding provided to the trial courts in the current year and additional current year deficiency monies that are still pending with the Legislature.
- Restored $55 million of annual baseline trial court funding, which had been reduced in fiscal year 2004–2005.
- Approved budget bill language that earmarks up to $5 million for funding Self-Help Centers. Approved the undesignated fees compromise negotiated between the AOC and the California State Association of Counties for the purpose of protecting the trial courts from a $31 million reduction. (AB 139 (Committee on Budget), Stats. 2005, ch. 74)
- Approved the Uniform Civil Fee (UCF) proposal as part of the budget to take effect January 1, 2006 and extended the court security fee surcharge until December 31, 2005. (AB 145 (Committee on Budget), Stats. 2005, ch. 75)
- Approved restoration of $5.5 million one-time reduction that had been reduced in 2004-2005 and restored an additional $2.2 million to the Supreme Court, Courts of Appeal, and the AOC that had been reduced by the Conference Committee.

As part of the enactment of the budget, the Governor vetoed $57.5 million from General Fund transfers to the Trial Court Trust Fund (TCTF). Because funding to the trial courts

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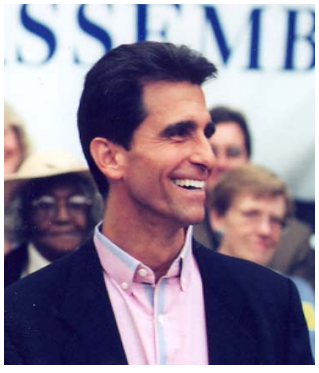
AB 519 (Leno) Provides a Remedy for "Legal Orphan" Problem



Assembly Bill 519, authored by Assembly Member Mark Leno, is co-sponsored by the Judicial Council and the Children's Law Center of Los Angeles to expand the discretion of the juvenile dependency court in two specified circumstances. First, the bill authorizes the court to reinstate parental rights that had previously been terminated where a number of conditions have been met. Reinstatement would be authorized only if:

- The reinstatement petition is filed by the child;
- At least three years have elapsed since parental rights were terminated, and the child has not been adopted or all parties agree that the child is no longer likely to be adopted; and
- The court finds that the child is no longer likely to be adopted, and reinstatement is in the child's best interest.

Thus the intent of the bill is to allow the court to reinstate parental rights in order to avoid the creation of a "legal orphan," a status which can arise when parental rights are terminated, but the planned adoption cannot

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Update on Judicial Council-sponsored Legislation

New Judgeships/SJO Conversions

Senate Bill 56 (Dunn), the Judicial Council-sponsored bill that proposes the creation of new judgeships and the conversion of certain eligible subordinate judicial officers, passed the Assembly Judiciary Committee on July 5. As they had done when the bill was in the Senate, presiding judges and executive officers of trial courts, bar association leadership, and Bench-Bar Coalition member organizations again sent letters of support to legislators. The bill is anticipated to be amended in the Assembly to specify by court the new judgeships and eligible SJO conversions.

For more information about SB 56, contact Eraina Ortega at eraina.ortega@jud.ca.gov.

Court Facilities Bond

Senate Bill 395 (Escutia), which states the intent of the Legislature to enact the California Court Facilities Bond Act of 2006 to acquire, rehabilitate, construct, and finance court facilities, passed the Assembly on July 5. The bill was amended to omit the amount of the proposed bond. If approved by the Legislature and the Governor, the bond would be placed on the ballot in an upcoming statewide election.

For more information on SB 395, contact Eraina Ortega at eraina.ortega@jud.ca.gov.

Uniform Civil Fee Proposal

In April 2004, the Court Fees Working Group (CFWG) made unanimous recommendations for a statewide uniform civil fee structure. The Uniform Civil Fee (UCF) proposal will streamline and vastly simplify the civil fee structure, provide for uniformity across the state, and address the funding shortfall under the current fee structure.

The UCF was approved as part of the judicial branch budget and is included in budget trailer bill AB 145. The UCF will take effect on January 1, 2006 and the enhanced security fee that was set to expire on June 30, 2005 was extended until December 31, 2005.

For more information on the UCF, contact Eraina Ortega at eraina.ortega@jud.ca.gov.

