

The Judicial Council of California is the constitutionally created policymaking body of the California Courts. The Council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts website. What follows is a formatted and unedited transcript of the meeting of August 26, 2011. The official record of each meeting, the meeting minutes, are usually approved by the Council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts' website at <http://www.courts.ca.gov>.

>> Good morning. We'll begin our business meeting of the Judicial Council of California for August 26th. I want to begin by calling our attention to the amended agenda that we'll get to in a few moments. As you know, if you look on the amended agenda you just received, the bar association of San Francisco has a request to amend rule 10.815, and there will be more information on this later but the summary is the item would establish a new fee in complex civil cases. It was added to the agenda earlier this week in consideration of the current financial situation of the Superior Court.

Before we move on further to the public comment I want to point out as I always do that our business meetings are audio cast live, and are also archived, and are available on the California court website. As a result, I ask everyone to please turn off their phones, and speak in the microphones directly, and when you remember, please try to identify yourself before speaking, or when speaking to another council member, please refer to the other council member by his or her name for those following on the live cast.

Also as you know, we tape portions of the meeting that are later broadcast on our website, or for educational meetings. You know for some of our meetings, we had hundreds of visitors online or later at the archive broadcast.

For this afternoon and our panel, we have several presenters who will identify themselves as the panel is produced and proceeds. I want to welcome, however, two northbound-coming council members whose terms will begin September 15th. Joining us, I believe from the state bar, Ms. Angela joy Davis of the office of the United States attorney general in Los Angeles, welcome. And we had yesterday at our business meeting but I believe he was unable to attend today, Mr. Mark Robinson of Newport Beach.

>> Because of the complexities and the interest and transparency that we have in our proceedings, Justice Miller, the chair of the executive and planning committee reviewed the changes and course of conduct and expanded our public comment period for up to five minutes per speaker. At the beginning of our sessions. Part of the changes instituted by Judicial Council and led by Justice Miller was the opening to the public of our education and issues meeting yesterday which I thought was very productive, put on by the judges, panels that if you're interested in the agenda was posted on the website and can be accessed.

I'd like to get immediately to our list of public speakers. As I said earlier part of the new process is to allow up to half an hour of our morning meeting devoted to comment by the public on a subject of their choosing relating to issues in front of the judicial branch or Judicial Council. Also we changed agenda where speakers who want to speak to a specific agenda item would speak more clothes fly time to that item. But this morning regarding our new public comment period, we have six speakers, I will call them up to the podium, in order of how they signed up to speak. And remind them they have up to five minutes. I'll start please this morning with Mr. Stewart.

>> Mr. Stewart: Is this position already, lady chairperson?

>> Might be more comfortable to step to the podium with the taller microphone. Thank you, Mr. Stewart, go ahead.

>> Mr. Stewart: Thank you. Good morning, lady chairperson and California Judicial Council members. It's an honor to address you. And I thank you for allowing me to speak.

As you may know, in 2009, there were over 500,000 foreclosures in California. My talk coincides with a power point slide presentation that I submitted for this talk, that all of you I understand have a copy of.

It's regarding Judicial Council Ud-100 form, intent versus use. And for all these talks, usually you give an outline of what you're going to say, then you say it and then you give a conclusion and recap what you said. So, I would open with a joke but the one that I had is kind of corny, so I'll proceed to the outline.

The -- I'm going to contrast the unlimited jurisdiction complaint versus the unlawful detainer complaint, then go to the legislative report concerning the code passed by the legislature regarding unlawful detainer actions, the Judicial Council intent as inferred by the comments on the Jd-100 form. The current use by attorneys for banks of the Ud-100 form. And then overview how judges implement the U D complaint versus the intent of the complaint and the civil rights and due process issues for homeowners who are confronted with UD complaint.

First of all the ordinary unlawful or unlimited jurisdiction complaint is to be used only after administrative remedies have been exhausted. For a party whose rights have been violated. The unlimited jurisdiction complaints have three realms of discovery prior to trial setting another full round of discovery after trial setting, but before trial. The unlimited jurisdiction complaint allows for cross complaint that must be heard prior to the hearing of the complaint and cannot be dismissed unlike the complaint. pursuant to maxims of law. The unlawful detainer does not allow for cross complaint. It does not allow for full discovery, it operates under the presumption that the plaintiff, who is filing the unlawful detainer, has standing to file the unlawful detainer, does not allow a challenge to the ownership claim of the plaintiff or the standing of the plaintiff to file and make the claim for unlawful detainer.

The legislative report for the unlawful detainer legislation makes it clear that it is intended for non-payment of rent. That indicates that it's to be applied to renters, not homeowners, who have been foreclosed upon. The Judicial Council on the UD-100 Judicial Council form states clearly on page 1, note, do not use this form for evictions after sale, and then it cites code of civil procedure section 1161-A.

Now the current use of the unlawful detainer complaint by the banks involves their deliberate misrepresentation of the owner who of this foreclosed upon as renters. And of course there is no opportunity in the unlawful detainer complaint to challenge this.

99% of foreclosures are currently done in California in fraud. So we've got a situation where you've got a fraudulent complaint filed, home owners are confronted with this on a fast track, and generally they are confused and baffled and when they ask to change the jurisdiction from the limbed jurisdiction unlawful detainer to an unlimited complaint with cross complaint as is provided generally by local rules, the judges generally refuse and further the judges do not do a SuA Sponte dismissal of the unlawful detainer for lack of standing --

>> Mr. Stewart you're up to your five minutes. >> I can conclude.

>> Within 30 seconds, please, sir.

>> Mr. Stewart: The banks have no standing to foreclose because all the notes for the mortgages are securitized, sealed in a 30 years real estate management conduit that the banks do not open because then they will have to pay the taxes and penalties on 3.6 billion dollars of Remic notes, not just the note they are trying to get. They never become an assign on the note, they never are recorded in the public record as an assign on the note, they've separated the note from the deed of trust, so they have violated UCC 3-305-B and made the note unenforceable but the standing is never allowed to be challenged and further more the trustee fraudulently certifies under penalty of perjury that civil code 2934 and all its requirements have been satisfied when in fact the California civil code 2932.5 has been violated because the banks never have the note. >> Mr. Stewart, I'll stop you here because I want you to know we have an idea of the substance of your complaint about the use of this form. And we appreciate you are bringing this to the attention of the judicial counsel. Thank you, Mr. Stewart.

>> Thank you commissioner, chairperson.

>> Chief Justice.

>> Thank you, sir.

Next we'll hear from Ms. Adrian Williams.

>> We'll pass Ms. Williams, Mr. Jose Ros Mariza present?

>> Madam Chief Justice, honor only counsel members, good morning, thank you for opportunity.

>> Good morning.

>> On July 22nd, members of my union local, local 21, spoke before you along with other service providers in the courts, -- pardon me.

Appreciative not only of your time and monumental task before you but also of the greater realities economic realities facing our state and nation, most importantly of the mission of the courts to provide equal Justice, equal access to Justice in our state, we came right to the point and we offered specific suggestions for your consideration. I would like to repeat those, termination of the Deloit contract for costly It. Termination of all further spending on a nearly \$2 billion CCMS computer system experiment. Bringing extravagant courthouse construction projects in line with other state building projects. Transfer of construction projects to the more experienced California department of general services. Termination of pension give aways to top executives. And further, streamlining of a bloated and centralized bureau extra see here at the AOC.

We were disappointed to learn despite a nearly unanimous voice by the California trial courts, and by service provides; our requests appeared to be ignored and the Judicial Council made up their mind.

So I'm here to suggest to you I think some of you are judges, to please accept it from a court clerk who often on a daily basis stands between you and the many court users putting your lives before the court, in the hallways and the attorneys and attorney services and paraprofessionals and we speak to them on a more informal setting. I like to suggest to you there is at least an elephant in the room that what we're hearing from the public and within our system is that there is a real possibly visceral disconnect between the members of the council, some of you perhaps within the seemingly safety of the constitutional tee of your offices, and the economic realities in California and facing the taxpayers. This transfers to us the court service providers when our resources are curtailed overburdened by the workload and dealing with daily frustrations of the court. Therefore I'll make it short.

I came here to ask you to please reconsider our recommendations. And that before the day is over that you please read again our our mission statement to the California taxpayers, to the court users, and to make service an equal access to the California taxpayers, the sole priority in allocating our budget. That is our sole purpose. Thank you, have a great day.

>> Thank you.

>> We'll hear from Timothy J. Lavorini.

>> My name is Timothy James Lavorini and I am your clerk. I could be any clerk from any courtroom or any office in any of these great counties, 58 counties that make up the golden state where I was born and can only hope now to continue to call home. Like many of my fellow clerks, the words unemployment and foreclosure have taken the place of to serve and uphold. Our stories are all much the same. We work hard, sometimes through no breaks and even through lunch times and after work without submitting overtime just to make sure our judges will be well-prepared or to make sure that we can help out at the window for the bewildered public. My first exposure to the court was when I was a boy. I would accompany my late grandmother, private attorney to court where I would help carry a heavy brief case when she filed brief motions. She originally came from Shasta County to start off her legal career as a clerk. She then studied law, graduated second in her class as a grandmother and went on to become the first female Public Defender in the city and county of San Francisco. He then -- she had her own practice where she was known to say "everyone deserves their day in court." Though she loved a good argument, I think she would have to say that all of us are really on the same side of the issue, and that is to keep in tact to keep the good name without faltering the duty to the citizens. As a boy when I would join her in court, she would gently admonish me, Timbo Jimbo, sit up straight, don't chew gum, don't read your comic book, and don't speak unless the judge has spoken to you. Because you must always show respect for the bench and to the judge. I remember asking her if the judge is always right and she paused and said it's because the judge took an oath, that's a very special promise. To always do what's right. I later came to work for the courts in part because my father told me before he died that I should get a government job. Where if I worked long and hard that I would have a secure future and a pension to rely on in my retirement. He feared it didn't look like me or my partner would have any children to take care of us in our old age as we were now doing for him after mom died. Now, besides my job, which I've grown to love, as clerk of civil archives, it looks like even my pension is now in jeopardy.

I remember the first time I had a chance to order a judgment book from our former unscrupulous warehouse company, that is the same company I made pay us back \$50,000 for the so-called building error that I, a clerk, exposed. When I first opened the book, volume number one, it took me back on a journey over 100 years to the clerks that made the beautiful handwritten entries. The first entry date was April 28th, 1906. Ten days after our natural disaster known world wide as the great San Francisco fire and earthquake. She looks pretty good for 105 years old.

>> You have about 30 seconds, sir. The eyes of the world are pulling closely to overcome the man-made disaster. Please remember altogether we make up the judicial branch of California, citizens voted once, the good citizens can speak again and who knows what they will demand of us. If we continue on the rights of putting -- restricting access to Justice this may be the last time I'll be able to speak before this civil body, as we know it today. and at the basin of my courthouse on the door that separates my working space from the judge's garage, I wrote a sign, it reads "civil archives, serving the courts, serving the public, preserving our legal history" I can only hope now it remains there and remains true after I'm gone.

>> Thank you, Mr. Lavorini. We appreciate your comments.

>> Next we have Judge Kevin McCormick.

>> Madam Chief Justice, members of the Judicial Council, I'm kitchen McCormick, a judge with the Sacramento superior court I address you as one of the directors of the 400 members of the Alliance of Judges. We respectfully are asking to you reconsider and reverse the decision which allocates cuts in a plan that insures court closures, compels layoff of staff, requires shortened court hours, and makes denial of access to judiciary a certainty the public we're in existence to serve. As a judiciary we have a duty to carefully, prudently, responsibly, and thoroughly thoughtfully spend the taxpayer money. We're required to take special care to insure access to the courts is not denied to the citizens who pay for it. It is undeniable the cuts of \$350 million are difficult to distribute. It's challenging to decide which projects to forego, which projects to delay and how to prioritize valuable and important personnel. Nobody wants to make the horribly difficult decisions but that is the financial reality in which we find ourselves.

The present of the alliance addressed you at the July meeting to mitigate the impact of the \$350 million budget cuts to the trial courts this year. He explained at that time that there was approximately \$82 million of additional mitigation available to the council, under the authority granted to it in this year's budget bill. We ask you to find the funds in CMS budget and AOC operating budget and utilize them to keep the trial courts open. As a Chief Justice and many of you promised that is your absolute first priority. We were not the only ones to make this request. Presiding Judge Kathryn Feinstein, Assistant Presiding Judge Laurie Earl made compelling cases for this position as well. Judge Fineston pointed out the folly and to spend money on a bloat bureaucracy while forcing trial courts to close and -- the choice before you last month was clear, cut the AOC budget and suspect funding of CCMS or deprive citizens of their ability to access the courts. Unfortunately, Judge Pines and Judge Wesley sided with us.

What is concerning about the allocation of the cuts is how the Judicial Council went about deciding how to apportion the cuts. The most significant financial decision facing California's there was no independent fiscal advisor, no auditor, no financial expert, there was no

independent analysis, there was no consideration of further cuts toward the AOC as opposed to the courts themselves.

To many it seemed peculiar to leave the decision making responsibility to the bureau extra see that was criticized in the state ought I tore's report and who had appear vested interest in protecting their own fiefdom. Based on methodology it looked thoughtfully at the scope. There was no option presented. Which was designed to minimize the impact on the citizens who rely on the courts being open.

In fact, the decision was made without any detailed analysis of the viable alternatives like the ones suggested by Jump Lampey. There was no consideration of the size of the AOC and recent events exposed why. Perhaps it's because nobody even knows who works for the AOC.

For over a month I have been asking for a list of people paid by or through the AOC. Seemingly simple task. Easily compiled in my private company in the United States. One would think an email list, Hr department, information services division, executive office, office of general council, finance division or at least somebody in 1000 plus person bureaucracy could supply a list. Over a month later and in spite of assurances that the information would be provided by August 22nd I don't have the information.

The AOC has grown beyond any concept of reasonable they can't identify who works for them. Of course, there is one other thing, the CDA provides training across the state for 5200 prosecutors. They do that with a staff of nine educational staff of the AOC which serves 1700 judicial officers, 100 people. Branch leadership has convened a committee to conduct be a in depth review of the AOC and organizational structure.

>> You have 30 seconds.

>> The usefulness of such an evaluation is obvious but inconceivable proposals from the committee are not anticipated until the summer of 2012. Our financial situation is too severe to wait until a year from the committee's formation for proposals. The Chief Justices many times been quoting a as saying keeping the courts open is the number one priority. These are meaningless if the council places bureau extra see and failed projects such as CCMS with higher priority than public access to Justice. You need to act now to provide all available mitigation from all available sources, including additional reductions to the AOC and cessation of funding to CCMS to the courts to prevent closures and insure public access, thank you.