Judges' Retirement

Senate Bill 528 (Ackerman and Dunn), as introduced on February 18, 2005, declares the Legislature's intent to evaluate the impact of trial court unification on the judges' retirement systems and the resulting increase in judges' ages at the start of their judicial service. This bill, co-sponsored with the

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Budget Update

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was not reduced, this action will have the effect of reducing reserves in the TCTF. This limits the resources available to address unanticipated shortfalls in various areas such as court appointed counsel, technology projects, and cash flow issues in years when the budget is late.

The Legislature augmented the budget by $29.5 million associated with projected annual revenues that would support aspects of the statewide uniform fee structure. The Governor also reduced the branch's budget by the amount of all the anticipated increases, except those related to the increased facilities fee. The UCF requires that each paid filing fee make a distribution to the Equal Access Fund; the set-aside for law libraries, dispute resolution, and children's waiting rooms; and information technology. The anticipated revenues were already obligated to pay for those items. Therefore, the General Fund reductions amount to an unallocated reduction to the trial courts in the amount of $9.8 million in 2005-2006, and an ongoing reduction in 2006-2007 in the amount of $19.6 million.

After a series of meetings with the Department of Finance, the AOC reached agreements on the following changes to address the long-term effects of the budget vetoes:

1. Increase the appropriation authority in the TCTF to allow the Judicial Council to allocate funding from new filing fee and civil assessment revenues that are deposited in the TCTF.
2. Provide a General Fund transfer in 2006-07 to reverse the reduction in funding that is necessary for the set aside for law libraries, dispute resolution, and children's waiting rooms and the new funding for the Equal Access Fund that were approved as part of the UCF.
3. Allow the judicial branch to submit a Budget Change Proposal for a base adjustment in 2006-07 to address the long-term technology infrastructure needs in the branch.

LEGISLATIVE REVIEW

The following is an update of the first year of the 2005-2006 legislative session on selected bills of interest to the courts.

BUDGET

SB 77 (Committee on Budget and Fiscal Review) as proposed June 13, 2005. Budget Act of 2005
Enacts the state budget of 2005.
Status: Signed on July 11, 2005, Ch. 38.
JC Position: None.

SB 78 (Committee on Budget and Fiscal Review) as amended July 7, 2005. Budget Act of 2004: Contingencies and Emergencies
Deficiency bill that includes $14.6 million for the trial courts to fund security and increased county charges.
Status: Senate unfinished business.
JC Position: None.

SB 80 (Committee on Budget and Fiscal Review) as amended July 7, 2005. State Government
Budget bill that amends the conference committee report and SB 77 to restore $7.7 million in funding for the Supreme Court, Courts of Appeal, and the Administrative Office of the Courts.
Status: Signed on July 11, 2005, Ch. 39.
JC Position: None.

AB 139 (Committee on Budget) as amended July 6, 2005. State Government
Budget trailer bill that includes the undesignated fee agreement reached by the Administrative Office of the Courts (AOC) and the California State Association of Counties (CSAC). Incrementally reduces and eventually eliminates over a 4-year period the counties' obligation to pay a $31 million annual obligation pursuant to Gov Code 68085.5. Increases the maximum civil assessment from $250 to $300. Freezes local civil assessment revenues at the 2003-04 level. Establishes a review process to make necessary adjustments to ensure fairness of payments by agreement between CSAC and the AOC. Requires courts and counties to pro-rate collection costs pursuant to State Controller's Office guidelines
Status: Signed on July 19, 2005, Ch. 74.
JC Position: None.

AB 145 (Committee on Budget) as amended July 6, 2005. Uniform Civil Fees
Budget trailer bill that enacts the Uniform Civil Fee proposal. Establishes a statewide, uniform first paper and first response paper fees at three graduated levels: the filing fee for limited civil cases where the demand is less than or equal to $10,000 is $180, the filing fee for limited civil cases where the demand is greater than $10,000, but less than $25,000 is $300 and that the filing fee for unlimited civil cases is $320. Establishes a moratorium on fee changes through December 31, 2007, except for possible changes by the Legislature to implement recommendations of the Task Force on County Law Libraries or revise the graduated filing fee for probate petitions. Establishes a set-aside for increases in dispute resolution, law library, children's waiting rooms, and judges' retirement fees during the proposed moratorium, ending December 31, 2007. Authorizes the Judicial Council to establish bank accounts for the superior courts and requires the courts to deposit moneys from trial court operations and any other moneys under the control of the courts, into those accounts. Provide that money, excluding restitution to victims, that has been deposited with a superior court, or that a superior court is holding in trust for the lawful owner, in a court bank account or in a court trust account in a county treasury, that remains unclaimed for three years, is the property of the superior court if not claimed after specified notice and if no verified compliant is filed and served.
Status: Signed on July 19, 2005, Ch. 75.
JC Position: None.