>> Thank you, Judge McCormick.

>> Next we'll hear from Mr. Christ Doolan.

>>> Good morning, I'm here although I'm a member of many statewide and local specialty bars as a private lawyer, who represents clients, I do not speak today on behalf of those booted dees, though I have been intimately involved with them over the years and the budget issues. First I want to thank you very much for your leadership. All of you. And for the time that you put in in doing this work, many outside of your regular jobs, to see that we have access to Justice. We have a financial crisis, I want to thank you for the reallocations that you made from your budgets unselfishly, court of appeals, the Supreme Court, AOC, to fund the trial courts. That has not gone unrecognized.

I want to say there is a voice that needs to be raised here which is the voice of the clients, the people who are waiting outside the doors, the people who have a constitutional right to a jury trial. All of us. We swore to uphold and defend the constitution of the state of California against all enemies foreign and domestic. That includes a right to jury trial. It's a fundamental aspect of democracy. It can only be delivered through an open courthouse.

I'm a San Francisco lawyer. There is due to circumstances a loud voice from San Francisco, there is a need from San Francisco. This is not a San Francisco problem alone. There cannot be only a San Francisco solution. If I was here solely as a San Francisco lawyer rather than someone supposed to uphold the constitution, I would say treat us specially, save us, I have colleagues, friends and clients in other jurisdictions that need the same savior and opportunity.

So why I believe and hope there can be a solution locally, it needs to be one state-wide, we can't fraction and I heard the word Fief Dom, that is what we have to avoid. Things can happen. I have to tell you that myself, many of my clients and colleagues, we feel we're in a hostage crisis. Day 30. What is being held hostage? The access to a jury. Why is it being held hostage?

Political issues. Contests for funding. But that is not, I do not think, the role of the judiciary. To create insecurity. It's to create calm, and security. And to work together.

It's interesting I look at the room and it's a circle of judges throughout the state, legislators who look inward. You don't point outward. You look inward at the goal of preserving Justice. And there are resources, there are resources available to keep our courts open now. And we can't close our courts now to try to keep them open a year from now. The impact of this crisis is already being affected to my clients.

We're being denied fair opportunities for compensation because people are literally saying you will not have a courtroom you better take this money now or you'll get nothing. That is the reality. These are people whose homes are being lost because they've been injured or fired, and they need this access to this jury trial. In the firms that this branch needs, need to be kept intact through the judiciary and not to be swept for convenience. In closing, I would like to say that I hope that this crisis, this hostage crisis, can end and I hope there will be offers and compromise from both sides with whatever reserves are available and not only would an offer be made by both sides but accepted because the time for division has to end, and the time for Justice must continue. Thank you for your time and your commitment.

>> We also received and council has copies, a written comment received for today's meeting. The persons who provided those written comments are: Mr. Stewart, who you heard from first in our public comment. But also Mr. Arnold Mednick, referee out of the Superior Court of Los Angeles. Kathryn Feinstein, and another written comment received by Mr. Fred Cabrera, California taxpayers. According to our agenda we're at a time and place to consider approval of the minutes of our previous business meetings. Any discussion on the previous business meetings or do I hear a motion?

>> Move.

>> Second.

>> Thank you. All in favor of approving the minutes, say aye. Any opposed?
Matter passes.

>>> Since our last meeting it's an opportunity now to share several reports of activities occurring between the last meeting and now, it's my opportunity to give to you the Chief Justice's report. I want to start off by describing I conducted an inquiry through surveys and meetings with you, your bench and bar associations, we all know we're in a new area defined by limited resources and more leadership in the judicial branch by our judges and by our stakeholders. We made many changes, we experienced them here, we have many more in the process. I recently formed three internal working groups that are members of council to assist me in a comprehensive review of branch governance structures and leadership. I would like to describe very briefly for you a few here.

First we created the working group on Judicial Council governance to address changes. Members of the group include all the members of the executive and planning internal committee of the Judicial Council as well as judge Sharon waters and judge Mary Ann O'Malley. Justice Miller agreed to chair the group in addition to duties of chair of ENP. You know the substance of some of the proposed changes came from our meeting here of Judicial Council members with three white boards and us discussing how we would like to see changes in judicial governance. Also suggestions to the governance committee come from the presiding judges, survey that was conducted that I received in May. Not only the entire survey but summaries of the survey, as you know, those comments received from the survey pertaining to the AOC have been redirected to the SEC for their evaluation so the survey is in use and part of our dialogue.

We also created the working group on Judicial Council parliament take rerules, I believe that was probably first initiated by Judge Rosenberg, we will have a developed set, they will be based I believe on Robert's rules of order but they will be simpler, easier to learn and more user-friendly, and the proposed rules will handle such topics as establishing a quorum, handling motions and counting votes. Justice Hull, judge Jackson, Judge pine Commissioner Alexander agreed to serve. Justice Hull will chair the group. Justice Hull has agreed to chair the working group on the search for administrative director to, and for this critical assignment I've also enlisted Justice Baxter, Ms. Turner and I would like to share with you appearances and outreach, first in early July had the opportunity to visit with the Justices of the court of appeals in San Diego, at the invitation of judge Nadler I visited the court in Santa Rosa with the Justice before remarks at a bar luncheon. Also had the opportunity to visit at that time with Senator Evans who was also at the reception, who is also present this morning, thank you, Senator.

I advice listed with several local Bar Associations, the bar is steers Club in a luncheon in Sacramento and one Justice formerly known as the clearing house in San Francisco and bill traveled to Atlanta to attend the Conference of Chief Justices as well as conference of state court administrators, very interesting meeting, across the nation courts on commonwealth and territories, struggling with budget issues. California's are monumental to the other states, primarily because of the numbers and our when we say a cut of \$350 million, that is in comparison to the fact that Guam's Chief Justice informs us his budget is \$12 million. It's a matter of proportion and California is always leading the way.

I've given numerous media interviews to explain the payment impact budget reduction, I gave a keynote address and finally in the last several weeks as many of you know, I hosted meetings with groups of bar leaders. No other Justice or judge was present except Justice Baxter and I, we discussed the branch budget and impact on access to California state-wide with leaders of the bar in San Francisco, Los Angeles, riverside, San Diego, we hope to conduct the same with central valley leaders and bar associations, a working group been established to explore some of the proposed state-wide solutions in more detail, and some of you here on council are also members

of the group and I thank you for taking on an additional responsibility as we look into trying to avoid dire straits in fiscal year 12-13 and avoid mid-year cuts in 11-12.

Before I conclude the report it's important to recognize this is the final business meeting for two extraordinary men, one is first K Ken Kann he guides us in all things and keep us focused, and on track. It was a wealth of knowledge and information and common sense in a gray world. And so Ken, we recognize you are an extraordinary person thank you for your service to the council and AOC.

(applause).

This is also the final meeting for the administrative director bill Vickrey, council members, Chief Justice Ron George, state representatives from Sacramento, folks from Utah, many others attended a wonderful event last night Honoring bill for two decades of leadership in California. It was an evening to remember, it was poignant, funny, sad, and we all love Bill, even the more after seeing the film from his family.

(laughter)

>> The early years, and the celebration, I had the pleasure of announcing what we knew and had been under wraps, the extraordinary gifts that council will be providing to him and that is renaming one of our highest honors previously named the distinguished service award for judicial administration, now be named the William C. Vickrey award because it's appropriate because it honors the quality, character and integrity he has in abundance and that is leadership, taking challenge, not taking no for an answer, seeing the possibilities and making them possible reality for all of us, thank you, Bill.

(applause)

The last thing I would like to say as you know, that we are renaming the Judicial Council conference center the William C. Vickrey conference center because it's the hub where all policy decisions and discussions happen here on this floor in this building, and it would be only appropriate to always remember that Bill has always been in those meetings and those discussions for the last 20 years. Thank you again, Bill.

We also have a resolution, Nancy will bring that forward. We would like to take a moment now to present this resolution and take a photo to hang it in our newly named conference center. This is a resolution that of course chronicles the history of Bill's legendary achievements, to be admired by all and institution that gives us strength and structure and allows you to really weather the storm that we could never have weathered without this kind of structure 20 years ago or even 15 years ago. I hesitate to read it all, but I will indicate something that maybe you don't know about Bill in this resolution. That he is admired nation-wide. When I go to the conferences of Chief Justices and meet with all the chiefs, all of the administrative directors, Bill is got-to person. He is the idea man. No one can steal him away, thank goodness. We stole him from Utah. And I want to just tell you a little bit about some of the awards.

This doesn't chronicle all of them he received based on his unflagging dedication. Mr. Vickrey recognized for outstanding achievements in judicial administration including receiving the James Larson award, Utah corrections association, 1984, Warren E. Berger Award, National State Center of State Courts. Judicial Council Award for Judicial Administration, Award for Leadership and Judicial Administration came in 2011, Leadership Award from the National

Association of Drug Court Professionals, year 2000. Award for Innovation and Vision in Government, Government Technology Conference, 2007. Induction in the National Center for State Courts 2009. The Kenneth R. Palmer award, 2011. Judicial Council's Huffman Justice for Children Award and Access to Justice Award, 2011. California Commission on Access to Justice, California State Bar and California Judges Association. Bill, an extraordinary career for an extraordinary man. (applause) That concludes my report and appropriately now I turn it over to the Administrative Director for his report.

>> Thank you Chief Justice, members of the Council. 20 years you think I would know how to do this. I wanted to thank all of you and as I said before, all the former council members, the members of the administrative office of the courts who are as other Chief Justices have said, the gold standard across the country in terms of the talent and the contributions that are made through the staff of the administrative office of the courts and staff of the courts across the state of California at the trial and appellate level, and it's been a real opportunity for me to have been part of this journey over the last 20 years and I'm someone who has really been the beneficiary of the great life experiences and the opportunity to participate here and I also want to thank you for the honors that you bestowed on me that belonged to the staff of the administrative office of the courts and staff of all our trial courts across the state and as I mentioned to Ron last night, when you announced the naming of the conference center in one of the things that I mentioned that I was both proud of is recognizing the field and profession of judicial administration in that process, in a significant way, so I thank you on behalf of all of us that work in the field of judicial administration for that and as well as the recognition with the council's distinguished service award. Been an honor to work for all of you, as I am -- as I said last night with all the challenges we face, with extraordinarily optimistic about the continuing progress of our court system and the ability to meet the challenges posed by the seems the never-ending roller coaster ride of the California state budget in the process but I think we have many partners in our gist is the system as well as the public as a whole that will be part of the solution and I hope it's through this year successfully without the need for dramatic closures and layoffs in the courts and to be able to find solutions for the future of our court system.
So thank you again for the opportunity to work with all of you, and to work for all of you in this time. Thank you. (applause)

>>> You have a copy of my written report and there is not much to add to that, so I'll leave that for you to review. I did want to point out for purposes of clarification that the recommendations of the council acted on on the budget were recommendations that came from the trial court budget working group, but as a result of the extraordinary times also that group supplemented by the administrator presiding Justices, the clerk administrator of the California Supreme Court who joined in joint session with the trial court budget working group, and arrived at the recommendations that you considered at your meeting in allocating both reallocating funding and allocating the budget reductions including the 12% reduction to the administrative office of the courts and 9.7% to the appellate system and 6.8% to the trial courts for this current year. In response to some of the issues facing courts that effected disproportionately in the system to some extent because of either limited reserves in their budget to help supplement operations needs in the current year, and there were two in particular that were discussed at the budget working group, and reviewed again, after your motion at the last council meeting to examine reserves and other factors that may point the courts that will have challenges in the current year

that may need assistance through the funding that is provided by statute, the one half of 1% reserve held at the state level. So based on that information, there are conversations that have taken place with both the courts that are the dising wishable in terms of extremely low reserves and that was the San Francisco superior court and the superior court of San Joaquin. Conversations have been taking place with San Francisco and will be taking place in San Joaquin County when the staff visit with them and review the activities.

I would like to call on Ron Overholt, who has taken time yesterday to follow-up on numerous meetings that the Chief Justices had with presiding Judge Feinstein, that I had and meetings that we had with representatives from various bar organizations, in the northern and southern California on these issues and there are specific proposals that were discussed with Judge Feinstein to address the issues in the San Francisco superior court for the current year. So Ron, if you wouldn't mind going over the nature of what the options were that were offered and the discussions that you've had.

>> Sure, would be happy to. Let me just say on behalf of all of the staff at the AOC, Bill, how grateful we are for your service and what a privilege it's been to serve under your leadership and what you've done for the courts and the public and the AOC is remarkable and your legacy will live on for a long, long time. As Bill said we're keenly aware of the difficult situation that San Francisco is facing, the San Francisco Superior Court and we've been in active discussions with the court and with the bar, Mary Rob Rob Robbers and I met with representatives with bar association on Monday for a couple of hours, we met with our financial Director, Kurt, Chad, Mary Roberts and I met with Judge Feinstein and PJ and the court executive for a couple hours last Thursday. As Bill mentioned, I left the council yesterday for a period of time to go meet with Judge Feinstein and Michael Yu and offer alternatives that we believe were viable to offset the \$6 million gap that exists in this year's budget.

Those included use of the court's reserves to a certain extent, not entirely, but does include use of the court's reserves below the 3% that we talked about yesterday. It includes accepting the funds from the mod fund which was scheduled to be closed the funding for the complex courts was going to be sent back to the mod fund. It included some potential additional revenue that I would ask your council to consider if we're able to move forward on this alternative plan, we talked yesterday about reserves and how that would be addressed and what the criteria would be and that certainly is a discussion that we would have to have, but included that in the alternative options that would be available potentially, and it included the court resuming cost saving measures that would be implemented last year at the San Francisco superior court, partially which is responsible for their ability to increase their reserves from \$280,000 the previous year to 4.6 million dollars as of June 30th of this year.

It also included recommendation that the court implement all of the items identified in the audit that was presented to this council earlier this summer. I was informed they were moving forward on all of those items, but I think it would be important to follow-up on that and make sure that if there is any assistance needed from the AOC or council, that be offered to make sure that that revenue is realized as well.

I left it with Judge Feinstein and Michael Yu to consider, I thought the meeting was very productive and cordial, it was a very good conversation. Judge Feinstein indicated to me that there was still great concern that the court has about future years and the court was certainly hoping to have a three-year plan so that we don't sort of fall off the cliff that we talked about next year, if there are no mitigations to the kind of budget cuts that are on tap that next year would be

very, very difficult as would the following year. I suggested that as far as my thought is it's worth the risk to not close the courts and layoff staff this year. And work on a solution for next year and the year after that three year guarantee or three year plan is not available in the legislature or offered in the legislature, knowing there is a lot of work that needs to be done and we're sort of working on a year-to-year basis at this point, given the volatility of the economy.

But in my view, we have an option that would be able to close a \$6 million gap this year, and I believed it was worth the risk to accept that and move forward on it and continue to work on plans to mitigate further cuts next year.

There was questions raised why there is reason for hope, that something might be done. I indicated that actions of the bar association of San Francisco in terms of raising the issue to the legislature and the Governor and Judicial Council was very useful and productive, and I think certainly with the announcement from Judge Edmond, day before yesterday of the future problems that the La Superior Court, with the La bar and consumer attorneys and various other groups raising the issue that it's not just judges saying we need more money, but it is those folks who use the court system and represent the public that we have a problem and it needs to be addressed. Given the kind of attention that has been raised, the legislature will bear fruit next year along with the efforts of the Chief Justice and all of us to go to the legislature and Governor and identify those problems going forward.

So I'm waiting to hear back, I left it with the court and currently am trying to reach Judge Feinstein, but I think I'm hopeful that we will be able to avoid the situation this year at least and that's -- the concern is real that, for Judge Feinstein and for Michael Yu, to issue potential layoff notices every year is unbearable for them and I agree and I understand that but I think if there's a way to survive there year, hopefully we will take that opportunity and work on it next year.

>> Thank You, Ron.

Finally often not discussed on the budget issues, are the budgets of the Supreme Court, courts of appeals, six districts of the court of appeal and AOC Judicial Council budget. As the trial courts after you made your decisions taking steps to figure out the strategy that is most appropriate in their respective jurisdictions so have the appellate courts and appellate administrators doing the same thing, we had a joint meeting with the apj's appellate administrators, the clerk administrator of the Supreme Court, and our staff and a number of actions are being taken at each of the districts individually, but collectively, in the state level judicial system, the decision has been made to continue the furloughs that have been in place for the past 18 months and to continue those furloughs for a day, a month for the next year again and that process and within the AOC, Ron Overholt and several directors acted as a committee, so some of the things that are reported on in here in terms of the consolidation of divisions, based on retirements taking place, the potential elimination of significant number of the positions based on the freeze that has been in place for the past 18 months and number of other steps that are being taken to reduce personnel positions and other cost-saving measures are the same types of activities taking place in each of the appellate districts and I think was mentioned at your last meeting the appellate courts and Supreme Court as well as Judicial Council budgets have not had money reallocated from our areas from the budget in the process, so for these reductions they had each year they're having to find ways to permanently make reductions to the base cost of the operations, so the challenges are there. Not as dramatically as they are in the trial courts, but with the same risk and same implications for the services to the public.

>> Thank you.

>> Thank you, Bill.

>> Now the we'll hear from Justice Baxter.

>> Thank you, Chief Justice, the policy coordination and liaison committee met on four occasions, since my last report, two meetings were strictly informational, that dealt with the budget opinion related issues. At the June 29th meeting, the policy committee approved one legislative proposal for circulation as part of the spring cycle of invitations to comment, and also received an update on recent activities pertaining to the budget.

The invitation to comment, the public comment on legislation relating to the recognition of tribal court civil judgments, the information update to the committee included information on SB-87, the 2011-12 budget bill and on assembly bills 109 and 117.

The policy committee welcomed Justice Ash Mangerst and voted to adopt the Administrative Presiding Justices Advisory Committee recommendation to enact a responsive filing fee for appeals, and urged the Governor to sign assembly bill 110, a budget trailer bill containing that fee and a few other judiciary items.

Two of our Council-sponsored bills have been signed in law. AB-458, relating to venue and guardianship proceedings and 721 which streams lines the proceeding governing litigants. The other bills continue to move through the process.

The legislature returned from summer recess on August 15th, and is in the final push before the close of the 2011-12 legislative session. The last day of the session is September 9th, and the Governor will have until October 9th to sign or veto bills sent to his desk.

Closing, I want to express my personal thanks and appreciation to all the members of the policy committee for their fine work during the course of the year, as well as to the staff of the office of governmental affairs. The service we received from Kurt, Donna, that entire staff is absolutely outstanding. And that concludes my report, Chief.

>> Thank you, Justice Baxter.

>> Justice Miller?

>> I guess I'm new, too. Thank you, Chief Justice, to start over. The Executive Planning Committee met seven times since the last council meeting on July 22nd, three of those deliberations were by email, three by telephone, and in-person meeting on August 24th. At August 5th we set the agenda for the meeting of yesterday and business meeting for today. We also discussed the new open educational meeting and expanded public comment portion of the business meetings and processes we would follow in that regard. Now that the educational meetings are public, they will be audio cast as well as memorialized as officials minutes of the council, the panel discussions were extremely valuable and I hope they will be taken advantage of by those who may benefit from them. That's why they are open. Beginning with this session, business meetings will open with an expanded and more liberal public comment period. Anyone wanting to address judicial or court administration is invited to address the council at start of the meeting. We simplified the notification process to make it easier for prospective speakers to reserve time. Outside of public comment we revised our rules

to allow judges, court administrators, and others who wish to speak on a topic on the agenda to address the council when it considers that proposal rather than at the start of the meeting.

We value the comments we receive and we think these changes will encourage greater participation and serve to enrich the discussion at the meetings.

We believe and hope this will make council decisions and the decision-making process more transparent and informative.

I want to thank staff for the assistance in quickly implementing the changes. None of us can be certain what the impact of expanded comment will be on the length or tone or content of our meetings, but we believe that council discussions can only benefit from increased access and greater input from affected and interested parties and especially the public that the council exists to serve.

At our August 5th meeting the committee reviewed recommendations from the trial court facility modification working group, to approve budget for court facilities modification, and planning for the current fiscal year, and the prioritized list of facilities modifications. This matter is one of the items on our discussion agenda for today.

The committee reviewed a request from the access and fairness advisory committee that the advisory committee be permitted comment on a pending proposal to amend the canons of the code of judicial ethics. The committee determined that pure our governance policy comment may not be made in the name of the council's advisory committee. However the committee observed the chair or members of the advisory committee may submit their comments as individuals and may state their role on the advisory committee.

The committee reviewed a working draft of recommendations from Judicial Council members on roles, responsibilities and processes for several areas of council functions. Oversight of the AOC, branch planning, communication, outreach, Council meetings, and advisory groups. The draft was the result of council discussion, a robust discussion at our June planning session.

Committees review resulted in a number of recommendations to the Judicial Council. Several of which I mentioned yesterday at our education meeting, and some which I want to repeat today.

Also, please be aware there are more proposals in the works. All inspired by council discussions and surveys. Again, as I indicated just for today's purposes, I will mention a few. Exploring more and frequent meetings of the council, the chief considered proposed dates for eight council meetings in 2012, six meetings of two or three days, similar to the current schedule. Plus two additional one-day meetings in January and July. Improving communications in outreach, improve council outreach at regional meetings, these should be listening sessions in addition to informative sessions, information needs to flow both ways, in other words, we want to provide information but also receive information that we can take back to the council.

We plan to set up a network of Judicial Council member liaisons for each trial court. Again to facilitate communication between the Council and branch. Court leaders would have designated council members assigned to their individual trial courts. We would make visits, provide information and listen to concerns and bring that back to the council. Also set up liaisons with AOC divisions and departments to better understand the work of these important departments and divisions. To understand who the employees are, who the managers are, what their budget is and the council will report back to the council to keep the council informed so it can better perform its oversight duties. For insuring adequate oversight, we asked the advisory committee on financial accountability and efficiency to undertake an analysis of the AOC budget, formulate recommendations and report back to the council.

Also asked them to look at AOC contracts and consulting contracts and formulate recommendations concerning adequate Judicial Council oversight and again to report back to the Council.

Meaning while the strategic evaluation committee the chief appointed in March will continue its internal review and audit of the AOC.

Our meeting on Monday the committee approved a final agenda that is before the meeting today. The request by the Bar Association of San Francisco to add a proposal to amend rule 10.815 to our discussion agenda was discussed in great detail, with one committee member voting against and another obvious sustain. Following at the meeting it reviewed nominations for various advisory committee vacancies. We have submitted our recommendations to the Chief. I want to thank Ken for the dedication, conscious nice and great advice he has provided I know for many years, especially for my first six weeks here, it will be difficult not having you there, although we are glad that you are going to enjoy your retirement, thank you for all your years of service and what you provided for us and the branch. Thank you.

Then I'd like to make an offer to Bill, I know that we have this connection with Utah, I want to offer the next time we're together in Utah, you go off on a nice quiet stream with me and go fly fishing but you can't bring your phone (laughter)

>> That will be hard, but I'll do it.

>> Thank you, Justice Miller. Hear from Justice Hull.

>> Good morning members of the Council, the Rules and Project Committee met twice by telephone, on July 29th, met by telephone to review a proposal to implement the recent. The proposal is expected to come before the Council at a future business meeting. On August 23rd, met by telephone to continue discussing issues concerns and suggestions regarding improving the rule making process, in addition communicated by e-mail on one matter on August 18th the committee considered a technical amendment to the university veil and penalty schedules which will be item 5 on the agenda today I should note they recommend approval of the proposal. I should note also I took the opportunity to attend a part of the August 16th, 2011 joint meeting of the Trial Court Presiding Judges advisory Committee. We gave a brief overview of some of the ideas that has been discussing and will continue to discuss in upcoming meetings to improve the rule making process.

I was able to speak to staff on August 22nd so they were able to give me a full picture of the rules issues that were discussed at the presiding Justice court executive meeting, during the time when I was not able to be there, all of that information they gave to me was in tern conveyed to members during the telephonic conference on August 23rd that I referred to a moment ago. I would like to note also, in the Chief Justice appointed me to chair the rules and projects committee in July, and things have become very interesting, very quickly. As I noted to the presiding judge's court executive meeting, they have been considering and continues to consider significant changes in the rule making process with an emphasis on focusing on the effect of the economic struggles the branch will continue to encounter. Our next meeting is set for September 9th, and we have in excess of 50 rules and forms to consider.

Given that number alone and particularly in light of the economic impact the rules and forms can have on the courts I invited chairpersons of our committees to participate in the meeting to get their views of the necessity and cost of the rules that are being proposed. We're going to want to

talk about among other things when the implementation of certain new rules can be delayed or whether they can be reduced.

Also discussing whether rules that are already in existence that are costly to the courts again monetarily or in staff time can be identified and perhaps suspended or even perhaps repealed given the branch's fiscal circumstances. We will seek input from each of the 58 superior courts through their presiding judges and court executives, and from the appellate courts as well. In addition to cost savings, we will also be cognizant of the goal of giving individuals courts appropriate flexibility in conducting their business in ways that best suit the needs of the public in their communities.

Finally taking a look at ways to relieve the burdens of twice a year proposals for many, many rules in our discussion whether we might establish two or three year cycles for considering proposals from the various advisory committees, so any given year, absent an emergency need, the council would be considering in various parties would comment on rules and forms from three or four advisory committees each year instead of all of them every year. These are ambitious goals and demanding times but I'm confident the council and branches are up to the task that stands before us and I would like to add my thanks to Ken and Bill Vickrey and I need not repeat every good thing said about them we are in their debt. Thank you.

>> Thank you, --

>> I wanted to ask a question of the last report from executive.

>> Please do.

>> Justice Miller, you had directed accounting an efficiency report back to the council on the AOC budget contracting activities, was there a date or form of that report, oral, written?

>> It would be written -- to figure out when they would be able to make that report back. We're hoping by October.

>> Thank you. Judge Herman?

>> I wish you luck with your bicycling career, Ken. So, at any rate, it's my pleasure to report today on behalf of the CCMS internal committee within its charge, oversight of CCMS, coordination with the executive governance committees, committee of CCMS and reporting back to the council on CCMS as a project, I was struck yesterday by Alan Karlson's comment during the budgeted you indication period about the existing B-3 version in orange county and peripherals in terms of number one, the savings that are being achieved in that court by this electronic process, this courthouse in a box as well as equally important the stakeholders, that is tremendously increased and more convenient access to Justice. Again, for those taxpayer, litigants are lawyers who are much appreciate the E-filing system and E-access to court dockets and information. As well as litigants self-help litigants who also throughout the state have access and electronic interaction with your system, which is the future we hope of our IT project.

>> Are being achieved in this court by this electronic process this courthouse in a box and what's equally important to the taxpayers the litigants and the stakeholders in the system and that is tremendously increased and more convenient access to justice. Again for those taxpayers, those litigants, our lawyers who must appreciate the eFiling system and the eAccess to court dockets and information as well as litigants, self-help litigants who also can from throughout the state have access and which the I.T. project and the CCMS project in the state. Since the last meeting on behalf of the internal committee, I've attended weekly meetings with Justice Bruniers and the folks to monitor the project's progress towards the completion of development. Judge Kauffman and I have attended all telephonic committee meetings to keep up to speed with what's going on with the governance committees. We have held a telephonic meeting with our internal committee jointly with the executive committee to bring them up to speed on the completion of development as well as the independent review process. Today's report will update the council on, first of all, final budget projection for the DCMS completion of development. The summary results from the product acceptance testing. That is the testing that's been going on for the last -- throughout the life of the project. The next step as we exit development and move into maintenance and implementation, I'll thumbnail a few of these and then turn it over to Justice Bruniers and Mark Moore. We completed the core CCMS product testing back in April of this year, and we're on track to complete testing of the externals, that is eFiling data filing, et cetera, et cetera sometime today, I believe. This year on the verge of finalization either today or early next week. Earlier this Justice Bruniers and I as well as justice Brian attended Deloitte's final project before the completion of most of the development phases. It was a very productive meeting. It's very interesting for the last years there have been product testers, many of them are experienced clerks that have been provided by our courts as well as retired clerks who have been testing the product along with judges who have also been testing the product. It was a real experience to meet with those testers and their work is almost done but they really have been workhorses and I just want to tell the committee thanks, those folks who have been doing testing with that product and I would also like to thank Marc Moore, Marc duesman and the AOC staff who had worked very hard -- it has been a very intense last phase of the development process. With that Justice Bruniers?