CIVIL PROCEDURE

AB 496 (Aghazarian), as amended July 11, 2005. Service of process: retention of original summons in court file.
Existing law provides that a plaintiff may have the clerk issue one or more summons for any defendant. Among other things, this bill would require the clerk to maintain the original summons in the court file.
Status: Senate Appropriations Committee; set for hearing August 15, 2005.
JC position: Support

AB 1459 (Canciamilla), as amended July 6, 2005. Small claims court jurisdiction
Among other things, increases the small claims court jurisdiction over actions brought by a natural person from $5,000 to $7,500. Provides that the filing fee for cases in which the jurisdictional limit is greater than $5,000 is $75 with $23 of the fee to be used for enhancement of advisory services, $2 of the fee to be used for county law libraries, and the remaining $50 to be deposited into the Trial Court Trust Fund. Makes these

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LEGISLATIVE REVIEW

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filing fees inoperable upon the enactment of the Uniform Civil Fee Proposal. Effective July 1, 2006, requires temporary judges, prior to serving in small claims court, to comply with training standards set under rules adopted by the Judicial Council.
Status: Senate Appropriations Committee; set for hearing August 15, 2005.
JC position: Support if amended.

SB 422 (Simitian), as amended July 7, 2005. Small claims court jurisdiction
Among other things, increases the small claims court jurisdiction over actions brought by a natural person from $5,000 to $7,500. Provides that the filing fee for cases in which the jurisdictional limit is greater than $5,000 is $75 with $23 of the fee to be used for enhancement of advisory services, $2 of the fee to be used for county law libraries, and the remaining $50 to be deposited into the Trial Court Trust Fund. Makes these filing fees inoperable upon the July 1, 2006, requires temporary judges, prior to serving in small claims court, to comply with training standards set under rules adopted by the Judicial Council.
Status: Assembly Appropriations Committee; set for hearing August 17, 2005.
JC position: Support if amended.

COURT OPERATIONS
AB 176 (Bermúdez), as amended April 21, 2005. Trial courts: limited-term employees.
Existing law prohibits the employment of any temporary employee in the trial court for a period exceeding 180 calendar days, except for court reporters under certain conditions. This bill would prohibit the employment of any limited-term law clerk employed in the Los Angeles trial court for a period exceeding 180 calendar days. The bill would further provide that any limited-term law clerk employed by Los Angeles court for more than 180 calendar days is a regular employee.
Sponsor: Association of Federal, State, County, and Municipal Employees
Status: Senate Floor
JC Position: Oppose.

AB 759 (Lieber), as amended April 4, 2005. Misdemeanors: penalty assessments.
Authorizes a county board of supervisors in a county that has established a local Crime Stoppers Program to levy a new penalty assessment of up to $2, upon every fine, penalty, or forfeiture imposed and collected by the courts for misdemeanor criminal offenses.
Notes: The penalty assessment authorized by the bill presents problems for court case management systems since it only applies to misdemeanor offenses.
Status: Assembly Public Safety Committee. 2-year bill.
JC Position: Oppose unless amended or funded.

Assembly Bill 1742 (Assembly Judiciary Committee), as amended June 28, 2005. Civil Omnibus and Court Operations
The bill proposes a variety of non-controversial changes to civil law and procedure, as well as several technical statutory changes that will improve court operations. Among other things, the bill would remove the sunset of Code of Civil Procedure (CCP) section 128.7, the sole remaining statute authorizing sanctions for the filing of frivolous lawsuits, which is due to expire on January 1, 2006. The removal of the sunset provision of section 128.7 will help deter the filing of frivolous lawsuits by continuing the courts' sanctioning authority in this area.
Status: Senate Appropriations
JC Position: Sponsor

SB 56 (Dunn), as amended July 13, 2005. New judgeships.
Authorizes an undetermined number of additional judges for appointment to the various counties, as determined by the Judicial Council. Additionally, authorizes conversion of an undetermined number of subordinate judicial officers.
Status: Assembly Appropriations Committee; set for hearing August 17, 2005
JC Position: Sponsor

SB 57 (Alarcón), as amended July 12, 2005. Fines and forfeitures.
Authorizes, until January 1, 2005, a county board of supervisors to levy a new $2 penalty assessment for every $10, upon every fine, penalty, or forfeiture imposed and collected by the courts for specified criminal offenses. Revenue generated would be deposited into the county's Maddy Emergency Medical Fund.
Notes: The bill was amended to remove authorization for a second $2 assessment that would have applied to specific categories of offenses.
Status: Assembly Floor
JC Position: Oppose

SB 395 (Escutia), as amended May 26, 2005. Court facilities bond.
Enacts the California Court Facilities Bond Act of 2006 to acquire, rehabilitate, construct, and finance court facilities.
Status: Assembly Appropriations Committee.

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LEGISLATIVE REVIEW

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JC Position: Sponsor

CRIMINAL

AB 106 (Cohn), as amended March 8, 2005. Spousal battery: fines: amnesty.

Requires the courts of each county to establish a one-time amnesty program, based upon Judicial Council guidelines, for fines, bail, and other monetary obligations that are imposed for certain domestic violence offenses that have been delinquent for not less than six months as of January 1, 2006. Provides that the amount scheduled by the court shall be 70 percent of the total fines, fees, penalties, or assessments imposed.

Notes: The Judicial Council is opposed to this bill because it is inconsistent with the recommendations of the SB 940 Court County Working Group on Enhanced Collections.

Status: Assembly Appropriations; held in committee. 2-year bill.

JC Position: Oppose

AB 1542 (Parra), as amended May 4, 2005. Crimes by veterans: sentencing.

Expands existing law governing the court's sentencing authority applicable to combat veterans of Vietnam who have substance abuse or psychological problems related to that service and are convicted of a felony to apply to a combat veteran of any war who has been convicted of a felony or misdemeanor, and suffers from post traumatic stress disorder, substance abuse, or psychological or emotional problems as a result of that service.

Status: Senate Appropriations Committee; set for hearing August 15, 2005.

JC Position: No position.

AB 1551 (Runner), as amended May 18, 2005. Sexual predators.

Strengthens the sentencing scheme for sexual assault on children.

Notes: The Judicial Council opposed AB 1551 unless amended to strike the provision eliminating the court's authority under Penal Code section 1385 to dismiss an action in the furtherance of justice. The council has long advocated that, while the discretion is not absolute, dismissal of an action in the furtherance of justice is within the court's "exclusive discretion." The May 18 version of the bill deleted this provision, and the council has withdrawn its opposition and is now neutral on the bill.

Sponsor: California District Attorneys Association

Status: Senate Public Safety Committee; hearing cancelled at the request of author.

JC position: Neutral

SB 330 (Cedillo), as amended March 29, 2005. Criminal proceedings: mental competency.

Requires a criminal action to be dismissed if a defendant in a misdemeanor or infraction case is not brought to trial within 30 days after the date of the reinstatement of criminal proceedings pursuant to the provisions of law governing the mental competency of defendants.

Sponsor: Los Angeles City Attorney

Status: Stats. 2005, ch. 36.

JC position: Support

SB 864 (Poochigian), as amended May 25, 2005. Sexually violent predators: term of commitment

Authorizes commitment as a sexually violent predator to the state Department of Mental Health for a four-year term rather than for a two-year term for treatment of the person's diagnosed mental disorder if the person is adjudicated to be likely to engage in sexually violent criminal behavior if discharged. Requires that courts give a preference in scheduling commitment trials over all other civil matters.

Sponsor: California District Attorneys Association.

Notes:To comment, contact June Clark at june.clark@ca.gov or (916) 323-3121

Status: Assembly Public Safety Committee; hearing postponed by committee.

JC position: No position

FAMILY

AB 118 (Cohn), as amended May 25, 2005. Protective orders: minor children.