>> Thank you. Good morning, Council members, Chief Justice. As the Chairman mentioned he and I attended the weekly project meeting with the Deloitte -- their offices in Santa Ana on Wednesday of this week. Both to ensure that we were up to speed on the project status and to personally thank the court-based testing teams who have really given their time and effort and expertise for the successful completion of this project. We also had our follow-up weekly conference call with Deloitte this morning. I'm very pleased to tell you that with one single exception that I will talk about in a moment, we are there. We have successfully completed all of the development activities for CCMS. We have a product that I think we can be proud of and will do what we need it to do in the branch. As you there as we tested the core product and it represents all the functionality supporting the court operations and those sorts of things are our acceptance criteria under contract with Deloitte. No more than 50-level defects those things which we referred to are going to punch list items. We finished that phase. Had 0034 and accepted the core product. We began the external component testing toward the end of June. The external components represent the additional features and functions that augment the CCMS core product. We have 121 data exchanges with our justice partners. It deals with the web portal, eFiling and the state data warehouse, among other things. As of this morning, we can report that

we have a final defect count of 0013, that is, we have met the contract criteria and I would point out this is a cumulative total going forward from the core product as well. So those 34 defects that were listed at the core acceptance have been repaired, have been fixed. We have a total -- a cumulative total defects at this point with a single exception of our reports. One of the things we discovered as we were going through the testing process and we were having issues -- there are 13 reports which are currently generated at the trial court level and which will be generated automatically from the data warehouse in CCMS. And as we discovered some issues with those, what we determined was that the product design, the product specifications were to the 2004 standards and requirements. Since that time, it has been changed. There's a 2009 standard which has been developed and our testing was for the 2009 standards. So not surprisingly we had some disconnects and defects there. To avoid having that delay the rest of the project and to avoid having it divert resources for product testing we carved that out and decided to put that on a separate track. So there is a separate track that we'll target completion of this single narrow issue, these reports, by the end of October. Excuse me. We expect to have product acceptance testing for those issues perhaps the last two weeks in October. Hopefully we will have it completed before we come back here for the October council meeting. But with that exception, every other component, every other piece of this has successfully completed the product acceptance testing.

>> I might just add, Justice Bruniers, from an educational standpoint that when we are talking about the level of, quote-unquote, defects that is punch list defects, we are talking about a system that has 6 million lines of code and 20,000 test scripts. The test scripts being the scripts that the experienced clerical staff from courts throughout the state run through the system on a test basis to make sure that the system is doing what it's supposed to do. And so that's been an intense and valuable process for us. And the fact that we are here with this level -- low level of defect is impressive. Everyone has gone through a beta processes with computers knows that it's an intense process and this is a successful result, so thank you.

>> The testing process has involved six courts, Fresno, Los Angeles, Orange County, Sacramento, San Diego and Ventura and it involved 80 testers including court-based subject matter experts, clerks, retired clerks, AOC staff as well as professional testers. We also brought 11 of our justice partners into the testing process, department of motor vehicles, Department of Justice, Department of Child Support Services, CHP, State Bar, at least one of the eFiling vendors. We did the testing in multiple locations at Burbank, Sacramento, Fresno, San Francisco, Santa Ana and Ventura. As Judge Herman mentioned we have 20,000 test scripts to ensure compliance with approximately -- approximately 5,000, I believe, user defined requirements that are incorporated in CCMS. In addition to the product acceptance testing we've run stress testing in operating environments for both the core product and for the external components. The stress tests are designed to ensure that the applications perform under anticipated peak volumes both internal and external court user volumes. So far in that testing, CCMS has met or exceeded our service level requirements. We began the judicial officer testing yesterday. We had hoped to be able to start that earlier but we started with the judicial officer testing yesterday. I'd say we did have a couple glitches in the system configuration. So we need to reset that and bring the judicial officers back in to make sure that we have a system that meets operating needs on a day-to-day basis in every court. So we had I think four judicial officers in yesterday from a couple different courts. We will be bringing them back in and

hopefully getting some additional judicial officer testing as well. And I'll be able to report to you at our October meeting on the results of those tests. Excuse me, Justice Bruniers, let them ask this question, when you refer to 13 level three defects could you give us some idea what types of defects those are?

>> Mark, can you focus on what some of those were 'cause, frankly, I couldn't tell you individually what they are.

>> No, I just mean generally what we're talking about here. How significant they may be.

>> Sure, a level 3 defect would be the type of defect that would -- in your normal course of business cause some disruption to your operation, but you can mitigate it usually through a work-around, a step that you wouldn't want to take or bypassing a step for the criteria for it to be a 3 is that it cannot delay your work flow or create a line or a bottleneck in your organization and it cannot reduce the integrity of the data. So they are really kind of work-arounds and things you wouldn't want to go for a prolonged period of time but it wouldn't prevent you from actually deploying in production. So anyone of these defects you would still make a go/no-go decision and you would still say go and implement CCMS and production.

>> And I would point out Deloitte's commitment within our existing contract parameters is to repair all of these defects. In other words, we're not going to go forward in deployment with those defects in place. They will repair at no other costs to us and within the -- the current contract parameters, all level 3 defects and as well as all over level 4 defects. So all of those will be taken care of before we begin any deployment in the trial court.

>> Thank you very much. Thank you, Chief.

>> We will have a more detailed report for you at the meeting but I can also tell you our CCMS development costs will come in at \$315.5 million. That's actually about \$3.6 million less than the last amount we reported to the legislature due to some cost-savings that have been implemented in the program. In addition to the testing of the independent quality review which both the council and the legislature have required that we do has been completed. We have hoped that we would have the reports available for you today. We do not have the final reports. We should have them probably the first part of next week, certainly before the end of the month, which is the deliverable date for both of the vendors. I did meet -- or Mark and I did meet yesterday with one of the vendors for our final review session with them. This is a two-part review process. One part of this is review of Deloitte's development methodology as measured against an industry standard which is set by the software engineering institute that is known as CMMI. It's a capability and maturity model integration, and they are required that to be at a level 3. This is a method to benchmark the quality ratings relative to the software engineering institute, CMMI models. The review done was -- what's referred to as a scampi A which is the most rigorous of the three evaluation models that can be used. The second review is done on the CCMS application code, the design development documentation. The test scripts and the test results. While it focuses on the developmental process, the code review focuses on the final CCMS product and the quality of that product. And according to the -- in

accordance with the BSA recommendations we hired different vendors for each of these reviews. We work with the California technology industry and the BSA on the RFP for the vendors and the statement of work for both of the engagements. Independent systems diagnostics performed the scampi review, K3 performed the independent code quality review. Both vendors started their work on June 20th and we should have their reports in hand all of their evaluation work is done. We'll have the reports in hand and we'll have them for distribution to you sometime next week. In addition to distributing the reports to the council, to the governance committees, we will also provide them to the legislature to the California technology agency, to the BSA and we will post them publicly on our website. Each of these reports will provide detailed recommendations on what we can do and what Deloitte can do to improve our processes and to ensure the maintainability of CCMS going forward. Deloitte and the project management office will create action plans to address each of the recommendations contained in these reports. And Mark has already asked me to ask the governance committee for authority to retain an independent consultant to participate in the development and review of our action plan, again, we should have the action plan for you by the October meeting. At the October meeting we would intend to go over those reports with you and we'll bring representatives from K3 and also from ISD if the council wishes to hear from them as well to participate in the review. As I mentioned we had our last review meeting with K3 yesterday morning. And while we won't have the final report until early next week, K3 did confirm to me at that meeting their conclusion that the CCMS application -- and this is using their words is built on a solid scalable foundation and that CCMS will perform as designed when implemented into a production environment. Bottom line is that we have a working product that meets the requirement that is we have established for it. That we have third-party confirmation. That the product is of sound quality and will work for us. And now we need to find a way to put it to work. Next steps that we have to complete under our contract with Deloitte, we do need to complete the work on the reports as I said that will be done by the time we come back here. We need to initiate the completion -- or the repair of the level 3 and level 4 severity defects. There are some changes in the CCMS fiscal reports that have been recommended by the operations advisory committee. These are changes to the original design but in other words enhanced functionality that the operations advisory committee has recommended that we implement. We do need to expand and complete our judicial officer testing and to optimize the application environment. We have some minor functionality changes that the court-based testers had recommended based on their experience during the testing of CCMS. And, again, Deloitte has agreed to do all of this work as part of their original contract without any additional cost to us. We do intend to come back in October on these recommendations and what we intend to do on our budget constraints to put CCMS to work, get it to the trial courts that do need it, to perhaps leverage some of the resources that local courts that have needs can offer. To move on to the next step in this critical project.

>> And the internal committee will be meeting jointly with the executive committee to develop what the council has requested us to come back with in terms of strategies within the existing budget framework so that will be our internal committee's intense work between now and when we come back in October.

>> Thank you, Judge Klein?

>> As you've heard me say before I've been concerned about the cost of this project. I appreciate that we're going to be considering this further in October. But as I understand it, the AOC is going to be submitting a budget request for next year's budget to the governor's office, department of finance in September. Mark, how much is being requested at next year's budget for CCMS?

>> Well, I don't think we have an official request yet for anything for next year. But --

>> We're going to be dealing with this later in the agenda. We need someone from finance but are you asking for --

>> Well --

>> The same amount or more that was requested for next year?

>> According to -- it was originally referred to as the one-year pause. We're now relabeling it. It's not necessarily a one-year pause. Hold on a second and I'll get you -- we actually forecasted what we need for three years going out and we presented that at the last session. One second.

>> While you're looking at that

>> I've got it. It's 74.5 million.

>> That's what's being requested in next year's budget? That's what you're going to be asking the counseling now.

>> That's before we consider the work that we're working with, with the internal committee to figure out how to refactor the deployments and the work efforts based upon the reductions this year.

>> That's one of the things we had said we would do, Judge Pines, is try to reevaluate the deployment strategies and see what we could do to further minimize the costs not just associated with the deployment of CCMS, the final version, but also with our interim versions in Orange County and others. We have ongoing costs incorporated that we have to deal with, with B2, B3 that we need to either mitigate or reduce. We need to find a deployment strategy going forward that will at least substantially reduce the costs that we will be incurring.

>> Go ahead.

>> I appreciate that. It would also be helpful to me at least for the later discussion if we're going to be dealing with this in October is to have some other alternatives. I mean, if we decide we really cannot afford CCMS as it's presently envisioned, while at the same time, keeping the White House doors open in the first fiscal year because from everything I can see -- for example, in Los Angeles, we're going to be able to get by pretty much this year because of all the one-year stop-gap measures. We're facing a real cliff next year. We've

got San Francisco, hopefully, this problem can be resolved this year through this compromise that's on the table now. But I know that they're going to have greater problems next year and so it is for all the courts. So if we reach the decision that we really cannot afford CCMS as it's presently being planned, it would be helpful for me to see some other options whether pieces of that can be used. For example, in our civil department, we don't have eFiling and I hear the wonderful aspects that exist in Orange County, it sounds great and can it be broken off -- I'm not using the right words and available for Los Angeles at a much reduced cost? Or are there pieces of this that can be used? I'd like to see some other options rather than all-or-nothing scenario?

>> And that's what we'll be discussing and will be discussing. As a matter of fact, we have an in-person meeting tentatively for both the executive committee and the internal committee of the council for September 23rd. And the entire focus of that meeting will be on, one, seeing what we could do within existing budget constraints on the early adopted deployment so we can get the system in a live court environment during a warranty period and two, look at alternative deployment strategies including -- and we've been discussing modular deployment within CCMS so if they have traffic they can take that part of the system that the court could implement civil and the document management and the eFiling components separately from the rest of the system. So those are all options that are going to be up for discussion, up for consideration and will be among the choices we'll be coming back to the council with. I think we need to look at what the cost impacts would be on each of those alternatives.

>> And if I could before we go on just a little bit more clarification on that number I gave you, that was inclusive of the entire CCMS program including the two precursor systems. CCMS itself -- the end product would be 55 million. And it is important to note and that's why our activities over the next month or so are so important. When we implemented a one-year pause that assumed a very drastic reduction or kind of turndown of the entire program and then a very large cost to sort of re-engage next year and the year after. I expect one of the benefits of trying to figure out a different way to factor and go forward is we won't have such a steep drawdown which will really save us, I'm hoping, on the back end because it's very inefficient to unplug and restart and so I'm hoping it will level out the expenses but we need to work through that in the model.

>> I just wanted to note that it started out as a one-year pause and that the vote of the council that the costs would be equal to a one year pause would be -- those monies would be given up but it would not -- the remaining monies could be used as was found to be appropriate so that it didn't have to have a pause in what was determined after that meeting.

>> Correct.

>> Thank you.

>> Thank you.

>> I would just add one more thing, Judge Pines. We did as part of our outreach through the governors' committees we've been giving demonstrations of the final product throughout the

state with impressive reactions from our judicial colleagues. Judge Reeser and I recently did a presentation a couple of weeks ago at the judicial college for new judges who are coming into our system. Many of them from civil practice and diverse practices, diverse judges from throughout the state. And I believe we had four or five signatures of your colleagues and they were all extremely favorably disposed towards what CCMS can do for our courts.

>> I understand. The issue for me is whether we can afford it, and what are your priorities are.

>> Absolutely. And I think that's where we're going in terms of coming back to the council in October.

>> Thank you. Alan Carlson?

>> Are we going to include our analysis about the cost next year. What's the cost of the trial courts that have to get new systems because CCMS didn't come yet like Nevada, Sonoma and some other people?

>> I know there are counties like Kings that has an immediate need coming up as well. I think that's certainly one of the factors we have to consider in assessing where our -- you know, what we can afford to spend on CCMS is what we're spending now in putting Band-Aids or providing interim replacements for failing systems. And there's certainly a number of courts that are in that situation.

>> I would just like, you know, finally recognize the truly amazing effort that Mark Moore and his staff have made to this effort. I don't think it's any secret that a year and a half ago, early 2010, we had problems and issues with CCMS and issues that certainly could have been fatal to this system and to this process. And Mark put together his PMO staff and I think in retrospect it's a process that we should have initiated earlier than we did but he stepped in; got it up to speed and the dedication and diligence of Mark and his staff have been absolutely essential to getting this done. We would not be where we are today without the effort that Mark and his staff have contributed to this.

>> Thank you, Judge.

>> I would just add -- I've already mentioned that tremendous effort but I would just also add the governance committees, putting together these governance committees was an outstanding way to make sure that we've got the judicial and CEO involvement and effort in this project and they have put in tremendous work in terms of bringing us forward and bringing us to where we are today.

>> Thank you, Justice Bruniers for that and for the presentation and thank you Mark Moore and thank you Mark Herman.

>> Thank you.

>> Next on our agenda our consent items 1 through 5 and to my understanding no member has asked for the matters to be removed from the consent agenda so items 1 through 5 are adopted. According to my agenda we're due for a break before we resume for the matter, item number -- not 6. I think I'd call it 5A. It's the new item, the judicial branch administration bar association of San Francisco's request to amend rule. That also has a speaker on that point. What I would do at this point is twofold, first call for a break for 15 minutes but reconvene then at 10:45 by this clock on the wall.

[Laughing]

>> And also indicate that when we reconvene, I won't be present. I'm recusing myself from item number 5-A and will return for item number 6.

>> And, Chief, likewise, because the matter does raise legal issues that possibly could come before our court, I would recuse on the same basis.

>> Thank you, Justice Baxter, at this point I would turn the meeting after break to Justice Miller.

>> Thank you.

>> We stand in recess.

[Break]

>> Come on guys, let's sit down.

>> If everyone would take a seat, please.

>> Oh, wait, I'm sorry. I didn't like that chair. Sorry. We're going to re-open our meeting the bar association of San Francisco's request to amend rule 10.815. We have three individuals here to speak. The first is Stephanie Scaff from the bar association from the bar association and Christopher Carney from the bar association in San Francisco and I think you're each going to divide that 10 minutes.

>> I'm actually going to take the whole thing. Chris has given me his time.

>> All right. Thank you very much.

>> All right. Thank you so the Judicial Council to the members of the Judicial Council for allowing us the opportunity to speak today and in particular, for your expedited consideration of our request of the D proposal that's on the agenda today. I'm the current secretary of the bar association of San Francisco. But I come before the council today not just as a San Francisco soldier but also as someone who cares deeply about the courts throughout our states. The core of our mission at the San Francisco Bar Association is access to justice. It is a mission I know we share with all of you. Our judicial branch is in trouble and our courts are underfunded. The threat to judicial -- to access to justice is real. The proposal we have put before the Council today will not solve our funding problems and keep our courthouse open until

we restore funding to our Judicial Branch. Let me talk briefly about why we chose this specific proposal that we put before you. It was after careful consideration and discussion of many possible alternatives. There's several potential options that exist but we targeted complex case appearance fees in our request for two reasons. First, and primarily, because our outreach in the complex courts both on the plaintiff and defense side have confirmed that there is strong support within our community for the imposition of this fee. Council involved in complex services universally appreciate the services by the complex and their willingness in to pay to continue to have access to those services headlight second reason is a practical one.

The service of fee supports the provision of complex case management requires significant court resources and as universally acknowledged to be a benefit both to the court and the litigants. We believe the reasonableness analysis that's set out in California rule of court 10.815 likely would support imposing a fee significant enough to make a meaningful difference to struggling courts. Under the existing methodology the reasonableness analysis includes consideration of the direct and indirect products and services at issue and consideration of the benefit to the court and the public from providing the product or service. The proposal we offer today would help the complex department in San Francisco and at the same time free up resources to help lessen the cutbacks that otherwise would occur in civil divisions.

To be clear our proposal is not limited to San Francisco nor is it limited to courts with dedicated complex departments. Should the Judicial Council approve our proposal any court handling matters designated as complex could choose to assess a fee for appearances in accordance with the procedures set out.

The proposal will also indirectly benefit courts in financial distress that do not handle complex cases. By producing a mechanism for courts with robust complex litigation departments to generate additional fee revenue the amendment was propose will reduce the demand by these larger courts for assistance from the AOC's emergency fund that's freeing up a greater portion of the fund to assist smaller counties that do not regularly handle complex matters.

In considering the request we make today, you as members of the Judicial Council have two questions to answer. The first is, can the Judicial Council approve the amendment we've requested? And the second and perhaps more important is should you approve that amendment? The first question is arguably the easiest of the two. Under the current statutory scheme, existing fees such as paper filing fees can only be increased or changed by the legislature. But the authority to approve new fees, fees not currently authorized or prohibited by statute is expressly left to the discretion of the judicial council under section -- government code section 70631. The Judicial Council has exercised its authority under this section to approve fees in a number of products and services not currently covered by statute. The approved products and services and the manner in which the fees for those products and services are to be determined by the trial courts are set forth in CR10.815. Although the list of currently approved products and services is fairly narrow, nothing in section 70631 limits the types of products or services that are subject to approval by Judicial Council beyond the requirement that the particular product of service cannot be the subject of an existing statute or rule.

There is no existing statute or rule that would prohibit the Judicial Council from amending CRC 10.815 with complex management conferences. The recommendation by the general council against approval of our request rests on a concern that the proposed appearance fee is already

authorized or prohibited by current government code section 7068170616 or 706B3. The plain text of these provisions, however, shows that this concern is misplaced.

Section 706A1 allows a supplementary fee set forth in section 70616 to be added to first paper filing fees in complex cases. It does not authorize or prohibit fees for any other particular product or services in a complex case. Similarly, although government code section 70617B3 prohibits fees for filing CMC statements, it does not authorize or prohibit fees for appearances in case management case hearings and I want to make the point that these are very distinct and meaningful distinction between a CMC statement and a CMC hearing conducted in a complex case. The statement is usually a routine submission. It's for the benefit of the Court. It's usually a couple of pages that is a status update. The complex case management conference in contrast and Judge Kramer I believe will talk further to this today is something that really benefits the litigants. It's a real service. In fact, it is the key service provided by a complex case management designation. These conferences can substantially impact the progress of a case and are of substantial benefit to the litigants.

In sum, although reasonable minds could differ, there is at least a very strong and well reasoned argument that section 70631 allows the Judicial Council to exercise its authority to approve the fee that we have placed before you today.

So the real question for you, members of the judicial council, is should you approve this fee?

We have real and true and great sympathy for the difficult choices that you as a Judicial Council have been forced to make in the wake of the budgetary cuts to our judicial branch funding. The proposal we offer today would help the Judicial Council fulfill its obligation to ensure public access to the courts and adequate court funding. That is part of your mandate. Trial courts all over our states are in financial distress. And although the situation in San Francisco is dire and immediate, trial courts throughout the state are underfunded and suffering. The closure of civil courts will affect judges, clerks and court staff but the real suffering will be felt by the people who need our courts to provide justice. Difficult times like these call for creative and courageous solutions. Although the council has exercised its authority under section 70631 sparingly in the past, I urge the council to conclude that now is the time for a more robust exercise of this granted authority. The time is now.

It is highly unlikely that we will see any legislative solution in the near term. Without action by the judicial council, our courts will close, our communities will suffer. And our shared mission, access to justice for the people of our state will be defeated. We recognize that the fee proposal that we put before you today will not solve all of the Court funding crisis in the long term, nor even in the short term. But in the near term it can be an important part of the solution and we ask you today to approve the bar association request. I'm happy to answer questions for the members of the council if that's appropriate.

>> Judge?

>> I understand the San Francisco bar association is in support of this. What about the other lawyers that might be affected throughout the state?

>> So we have done outreach and particular we have here with us today the president of the association of business trial lawyers. We have lawyers that practice in firms that are -- have offices throughout the state. And we have done outreach beyond our area. There is not -- we

have not requested or got official support from any other bar association but we believe the support is strong, which in those who practice in the --

>> But we don't right now know exactly what those other groups who might be affected by this fee -- what their positions are yet?

>> So this fee was chosen because we did hear from many groups throughout the state that there was opposition more broadly to a fee that would be imposed across civil cases. And so that is how this was selected as part of that process. We don't have formal feedback from any other bar association about its support or otherwise.

>> Miriam?

>> I just have one question can your "can we" argument. And I guess I'm just looking at the last sentence in 7063 -- 70603A, sorry, and I guess it's on the third page of your draft, the reply memo. And it's the sentence that says the only charges that may be added to these fees in this chapter are the following and I recognize it's this chapter is all civil fees. So I just am looking for how you get around that.

>> Yeah, that's an excellent question. If you read the sentence right before the, the important language is that the fees are the only allowable fees for those services and filings in the chapter. So it's really talking about the specific services and filings that the legislature has spoken to, and this is kind of a canon of interpretation and a legislature speaks to a certain area and in this case not only -- it's not even that they remain silent as to the remainder. They've actually expressly designated the Judicial Council authority -- the authority to the Judicial Council for everything that is not expressly services and filings particularly set out in the statutes.

>> Yes, Judge Rosenberg?

>> Are you relying sole on the statute or are you contending that the judicial branch to the Judicial Council can do this through inherent powers?

>> There is an inherent mandate to the Judicial Council to ensure access to justice and funding of the trial courts so I do think that there is an argument that there is an inherent power to make sure that significant cuts like those that are about to happen in San Francisco do not impair access to justice and in a particular court or courts throughout the state. Having said that, our proposal is very firmly grounded within the existing statutory authority that's set out in 70631.

>> All right. Yes.

>> In terms of appearances, is there a limitation on how this fee would be applied? So maybe there are three or four appearances.

>> Right. And in general and in complex cases there are -- there are multiple appearances. It's one of the things that makes the case management conference a difficult and time-consuming and

costly process to administer. It is one of the things that would go in the analysis that the trial court would do of both the direct and indirect costs in coming up with the fee proposal.

>> All right. Any other questions? Yes.

>> Is there any other area in the court where they are charging a fee other than the initial filing fee for additional services by the court?

>> So 10.815 lists 17 different places where there are fees --

>> Well, but I don't see any of those being a settlement conference or some other hearing --

>> That's correct. And that is -- and I think that was my point to exercise authority by the Judicial Council to approve fees has really been exercised very sparingly. And this -- I am coming before you very honestly to say that this would be a historical departure from that more sparing exercise. It would be a more robust exercise of the authority which I do believe and we've carefully looked at has been granted to the judicial council under the existing statute.

>> Yes.

>> Judge Jackson raises this problem how many times. My concern would be a lack of uniformity within the complex courts. Some of the judges said regular case management and conferences often, every few weeks, once a month. Some sets them every three months so are you going to have that kind of difficulty depending on where the case winds up it would seem to me. It's also been raised to me that it would discourage the case management conference and encourage and demurs in the filing of ex-parties. Do you have any concern about that?

>> I think first on the issue of consistency, I think that can be addressed by the Judicial Council in the way the fees are approved so the trial court that is the initial decision maker for determining the costs and the reasonableness of the fee but that would be Judicial Council approval. In the instance of the Judicial Council was interested in uniformity, I think there is something that the Judicial Council could do there. From a more 60,000 foot perspective, however, I think the risk to inconsistency in access to justice amongst the courts really outweighs the small risk of -- a small really what is one very specific fee that might be different from court to court.

>> Yes.

>> Thank you. Is this on? Thank you. I'm very intrigued by this proposal. I have a couple of questions, though, actually more of a comment and then a question. I don't think the legislature quite would see the interpretation of the judicial council's authority the way that you argued that it exists. And potentially, if the judicial council were to go forward with this, it could potentially somewhere down the road draw some legislation to clarify the law in a way that would not necessarily be supportive of what you're proposing. So I just want to caution people that that could be looked at with some skepticism by the legislature. However, I think the proposal is something that needs to be looked at but I share the uniformity concern. That was the first thing

that I looked at when I saw this proposal is this uniformity that we have tried to maintain across the state would suddenly go away. So my question is, have you looked at doing this statewide as opposed to simply doing it in San Francisco?

>> I think the short answer to that is, absolutely yes and I'll have to tell you as the bar association we've been brewing every possible avenue as we can to get a solution to this funding crisis with a similar and slightly different proposal and it's very formal and intent to senator Leno and pushing for legislation to solve this problem. The reality is, that the response to that we have gotten is that it will not happen. And so I'd love if you would tell me --
[Laughing]

>> But --

>> Senator Leno said it wouldn't happen but is there a vote requirement that he's concerned about.

>> No. I don't think it's that. And I don't want to misspeak. I think what we've heard is that it won't happen quickly and that the process that we could go through -- that could go through the Judicial Council in this more narrow way could happen in a way that could actually help the courts in the near term, the legislative solution, what we've been told is that it will take a much longer time.

>> Uh-huh.

>> All right. Thank you very much for your comments and we appreciate you appearing here today. We have an additional speaker, Judge Richard Kramer from the San Francisco superior court. Judge Kramer?

>> Hi, I'm Richard Kramer. I'm from the San Francisco superior court. I run the complex litigation department, one of two now and have done so for eight years. I'm here to talk about the whether -- not whether you can but whether you should approve this fee. But to do so I will be also answering some of the questions about whether this is legally permissible. What I'm going to do is tell you how it really work, and what service would be provided and would be covered with this and it has nothing to do with filing fees and it has nothing to do with duplication say a gate charge to come to court. It's important to understand the role of a complex litigation judge. And I mean both in a complex department as well as a judge in a county that doesn't have complex departments but is administering complex cases and there is an absolutely crucial difference between that role.

Basically our court system works on the precepts that the litigants run their cases and they ask us from time to time to time to time and they ask us to make decisions on things and our jobs is to take the choices presented and to resolve them. The metaphor I'm going to use which I absolutely hate but, unfortunately, it works here so I'll do it. They come to court is a box and in their box is their motion. In their box is their settlement proposal. In their box is their trial. Whatever it is, they put it in the box. We look in the box, and we say yes or no, up or down, blue or green, 7 or 12. That's what we do. We react to them. As a matter of fact, we wait for them to show up. That's what normally happens in our court. Why? Because, one, there's usually no process by which there's a continuity where the judge knows what's going on a case -- on an

ongoing basis even so when they're single assignments because usually the single assignments courts are far too busy and second, courts are too busy. Motion courts can't say why did you make this motion for? We got a better idea for running your case. It doesn't happen that way. So that's the job of the Court system.

We've created complex courts where we have a completely different role. Our job is to actively participate in the administration of the case and to think of ideas that may be beyond the considerations of the lawyers that will effectively in an economic and a practical way help resolve the case. Here comes the metaphor I hate. I apologize in advance. We have to think outside of the box.

[Laughing]

>> And we look in the box and we say, okay, you have this in mind but here's some more ideas. Why don't you do this instead? Instead of making a motion, why don't you exchange information on the following terms and then we'll see where we are. Or instead of moving for summary judgment on the whole case why don't we have a bifurcated court trial where I can resolve a single question that will answer what you need to know to settle the case, to have the invisible hand show up. It's a service. And I am not suggesting that the judges that do this know a lot more than everybody else, but we do have the freedom of not being concerned about what our clients think of us. We do not have to asked bluster to the other side to show we're tougher than you are so we're going to make these motions. We also have probably more experience in some of these matters. And we also have the ability to know what appellate review on what we do is going to look like so we can fashion the matters that we decide in a way that think -- that we think will assist the appellate courts. That's the service we perform. That service saves a ton of money.