Requires that child custody orders must reference and acknowledge the precedence of enforcement of a criminal protective order issued in cases where a criminal protective order protects the custodial parent and provides that contact between a restrained parent and a protected parent shall be for safe exchange only.

Status: Senate floor; Inactive file.

JUDICIAL OFFICERS

AB 1595 (Evans), as amended May 16, 2005. Public safety officials: confidentiality

Prohibits a person, business, or association from selling or trading for value on the Internet the home address or telephone number of any elected or appointed official if that official has made a written demand of that person, business, or association to not disclose his or her home address or telephone number. Provides for exceptions for heath care providers and financial institutions covered under

Legislative Review

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existing privacy laws.
Notes: Product of 2004 Final Report of the Public Safety Officials' Home Protection Act Advisory Task Force. Council to seek amendment allowing public safety official to submit opt-out request to Secretary of State for inclusion in "opt-out registry."
Sponsor: Author
Status: Senate Public Safety Committee
JC position: Support

SB 506 (Poochigian), as amended May 31, 2005. Voter records: confidentiality
Allows a county elections official to, upon application of a public safety officer, make confidential the residence information of the officer contained in the affidavit of registration, subject to certain requirements. Provides that public safety officer includes judges and court commissioners for the purposes of the bill.
Notes: Product of 2004 Final Report of the Public Safety Officials' Home Protection Act Advisory Task Force.
Sponsor: Author
Status: Assembly Appropriations Committee; set for hearing August 17, 2005.
JC position: Support

SCA 16 (Runner), as introduced July 14, 2005. Judicial districts: superior court judges
Provides that the superior court of any county with a population of more than 5,000,000 shall be divided into judicial districts established by three special masters appointed by the Supreme Court.
Sponsor: Author
Status: Awaiting Committee assignment.
JC position: Pending

JUVENILE DEPENDENCY
SB 218 (Scott), as amended April 21, 2005. Termination of parental rights: prospective adoptive parents.
Authorizes the court to designate specified caretakers as prospective adoptive parents in cases where a dependent child's parents have had their rights terminated, and the child has resided with the caretaker for at least six months, and the caretaker has expressed an interest in adopting the child. Where the court makes this designation, a child could not be removed from the home of that caretaker until a noticed hearing had been conducted to determine that such removal was in the child's best interests.
Status: Assembly floor.

PROBATE
SB 390 (Bowen), as amended June 14, 2005. Probate assignments: cash advances.
Existing law provides for the regulation of the distribution of an estate. This bill would regulate the assignment of a beneficiary's entire or partial interest in an estate in consideration for a cash advance or any other consideration, as specified. Among other things, the bill would require the agreement to be filed with the court, would require specified disclosures with regard to costs and fees, and would prohibit an assignment agreement form containing certain provisions, including, but not limited to, a binding arbitration clause. The bill would further authorize the court to modify or refuse to order that assignment under specified circumstances, and would allow for specified damages upon a willful violation of the above-described provisions.
Sponsor: Author
Status: Assembly Floor
JC position: No position

AB 519 (Leno)

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be completed.

The other provision in the bill would authorize the juvenile court to issue protective orders for parents, guardians, and caregivers of children under its jurisdiction even where the court is not issuing an order to protect the child at the same time. This change is designed to provide the court with more flexibility and efficiency in order to address the needs of a family that is before it.

AB 519 is currently awaiting passage on the Senate Floor, and has not received any "no" votes as it has moved through the Assembly and on to the Senate.

Sponsored Legislation

(Continued from page 2)

California Judges Association, is a two-year bill, allowing the council to report to the Legislature on the effectiveness of JRS II based on the ten years of experience under the new system. This assessment of JRS II's effectiveness is required by supplemental reporting language in the budget.

For more information on SB 528, contact June Clark at june.clark@jud.ca.gov

JUDICIAL DISQUALIFICATION: AB 1322 (EVANS)

Assembly Member Noreen Evans

Assembly Bill 1322, which the council is co-sponsoring with the California Judges Association, was introduced in response to a recent decision in 2004 by the Court of Appeal in *Hartford Casualty Insurance Co. v. Superior Court* that took an unexpectedly broad interpretation of the disqualification provisions, which could severely hamper a trial court's ability to manage its civil litigation calendar.