The first day people show up in my courtroom, the first case management conference, I tell them what to exchange, much like federal court which mandates that. No discovery requests, no responses that read like a letter from James Joyce to Joseph Conrad where they're requesting each other's genetic stability and things like that. Just simply turn over these files. No motion practice. I probably saved \$30,000 on my average case or more by doing that, and they know it. And the idea that they would have to pay a minimal amount of money to save that -- it's axiomatic. The best proof I can give that of that, look who made that request not me the superior court, the bar of San Francisco and by the way, I see the lawyers all the time from all over the country. And since this crisis has hit, on my anecdotal observations, everybody that appears in front of me says, what a great idea, especially if the alternative is to have the complex management system go away.

I am absolutely certain of what I just told you. And just think of it by yourselves. You all are probably lawyers and ran things. If you could pay X hundreds of dollars to avoid tens of thousands of dollars, then I think that would be a no-brainer.

All right. I only have five minutes, I want to end with a personal note. My personal note is that the perception of what we're doing here is an adversarial proceeding is appalling. We're all in this together. We all have precisely the same job. What is that job? To provide access to the court system and the efficient administration of justice. We should be sitting around talking about how do we make this work and not simply looking at this as a question of statutory interpretation. Thank you.

If anybody any questions.

>> Basically, what you're saying is that this is going to reduce the appearances by having this case management. Is that what you're saying?

>> Not just the appearances but the costs. When do you get to go in and say, hey, Judge what do you think. You don't show up I've got this motion but before I argue it, you got any better ideas, Judge? After you spent \$40,000 and written lots of briefs and things. You don't go in there and say, gee, what else could I have done? Here we do that. So, yes, that's exactly what I'm saying.

>> All right. Thank you very much.

>> Thank you.

>> Thank you.

>> Next, we'll hear from Mary Roberts, office from the general counsel.

>> Good morning, council members, Bill, Ron. Before I start I just want to make a couple of corrections because we do have a listening audience who may not know how the judicial council operates and what the distinction is between the Judicial Council and the Administrative Office of the Courts so there was a reference to the AOC's emergency fund and I just want to clarify that there is no AOC emergency fund. I think the reference was to the trial court improvement fund which does by statute have a component that is -- or can be used to deal with trial court emergencies. That would be the government code section 77209 that has been the subject of discussions at other meetings.

And then secondly there's been repeated assessments of the council's to ensure adequate funding for the courts and I think it's very important that we all acknowledge that the responsibility for funding the courts rests primarily with the legislature which appropriates the funding for the courts and it is the responsibility of the Judicial Council to then allocate the funding to the courts. And with those two points I would like to address the bar association of San Francisco's proposal and say in the first instance I am not addressing the merits of the proposal and whether this would be a good idea to have this new kind of fee instituted in complex civil litigation courts across the state or in all courts. But the focus here is on the council's authority to amend the rule of court that allows the council to approve court-established fees for certain products and services that are not otherwise prohibited or permitted by statute.

It's important to understand the Council's rulemaking authority is not a creature of statute. It's a creature of statute of California. The council is given rulemaking authority. The council has the authority to adopt rules of court administration, of court practice, and of court procedures. But the constitution has an explicit limitation on the council's authority. The rules that the council adopts may not be inconsistent with statute. And that then causes us to turn to the statute that is at issue here but, frankly, we can't look at just one statute because 70631 is one of dozens of statutes that make up an entire chapter of title 8 of the government code. Title 8 being the title that governs the court system in California. So that chapter, chapter 5.8 states the intent of the legislature to establish a uniform schedule of filing fees and other civil fees. That chapter is referred to in statute as the uniform civil fees and standard fee act of 2005. That intent of the legislature that there be statewide uniformity in civil fees, not just filing fees but civil fees

generally is this overarching legislative intent that the council needs to be mindful of as it considers the proposal that is before you.

The legislature has enacted this comprehensive set of statutes that address superior court fees. Section 70603 of that uniform act states that except as provided in that section the fees charged for filings and services under the chapter are intended to be uniform statewide and the only allowable fees for those services and filings. Let me say that the representatives from the bar association of San Francisco in noting that there is no specific statute that addresses case management conferences in complex civil litigation matters, that's absolutely correct. There is no specific statute on that specific point. But if you look at the statutes that are part of the uniformed fee act you'll see that there is a specific statute that addresses complex civil lit and it imposes an additional fee on the litigants in complex cases that additional fee is at that point -- I think it's \$550 per party with a cap of \$10,000. That's a filing fee.

The statute also -- rather, the statutory scheme, chapter 5.8 also has another statute 70617 that prohibits charging filing fees for a very long list of items, one of which is a civil case management statement. And so while we acknowledge in our mini brief, if you will, that we wrote for our director of the office of governmental affairs that there is a difference between a case management statement and a case management conference -- when we take a step back and look at the overarching statutory scheme and the expressed legislative intent, our conclusion is that the vehicle that is identified here, the rule 10.815, which is the implementing rule for the statute, 70631 is simply not an available or appropriate vehicle for the Judicial Council to take the action that is requested. Can such a fee be established? Absolutely yes. What body has the authority to establish that fee? The body is the legislature.

Because of our analysis and conclusion, our recommendation to the council is that it not approve the request of the bar association of San Francisco with regard to the amendment of rule 10.815 because of our conclusion that the -- for the council to amend the rule as proposed would be inconsistent with statute.

If you look at the rule as already said the rule identifies 17 specific products, mostly products and services, that are ancillary to the court's actual proceedings. We think it would be as noted a historic departure for the council to amend the rule to add on the proceeding fee, the appearance fee as proposed. But for the council to do something that is a historic departure is not a no-no. But what is inappropriate would be for the council to amend the rule in a manner that would result in an inconsistency with statute. Because of that, as I said, our recommendation is that you not accept the request but also that you direct staff to consider what the state wide fee increases might be appropriate for the council in its Constitutional authority to recommend to the legislature for its consideration and you direct the AOC to continue to work with the trial courts to find other ways that are constitutionally sound for addressing the reduction in the state funding that is affecting all of the cards and judicial branch entities. And with that I'd be happy to answer any questions.

>> All right. Thank you. Let's start with Justice Hull.

>> Ms. Roberts, thank you for that. The language that we're dealing with that seems would be most central would be in 70603 subsection A1 relating to the identifying that charges may be only added to the fees in this chapter. And then since the chapter refers to all civil fees and not just first filing fees, you base a large part of your conclusion on that language and I understand that.

As I heard Ms. Scaff's submission, if you will, she suggested that the language -- some language that immediately preceded that particular language somehow placed it in a different context. Did you speak to that?

>> I would speak to it, Your Honor, in this way, in looking at the statutes and what they mean, in trying to define legislative intent, it is important to look at the context in which the statute appears. And here while I think the parsing of the words -- I would agree with Ms. SCAFF in terms of the parsing of that sentence but if you take a step back and look at where that section lies and it's part of as I said the uniform fees and schedule act, I think the more reasonable conclusion about what the legislative intent is, is that fees in complex cases as the one proposed were not supposed to be established in any way other than by the legislature.

>> All right. Thank you.

>> If the fee was applied to all the state who has complex courts, would that solve your uniformity problem?

>> Well, the vehicle that the bar association of San Francisco is proposing to use is one that is court-specific. So by its very nature it would not be a uniformed statewide fee. But even if it were a uniformed statewide fee, it's not something that the council in our view is authorized to establish or to permit the local courts to establish.

>> Okay. But I'm only focusing on the uniformity argument. If it applied to all complex courts throughout the state, that would be a uniformed fee, wouldn't it?

>> Well, if a uniformed fee were applied statewide it would be a uniformed fee but the proposal is not for that. It is for allowing each individual court to determine what the appropriate fee would be. And that's part of the problem with the statute that would arguably authorize that. The statute requires that the fee that is charged be a cost recovery fee and nothing more. And because each court that has complex civil litigation departments or that handles such cases would presumably have different costs involved, based on any number of factors, it would be -- I don't think you could have a uniform fee using 10.815 as the vehicle which is what the proposal is.

>> Wouldn't that argument apply to any fee that all courts have different costs and needs but we apply fees all over the state all the time and they have to do it.

>> But those fees -- I'm sorry. Maybe I misunderstand your questions. But the fees may cost the court more or less for providing whatever service. But that's why the legislature has enacted a uniformed fee system so that there would not be the kind of court to court or even department to department disparity up and down the state. And that is something that is worth noting that when the legislature enacted the uniformed civil fees and standards fee schedule act of 2005, it explained the purpose of what it was doing. And in uncodified language, the legislature explained that local fees and surcharges on court filing fees have created confusion, difficulty in administration and lack of uniformity in fees in different counties.

[Lost audio]

>> I think the task assigned to the talented AOC staff would try to come up with a uniformed fee that would make sense for this kind of activity in appearance in a case management conference I'm sure it could be done but the vehicle that is being utilized in this proposal is not that -- the right vehicle because it requires that each court determine what its actual costs are. So the rule would have to be rather dramatically amended as would the statute about the rules implementing.

>> I'm sure they would be able to amend their request to -- I have two more questions and that's it. One, are you saying that the bar association's argument is not even arguable if they're flat-out wrong or if it's arguable if you think these bodies in these times should be creative and be willing to take a risk or two?

>> You know, in the absence of law interpreting 70631, I would be -- I'm disinclined to say absolutely positively the bar association of San Francisco's argument would have no merit. That would be too far.

However, I think that when you look at again the statutory scheme, when you look at the constitutional authority and the limitations on the council's authority, I think if this matter were put to a reviewing court, I think it's far more likely than not that a reviewing court would conclude that the council lacks of authority to do what the bar association is asking it to do. Again, the legislature has that authority and I'm convinced that working together with the bar associations up and down the state, with the trial courts, and other interested constituencies, a reasonable fee for this kind of activity and many others could no doubt be arrived at.

>> I actually was hoping since Kirk is in the room if I could ask some questions prompted by Mary's comments to Curt. Curt, let's assume and I don't know where the discussion is going to come out and let's assume we're moved by the arguments that the bar association has made that -- that Judge Kramer has made about the notion, the principle, the complex cases by virtue of the uniqueness of them by virtue of the money the parties saved that there is a justification for it and a justification for a pilot project letting San Francisco move forward with a C but let's assume we're also troubled by the analysis Mary's presented and AOC has put together put together we're troubled by our authority to enact that fee so we really have concerns about whether we can do it and we have concerns as validated by senator Evans is validated that we should be doing this on our own. What's the quickest -- so I have two questions for you. If that's kind of where we are and, again, I don't know where we are and I'm just trying to create a hypothetical. One, what's the quickest if we did pass a motion today asking you all to try to move on a legislative effort -- what's the quickest that a fee such as this through emergency legislation or otherwise could actually come to pass? And two, is it your understanding that it would require a two-thirds vote?

>> I don't have an answer to the last part on whether it would require a two-thirds vote. I think Mary is taking a look at that question. So open question and I think that depends in part how you would actually try and formulate that fee as a two-thirds. But it does impact, I think, the ultimate chances of success on getting a fee if it's a majority vote or a two-thirds vote.

>> And actually just to add to that, if we formulated it more as a pilot project, would that make it less likely that it would require a two-thirds vote or a fee is a fee, however, cast?

>> That would be my understanding.

>> Okay.

>> In response to your question on the timeliness in of this -- and I've spent a fair amount of time over the last two weeks, both looking at the proposal from the bar association of San Francisco and trying to get a read on whether the legislature would share a few on whether the council did have that authority or not, but also on trying to work with the legislature on coming up with some solutions and particularly a fee solution and if a solution such as a fee on complex litigation would be viable, to get a sense of that -- it would be my read that there is probably little or no chance to get the kind of agreement that you would need before September 9th when the legislature leaves on this issue.

Essentially, you're trying to get a lot of stakeholders together. You're trying to get houses together and I think there's not in the time I've spent now with legislative staff and members on both sides that there's not necessarily agreement at all, that this could be done. And even through budget committees and I think despite, I think, some of the issues raised about whether there is opposition or not, you know -- there's not a bill out there so folks are not coming forward and saying, you know, we're opposed to a concept. It's difficult if you don't know what you're supporting at this point. That doesn't mean then -- and I've heard this from a lot of members and a lot of staff that that couldn't be considered come January.

One other comment that I think -- I've heard a number of times from the legislative staff is -- we got a difficult year coming up starting in January when the governor's budget and we're going to be looking for solutions.

Some of the issues raised whether there is opposition or not there is not a bill out there, folks are not saying we're opposed a concept it's difficult to state an opposition or a support if you don't know what you're opposing or supporting at this point. But I'd suggest there would be an extremely difficult time and I would suggest, probably, little, lit chance one or two percent you could get legislation before the 9th. As we talked about yesterday, solutions that may involve general fund, that may involve reserves and that may involve new revenue as well, so I think there is a sense that folks would like to put this in the perspective of the broader problem fating the judicial branch in funding right now. Facing the judicial branch in funding.

I heard from a number of Folks, senator, Evan's concern is that there is not a belief that the council does have the authority to create what would be potentially tens of millions of dollars of fees disprattly through the courts and there would be a risk of backlash. The legislature then, if the council were to take that action, that the legislature would want to clarify and I would suggest that the clarification would be limited, more limiting or at least there would be the risk of that if the council were to take that action.

>> All Right, Judge Baker?

>> We have an impressive report from the General Council, I appreciate the comments By Senator Evans about the negative effect of potential negative he expect of our actions with the legislature. I'd like to move we accept the staff recommendation not to amend rule 10.815, items 2 and 3 of the staff recommendations seem a little to be surplusage, we have such an aggressive legislative agenda right now that includes seeking alternative sources of renew, so I'm cure just if

staff, Mr. Child you would be the one to present that, moving a motion including items 2 and 3 would be necessary.

>> Mr. Child: It has been the policy to look at all possibilities, including new revenue, I fully anticipate indeed we will be focusing on new revenue as part of the budget solutions. As we're moving through the next budget year.

>> I'll second the motion.

>> Any further discussion?

The most to approve not to amend.

>> Second.

>> Any discussion?

>> Yes. I just want the context to be that the discussion about whether to actively find solutions to the problem in San Francisco is not an adversarial issue, that is something we're all in the same page on, in my view, and so, this specific question about trying to get to the appropriate vehicle to do that is adversarial, I guess in terms of what is the proper vehicle to do it but I don't want any misunderstanding there is some effort not to help San Francisco or any other of our courts that are in fiscal trouble. That's actively underway and so, I just want that as a context as this decision is made, however it's made that we're continuing to try to do what we can to keep our courts open.

>> Judge Jackson?

>> I was concerned you were saying you would be addressing item number one but as to 2 and 3, it's important because frankly, I'm very impressed and I applaud because it's not about the court, it's all the stakeholders, and I really appreciate that the bar and not just San Francisco, but throughout the state and what I'm hearing from Judge Cramer, the country, they're concerned.

>> Do you have an amendment you want to propose?

>> I would amend we also consider items 2 and 3. Can I do that?

>> Yes, you can.

>> Are you willing to add that to your motion?

>> I have no objection.

>> So we added that, Judge Pines you had a comment?

>> I want to echo what Ron Overholt said in deal with the content.

The reason we amended this to our agenda the last moment is because we're all concerned about what is going on in San Francisco. And we appreciate the efforts of the bar to try to find

solutions here. At the last meeting I expressed my personal concern about civil courts in San Francisco closing and we do not want that to happen.

There is a solution and frankly we're waiting to hear back from Judge McBride and Judge Cramer, we're waiting to hear back from your court on whether we'll have a solution. There have been meaningful discussions, whereas I understand it, a compromise is being made and a one-year solution is being offered to the court. You asked for a three-year solution, none of us have three-year solutions, we're all facing real problems in 2012, 2013 and so on, but there is a one-year solution on the table now that will keep these courts open. So what's going on? Are we going to have resolution of this now?

It's a solution as I understand it that involves some use of the emergency funds, some use of the reserve funds from San Francisco, and other solutions here.

>> I appreciate the comments, I'm not sure I want to put them in a position to negotiate.

>> This is rhetorical, I want them to appreciate and I want the public in San Francisco to know this is a matter being addressed by the Council, there have been discussions to try to work things out. And the ball's in San Francisco's court right now, as I understand it, to resolve this and we have a workable arrangement that can keep the courts open.

>> We're still in the discussion phase, Judge?

>> I think all the motion is saying we don't believe the Judicial Council has the authority to vote this. We're expressing no view by this motion as to whether it's appropriate or not. I think most of us would be inclined something to support this in the legislature. As Ron Overholt said, we are looking for solutions, we want to work together, this is not an adversarial position, this is a legal position we're taking today. If somebody can figure out a way to get this through the legislature in a very -- sorry, (laughing)

>> I was going to suggest a headlock or something. (laughing)

>> And I know maybe we can talk about sunset legislation, something that solves the temporary problem. Let's not misinterpret what this is. All this is saying we don't have the legal authority. Nothing more, nothing less.

>> I want to echo what Judge Jackson said, I want to thank individuals who worked on this for coming forward, I agree with the sentiments we are all in this together, it's not an adversarial circumstance, but I think we're all trying desperately as Jim said, to look for creative solutions and find our way there. And if we could do this, I think I heard enough sentiments we would do this. I have real concerns with our legal authority to do it and I think they have been reinforced by the Senators comments, by what Kurt heard about not just the legal peril but political peril, I think if we did move forward it would be a very short term movement because the legislature likely would slap us back and what we got in response could be worse than where we sit currently. So, I do think there is a view that this makes sense. I did want to add two things, one is it's my assumption the second part of the recommendation, item 2, is correcting the AOC to continue to consider new fees. I don't think it's something new and different. We've been doing that already. Kurt has been trying desperately to do that. So I don't think one should read that as

suggesting that the green light is now on doing it. It's a continued green light that has been in operation throughout. And frankly, I don't think it's the AOC alone or Kurt alone that are doing this, I think to continue to work with the bar and the legislature and others to find a solution. The second clarification, by virtue of having raised this issue it gave us the opportunity as a council, to also look at the procedures for authorizing emergency funding requests. And we have the opportunity to look at a memo that issued a few years back in regard to that.

I think based on our having looked at it, it's my understanding that it's our intent to have our staff try to clarify the criteria that we're adopted years ago that probably are no longer applicable and that we've asked our staff to revisit set forth in those criteria and also look for a process where the council is the one who will be exercising the decision making in regard to those emergency funds.

So, I know there has been inquiries from individuals in the legislature and otherwise about that issue, and I think by virtue of the discussion this council had it's important for it to be clear that is something that we very much intend to do and have asked our staff to do and will come back to it our next meeting.

>> Thank you, Judge Herman?

>> I want to echo some comments. Some how this gulf or disconnect between this body and the trial courts and I look around this room, and I see former bar leaders at the state level and the local level who are now on this body. Some of us now judges, becoming bench judgees instead of bar junkies, willing to contribute to the future of the branch. Everyone is a lawyer or on the bench as a recovering lawyer, I like to say, or a practicing lawyer in the trial courts, consumers of what we do in the trial courts every day with staffers who are all dedicated to the idea that we are struggling to find the best solutions that we can for our trial courts.

>> I wanted to make a slight clarification, only that while we have asked or I don't know if we officially asked the intent is to ask staff to relook at those criteria and make recommendations to the Judicial Council with regard to what criteria should be used, that was my only clarification and while I have the Mic I'll say that I'm very concerned about even if there is a potential which I consider to be a very, very small potential we would have the authority to do that. I think it would be a mistake for this body to exercise authority where it's not clear that we can, particularly under these circumstances, and so, I would support the motion that is on the table.

>> Judge Rosenburg?

>> While we may very well a solution for San Francisco, I do not disagree the solution needs to be negotiated and reached that will help San Francisco, the situation that San Francisco finds itself in today may very well be the situation that 15 or 20 other trial courts will find themselves in next year, and certainly that 56 of 58 trial courts will find themselves in two years from now. And so, there is only so many bail-outs and unique approaches that we can employ, I hope everyone keeps that in mind.

>> I would like to call for a vote on the motion. Does it need to be repeated, it has been a while I think --

Judge Baker?

>> The motion is that the council approve the staff recommendation one, that we not amend rule 10.815, secondly that we direct the AOC to consider new state-wide fees or fee increases that the council may recommend to the legislature to help offset the reduction in state funding for trial court operations and thirdly, that the Judicial Council direct the AOC to continue working with the trial courts to find other ways of addressing the reduction in state funding for trial court operations.

>> There was a second, all in favor say aye?

>> Abstain.

>> We have abstention and one no. The motion passes.

We have asked the Chief Justice and Justice Baxter to return, what I would ask is for those who are speaking on item 6, Mary Roberts from the office of general counsel, and Evan Bar Gear and Todd Torr if you could prepare yourselves.

Just for the record, one no vote, one abstention.

(random chat).

I understand panel is ready.

>> Let's give 40 seconds.

>>> Number 6, judicial branch administration, the judicial branch contracting manual. I'll have Mary introduce the panel.

>> Thank you, with me on the left is Evan Garber, managing attorney responsible for transactions and business operations, within the office of the general counsel and Todd Torr one of our attorneys in that unit. The entire unit by way of a little bit of background, was swept in action to deal with the new California judicial branch contract law which was the product of very -- no discussion as far as we're aware of in the legislature, but it came on with SB-78 and what we'll do right now is get in the power point, with the recommendation that you adopt. So the topics we're going to address are the following: First we'll provide background about the new law and the requirements contained in the law about the adoption and publication of Judicial Branch Contract Manual. Then the content of the proposed manual and then we'll move to the specific recommendations that we have for the council.

First the California judicial branch contract law was enacted in late March of this year, it established a brand new part of the public contract code, that part is part 2.5. It covers judicial branch entities, defined to mean the courts, the council, AOC, and the Habeas corpus resource center. The fundamental requirement is that all contracts entered into by judicial branch entities beginning October 1st of this year must comply with public contract code provisions that speak to the procurement of goods and services that are applicable to state agencies and departments. So, essentially, the new law is bringing the judicial branch under the requirements of the procurement requirements that are applicable to the executive branch agencies and departments. There are some very limited exceptions to this otherwise pretty broad application and those exceptions are with regard to procurement and contracting for planning, design, construction, Rehab, renovation, et cetera, of court facilities, trial court facility, not appellate court

facilities. That is a very good and important conception or carve out of the new requirements. The requirements pertinent for today's discussion is that the council must both adopt and publish judicial branch contracting manual which must be followed by all Judicial Branch entities. That -- so the mothership of manuals is the judicial branch contract manual. I say mothership because all the individual judicial branch entities must then adopt their own local contracting manual. The Judicial Branch Contract Law requirements beyond the adoption of the manual include that the counsel must report to the budget committee and the state auditor about judicial branch procurement activities beginning in February of next year, the counsel must make this report every six months. The Bureau of State Audits is required under the new law to conduct audits of the AOC, the courts, to assess the implementation of the new law, and just as an aside, we have been in discussions with the Bsa about these new obligations because they are their thoughts are that they will look at this current fiscal year as the planning year as they try to figure out what it is they are supposed to do, to implement their new legal obligations and it will include identifying courts in each of the three categories, small, medium and large, and have a pilot program to go out and start auditing courts with regard to their implementation of the new law. So turning to the Judicial Branch contracting manual itself, the deadline for adoption of the manual by statute is not until January of next year. So, why are we coming to you now in August when there is so much going on? It's because of another peculiarity of the new law, which is that if the manual is not adopted by October 1, which is the operative date of the substantive requirements of the new law, then the state contracting manual and the state administrative govern will considering and in our view, that is not a helpful situation. If the manual is not adopted by October 1, those two executive branch documents will govern until such times as the judicial branch contracting manual is adopted. So we're coming to you now with the thought being that if the counsel were to adopt a manual it would be in place effective October 1 and thereby not requiring judicial branch entities to be looking at the state contracting manual or state administrative manual for requirements. The requirements in terms of the content of the manual are the following: The provisions must be consistent with the public contract code, and they must be substantially similar to the state contracting manual and the state administrative manual. Those two bullet points that you see that I just referred to are the legal requirements. The third bullet point is more aspirational, that the manual, it should be legally sound, that is not aspirational, we're make sure it's legally sound but the other two frankly are aspirational, that it be business-smart and user-friendly. It is rather difficult to accomplish those aspirations because. requirement that the content of the manual be substantially similar to the state contracting manual which is in excess of 850 pages and state administrative manual, I understand goes through thousands of pains, so it's -- pages, it's a challenge to be business-smart and user-friendly we endenderrred to make it so.

There is tension between the legislative objectives and let me stop there, I think that is something I neglected to say. The judicial branch contract law begins with a statement of legislative intent that in enacting this new California judicial branch contract law, the intent of the legislature is to achieve the objectives as set forth in the very first sections of the public contract code itself, sections 1 hund, 10 -- 100, 101 and 102. Those sections speak to the legislative findings and declarations that put in all public contract law in one code would make the law clearer and easier to find, with it help clarify the law with respect to competitive bidding requirements, will help insure full compliance with competitive bidding statutes, as a means of protecting the public from misuse of public funds, will provide qualified bidders with the fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal

practices, help eliminate favoritism fraud, and that is all good. The next section, 101 says California public contract law should be efficient and the product of the best of modern practice and research, that is where we see a bit of a tension because a lot of the more innovative and modern approaches to contracting are not found within the provisions of the public contract code that apply to executive branch agencies and departments. For example the more liberal methods employed in contracting, the Cal state university and college system, many districts are able under the law to utilize are not available to judicial branch entities by virtue of how the Judicial Branch contract law is drafted. So, it was difficult to be candid, to apply the state contracting manual and the state administrative manual provisions to Judicial Branch entities. It's difficult because with those two manuals that are developed by and for the executive branch, the roles, responsibilities and activities run throughout those manuals. And in sharp contrast with our new law, DGS does not have a role to play. So in trying to implement the law and do what it says, have the manual be substantially similar to the executive branch manuals, was not an easy task. But we met the challenge with the help of the working group, comprising representatives from the trial courts, namely and representative from the appellate courts and Hrc who came together as a working group to help us in the process of developing the content of this manual in very, very short time frame, as I said the law was enacted in late March, in May we discussed the new requirements with the courts at the regional meetings and at CIAC we requested CIAC's assistance in helping us put together working group, what we were gratified with the response, and we have been working on it virtually non-stop from that time until now. The process was largely to identify the applicable public contract code provisions and then to cross-check them with the state contracting manual and the state administrative manual to see where in those manuals they were implementing provisions that tied back to the public contract code requirements and then to draft provisions that were substantially similar and still made sense for judicial branch entities and their contracting activities. The manual now turning to the content of the manual, it has an introduction and the introduction, I'll get in the content in a moment, it has 12 separate chapters, and has appendices, that the branches can use. Work sheets to calculate what needs to be calculated in some instances, a whole lot of model contract provisions, both general terms and conditions and special terms and conditions that can be utilized by the courts and others as they shift their practices in terms of their structuring their contracts. The last part of the manual is a glossary of terms.

Procurement officers and other entities who have to do the hands-on work when they pick up the manual and open it you will it will inform them as to why this manual exists, what it is intended to do and what the guiding principals are. It also addresses the use of terminology throughout the manual, our consciousness has been heightened about the importance of dising wishing such as you must, you should do something, and language such as you may do something. What we've endeavored to do is use the mandatory language "must" when in fact it is a legal requirement. So we have a chart in the introduction that lays out the terminology and what it means and in what kind of compliance or attention needs to be paid to the terminology. Again, we try to separate out between requirements versus what could be referred to as best practices.

In the next slide, what we will do, our view is you need to know what this document is that we're asking you to approve, so we do want to go through quickly if we can each chapter, what the content is, and why it's part of the manual that we're proposing.

So the first chapter, Chapter 1, purchasing authority chapter, based primarily and identifies the sources of judicial branch entity authority to engage in procurement, because unlike the executive branch agencies, which are required pretty much to use DGS' services, each court has

its own independent authority to contract. As does the Hcrc and the counsel through the staff agencies, AOC. So we wanted that to be clear. We also in this chapter identified the rules and responsibilities of personnel in those judicial branch entities with regard to procurement. There is references to the types of personnel, the procurement officer and others who have defined responsibilities to engage in procurement and contracting, and we're mindful of the fact we're trying to have a manual that would be workable for the smallest two-judge court with fewer than a dozen staff members, to Los Angeles. Not an easy task but we tried to make it as scalable if you will, so it will be a useful and workable document for all of the courts.

The second chapter is about procurement planning, again based primarily on portions the state's contracting manual, because the executive branch approach to contracting differentiates among non-It goods, non-It services, and It goods and services, the three different categories of procurement types, this chapter of the manual explains and guides in terms of the planning that should precede any actual procurement activity so that those staff in courts and elsewhere that have to implement this new law and work under the new manual will know in the first instance how -- that the planning part is important and how to go about doing that.