Two years before the *Hartford* case, Assembly Member Hannah-Beth Jackson authored AB 2504, legislation that amended the Code of Civil Procedure to require the disqualification of a judge who has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral, or is participating in or has participated in, within the previous two years, discussions regarding that prospective employment or service. The original focus of the Legislature in enacting AB 2504 was on the potential appearance of bias when a judge who has a prospective arrangement for employment or has discussed such an arrangement with an alternative dispute resolution (ADR) provider can steer cases to that provider.

The *Hartford* court also determined that disqualification was triggered when the judge referred the parties in the case to mediation but had no involvement in the identification or selection of the mediator. Since, under Judicial Council case management rules, judges are required to consider what ADR process might be appropriate for a case, this raises a concern that disqualification will be triggered in virtually every civil case.

The *Hartford* court further noted the likelihood that many judges have or will receive unsolicited, superficial overtures from ADR firms that may require disclosure, disqualification, or the setting aside of past decisions even though the judges indicated to such firms that they were not interested. This may also disqualify most available assigned judges from handling civil matters, as most judges who have retired have likely received such overtures.

AB 1322 seeks to eliminate the type of mischief identified by the *Hartford* court and avoid wholesale disqualifications of civil judges by amending the statute in order to more narrowly tailor the disclosure and disqualification criteria to those cases in which the potential for conflict is more readily apparent, consistent with the intent of the underlying legislation.

AB 1322 has passed the Assembly and is currently pending on the Senate floor. For more information, contact Dan Pone at daniel.pone@jud.ca.gov ■

All Bench-Bar Coalition Members:

Register now for the next BBC meeting to be held during the
Statewide Judicial Branch Conference and the Annual Meetings of the
State Bar of California and California Judges Association
with opening remarks by
Hon. Ronald M. George, Chief Justice of California

Date: Friday, September 9, 2005
Time: 8:00 – 10:30 a.m.
Place: San Diego Marriott Hotel
Manchester Room
330 West Harbor Drive
San Diego, California

For an event flyer and registration form, please contact
Christina Fonseca in the Office of Governmental Affairs at:
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Looking for a past issue of *The Capitol Connection*? Find it online at www.courtinfo.ca.gov/courtadmin/aoc/capconn.htm.

In Memoriam: Assembly Member Mike Gordon (1957-2005)

Assembly Member Mike Gordon, a freshman legislator and former mayor of El Segundo, died on June 25, 2005, due to complications from a brain tumor. He was 47 years old.

Gordon served the 53rd Assembly District, which includes Torrance, Redondo Beach, Manhattan Beach and Lomita.

As mayor of El Segundo, Gordon focused on increasing funding for education, improving public safety and revitalizing the city's downtown. He stepped down in April of 2004 to run for a seat in the California Assembly.

After being elected in November 2004, Speaker Fabian Núñez appointed Gordon as chair of the Assembly Committee on Veteran Affairs and chair of the Select Committee on Aerospace. He also served on the Assembly Appropriations, Health, and Natural Resources committees, the Select Committee on the Los Angeles Health Care Crisis, and as the Assembly's representative to the Milton Marks Little Hoover Commission.

Gordon was raised in La Mirada, California, and graduated in 1979 from California State, Fullerton, with a degree in political science. He resided in El Segundo, and is survived by his wife of 13 years, Denise, and his four children.

Assembly Member Gordon's seat will be filled in a special election scheduled by Governor Arnold Schwarzenegger.

The Capitol Connection extends our condolences to Assembly Member Gordon's family, friends, and staff.

News From the AOC

In addition to *The Capitol Connection*, the Administrative Office of the Courts publishes several newsletters reporting on various aspects of court business. Visit these online on the California Courts Web site at www.courtinfo.ca.gov. To subscribe to these newsletters, contact pubinfo@jud.ca.gov.

CFCC Update: Reports on developments in juvenile and family law, including innovative programs, case law summaries from the AOC's Center for Families, Children and the Courts; grants and resources, and updates on legislation and rules and forms. Published three times a year. See www.courtinfo.ca.gov/programs/cfcc/resources/publications/newsletter.htm.