This does reflect, incidentally, a difference between how the judicial branch engaged in the contract and procurement up to this point in time, the trial courts under the guidance of the trial court financial policies and procedures manual, the AOC under our own procurement rules, which don't differentiate among the types of procurement activities, but now under the new regime, since that is a requirement under the law, that we follow those portions of the public contract code applicable to the executive branch, that is what we're doing here in the chapter, little bit of planning. Next chapter addresses the socio, economic and environmental programs applicable to the executive branch and now to us with regard to considering. The disabled veterans and Dvde, the State by recycled campaign program. So this chapter is devoted to those subjects. The next chapter is really the kind of the meat and potatoes of the competitive solicitation requirements, because of the necessity to differentiate among the three different types of categories of procurements, this chapter has sort of the introductory chapter, chapter which deals with those three types of procurements. This chapter draws extensively from all three volumes of the state contracting manual, and it has step-by-step guidance in those three categories. Chapter 4 also includes the requirement of using the lowest responsible bidder methodology for non-IT goods procurement over 50,000. The method that courts and others have been using which is the best -- this is accurate, best value method, is not permitted under the new requirements for non-It goods over 50,000. So that distinction is very clearly made in this chapter. Chapter 5 turns to non-competitively bid procurements. Again, based on the state contracting manual, because there are categories of purchases that are not subject to the competitive bid requirements, for example, purchases under 5000 dollars are exempt, there is also the sole source justify case that exists under the current regime, also permitted under the new law, that deals with the flip side of Chapter 4, Chapter 5, the fewer non-competitive bid procurement opportunities. Chapter 6 deals with leverage procurements. These actually we find to be very, very useful especially for the trial courts. you can develop your own -- you can engage in your own procurement and create the kind of agreements that other courts can then take advantage of. This is a very useful tool that we have in our little tool kit here. Chapter 7 deals with protests and post awards disputes. This is basically pulled from the existing portions of the trial court financial policies and procedures manual, and one distinction here where we actually are doing something, proposing that something be done that is a little different from what is required under the state contracting manual, is that in what as we have drafted the

chapter, the protests imposed process is out there for all procurements as opposed to limiting it to the dollar thresholds that the state contracting manual has.

So we could have gone that way, which would have had the effect of a certificate of procurement activity if it below a threshold, there wouldn't be a protest and post award dispute process, we thought it would be more helpful for there to be a process in place so that if there are protests or disputes, irrespective of the precise dollar amount at issue, we would have an established process that could be followed. But that is -- that reflects a policy issue that I wanted to flag for you. Chapter 8 is the chapter most dense in that it deals with the specifics of preparing, drafting, approving and executing contracts. This is analogous to Chapter 8 of the contract manual, but the state contracting manual, but it also pulls from the public contract code itself, and from other chapters of the state contracting and administrative manuals and the trial court financial policies and procedures manual and this is one where we do have rather lengthy provisions. Chapter 9, more detailed than the trial court financial policies and procedures manual on progress payment requirements. So that is more in line with the requirements that are found in the state contracting manual. And this is most -- rather with the -- with the information in that manual, because the state contracting manual has a lot of stuff that is not specifically required, it's just information. And this is really more so a best practices kind of chapter. Our thought is in order for it to be useful for courts, especially the smaller and medium sized ones, may not have a full-on procurement department, to have a manual that really is one-stop shopping for contracting, that goes from the planning, through the -- selection of the vendor to the execution of the contract, to receiving the services and paying for them, having everything in one manual would be hopefully useful. In Chapter 10 we deals with accepting goods and services, mostly in this chapter there are best practices, not require mens. And the material in this chapter is consistent with the trial court financial policies and procedures manual. Chapter 11, contract administration, again, pulled from the existing manual that the trial courts operate under. With regard to contract administration, and that it also includes some optional provisions from the state contracting manual. Chapter 12, contains the reporting requirements that I made reference to earlier. It describes the counsel's obligations to report contract information to the JOVC, the Joint Legislative Budget Committee and bureau of state audits and describes each judicial branch entity's obligation to provide information to the AOC so that the AOC can then prepare the report for the council to approve in terms of submitting it as required by the statute. So, that takes us through the content of the manual. If there aren't any questions about that, I would move to the recommendations that we are making or I could talk about the recommendations and go back and have discussion, as you wish.

>> Judge Rosenberg?

Thank you for the presentation. The manual applies to good and services, does it -- will it apply to courts contracting with interpreters and reporters and private security?

What about labor contracts?

>> Labor contracts, no, they're covered by governance contract.

>> Does it specifically, if it doesn't include them, exempt them like construction projects, specifically exempted, does it clearly say what is exempted?

>> No, there is no specific statutory exemption for those matters you just described.

>> There are portions of the manual that would apply, generally speaking, the contracting provisions, however, for certificate holders of service providers, such as court interpreters, or court reporters, where there the fees for those services are set either by the legislature or by the Judicial Council in the case of interpreters, we think that those should not have to be competitively bid because if the fees are set you won't obtain a lower cost and that is not specifically addressed in this version of the manual, but it's our intent to include language to that effect in the next version of the manual, which I believe if we're going to present in December. I think it's very important for the 58 trial courts I know the judicial counsel can figure it out by itself but for the 58 trial courts it's very important that we put out at least a memo and let them know what is in and what is out, because --

>> Is your Mic on?

>> I'm leaning on the cough button. A rookie mistake.

>> I was just saying it's important that we put out a -- I mean this manual is 786 pages, so it's --

>> 275.

>> It's long.

>> Just felt that long.

>> I think we need a memo to the CEO's and Pj's which clearly lays out what is in and Out.

>> Judge, we need a lot of stuff we're racing as fast as we can to develop a number of tools including a fact sheet, Fa-2's, and fortunately, we are getting questions, courts aren't shy in lobbying questions at us, we're trying to Harmonize other legal requirements from other statutes, like the interpreter statutes and harmonize them with the requirements under the public contract code now, and we're endeavoring to do that in a way that makes sense.

That's why when we did the introduction to the manual, we identified those guiding principles, because when push comes to shove as we try to figure out how to make this work, we want to be able to look at what the legislative intent is behind the public contract code, including that California public contract law should be efficient and the best -- the product of the best of modern practice and research. We don't want to go backwards, so we want this to be a useful, efficient and sound document.

>> That's very nice, legislative intent is important. We need a bright line, a PJ's CEO's need a bright line, tell us what is included, what is not included.

>> Understood, thank you.

>> Alan Carlson?

>> I'm closely involved with this over the development and my staff has been involved as a number of other courts, what I'm going to say is not to reflect on the work been done I think its very useful and there is a use for it but not exactly what was presented initially to all of us. I see this body as a policy making body and I think the manual we should adopt should be a policy manual. What we've got here and it's useful but what we've got here is another courts purchasing officers called a desk reference, not a policy manual. Part of why the recommendation is keep working on this I think we need to revisit this and turn it in a manual that reflects the policy of the council, not a how-to, you might do this, consider this, here's an alternative kind of a document.

I think the other thing you have to remember is we can audited against this manual, so the more that is in the manual the more mistakes we'll make on audits, intentionally or otherwise. I don't like putting the trial courts and appellate courts in the position of saying you're not doing this thing it says you should be doing when I don't think it should have been in a manual we approved as a council in the first place and put out there. So I have issues with that.

I have issues with the deny shun. I think -- the tension, you said let's take the intent of the legislature to have a modern procurement law and develop a modern procurement law. Having looked at the state manual, listened to my staff about this, the state manual, to be charitable, is an archaic document, mostly barnacles, developed over a long period of time and stuff added and this has been changed, why It is different from the rest of the stuff is not clear, we have a great opportunity here to modernize the manual and luckily the statute says substantially similar and consistent with. Doesn't say identical to or take the parts out and repeat them in the state manual.

I think we have an opportunity here and stepping out to do this say here is a more mad eastern way to do this. And I think we ought to do that when we revise this the next cycle around. The process of developing it involved AOC folks and they did a great job and the staff worked hard it's interesting when my staff watches me grumble about this, I know how hard they worked to help get this to a good place. There were no Pj's except for Judge Edmond, the only way the CEO's -- I like what you're saying about clear lines, your signature otherwise there, not mine, so to speak, although it's delegated, I think we need to have this vetted by the PJ's and court administrators, there wasn't time for that this time but we need to do that in the next cycle.

So I think the sense of the recommendations here is having said all that, I recognize we have to have something on October 1st, I don't want the state manual to apply to us on October 1st, mainly because our people would have to sort out what that means for us and in a sense we've already done that by developing the manual so let's adopt the manual with the understanding that we're going to keep working on it, and go to a more modern system. You have Odd things in here, state manuals intended for statewide procurement, I don't think they contemplated purchasing stuff and LA and medium size courts, so we need to construct a manual that makes sense for all the different sizes of courts we have. The rule about what is the cut off on best value versus it has to be lowest bid, frankly, probably 30 of our courts are always going to be under the best value standard because they don't have a contract that big. The big courts are saddled with taking a contract at lowest bid that isn't the best value. I don't think that is consistent with the statute.

That is why I'm arguing we ought to go with where the recommendation is and get the PJ's and court administrators and administrative PJ's involved in the process.

>> Two things I'll take that as a motion, number one. I also want to point out, too, several components to this. First commend the AOC for putting this together and in the way that you

have and as quickly as you have, not withstanding that it is a work in progress, but we need something in place before October 1st, so our procurement isn't superceded by the state procurement manual, which doesn't apply to us. So the background on this, as you might want to know, is when we were looking at the \$200 million cut to the budget in January and negotiating with where that would come, the -- we received word based on complaints about our spending, that there was an effort to bring the judicial branch in the public contract code. Again my congratulations and respect for the AOC and office of general counsel, and office of government-and-a-half affairs for being in the capital trying to fight the application of the public contract code to judicial branch entities because they don't compare such that the contract code can be laid upon us and it would apply. So there was a lot of give and take and back and forth you're under you're not, you're under you're not. Changed every night and the phone calls that we had.

Ultimately, the result was construction that was the sort of negotiated resolution, construction would not be in the public contracts code. But this was a directive by the legislature in part because of allegations of our spending and this is what we had to do in a short period of time for Mary and her team to go through the state contract manual and the public contract code and find out what applies so that we can make it applicable to us.

That is the background how this is here, why it's here, why it's in the condition it is and why Alan Carlson made the motion and I echo all of your concerns about our procedure on this.

>> Alan, could you read what your motion is?

>> I'm making the motion on recommendation on number one about adopting the manual, I don't know why we have the last sentence to comply with the contract law that is obvious and sounds like we're doing it to comply which I don't like, then the first bullet under 2, I would add increase represent takation of providing judges court administrators and small medium and large trial courts. That would be my motion.

>> Seconded?

>> Item 3?

>> I'm fine with 3 and -- with 3.

>> Are you moving that we adopt all the staff recommendations?

>> With those changes.

>> With those changes that you made?

>> Yes.

>> 1 through 4.

>> I only have 3.

>> 1 through 3.

>> I would second.

>> It's recommendations 1, 2 and 3 with the additional language, as memorialized on our tape about looking forward involving the PJ's and CEO's to amend to a better product by the second iteration of the manual.

Second by Judge Wesley, Judge Waters?

>> Judge Waters: I spoke to the people involved in the working group I want to share with you the high prices they gave me for Ogc staff, the work that you did. There are concerns, pretty much along the lines of what Mr. Carlson mentioned I think we need to reemphasize Mary you mentioned, we have variety of courts of different sizes, I would say because of the added costs to all courts, in going in to the new procurement process, maximum flex built to the individual courts -- formal and informal methods should be one of our goals, particularly in this budget situation. But I didn't want to leave the room without telling you that with all that you have on your plate and this being added in, Mrs. Carter and Mr. capelli had high praise for the work you put in this.

>> Thank you, Judge, nice to hear.

>> I assume this is available in hard copy and online?

>> Yes, will go online, we're haven't thought through the details about whether we ought to be putting it making it available in that way, certainly if any courts want us to do that we would be happy to.

>> My second question was is this something that justice:hill's committee would be interested in?

>> Yes, short answer.

>> Procurements at the state level versus procurements at the county level or maintenance, et cetera?

>> Yes, for maintenance and not for construction, but for maintenance and we have been in discussions with the office of court construction and management about that issue, especially given the contracting activities that are happening at a fast pace in that area.

>> Kim Turner?

>> Thank you, Chief. I want to echo what some my colleagues said about a remarkable achievement on the part of you, Mary, an your staff to sift through, you know, thousands of pains of other documents and law to disstill to mere 275 pages to serve the courts going forward. I would also say that I do believe one of the comments Alan Carlson made, I have a different view, and that is that while the judicial counsel is apolicy-setting body, we have many manuals that the council has oversight on, for instance the trial court financial policies and procedures

manual, the trial court records manual, which do contain some procedures and some practice and process for the court which I think for our smaller courts is extremely helpful.

>> Could I commend on that, please?

>> Yes.

>> The statute that imposes the obligation on the counsel to adopt a manual explicitly states that the manual is to incorporate procurement and contracting policies and procedures. So it's not simply a policy manual, it's a policy and procedure manual.

>> Yes, thank you. And having said, that I would just also add that I agree with Alan that whatever extent we have discretion and latitude to use modern, progressive, forward thinking practices, of course we want to use those, we don't want to be married to the best procurement manual money can buy in 1952, with you to the same extent, I think that you know, your charge, Mary, is to make sure we don't run afoul of the requirements in the new law and when you read substantially similar and the other terms that you referenced at the beginning of your presentation, I understand why you took the approach you took and I think within certain parameters and I hope with the help of CEO's, PJ's, the continuing efforts to refine the manual and so forth, that maybe -- and perhaps with additional help from Oga, we can maybe get clarification that will enable us to move forward in a way that will enhance the product and make it easier for courts to use the modern practices.

>> I also want to recognize what I think counsel and what I think the committees do best, that is with great thanks and respect to Los Angeles, Judge Wesley and Judge Edmond's involvement and and alan Carlson, trying to figure out something that we can put together that is useful to the courts well before the deadline.

>> Thank you, Chief, I'll pass that on.

>> Without hearing further discussion, all in favor of the recommendations as stated?
Please say aye. Any opposed?
Matter passed.

>> Thank you.

>> Because we are a little bit ahead of schedule, but we know how quickly that can change, we're going to take our lunch break now, it's half an hour, I would calculate it now from the clock on the wall, 12:35, we will reconvene at 1:05 here to start our afternoon. Thank you.

>> That would make our jobs I think more streamlined, you know, use technology where possible. I want to touch on the issues that are branch wide. We'll see slides for the Supreme Courts and the trial courts and then Justice Huffman will present the issues that will be considered for the AOC. First I'd like to say it's a pleasure to be here in my first formal presentation. And I'm very looking forward to working with everybody to help the branch move forward and I think this is the first step in doing that. This is the way state agencies adjust their budgets. We do incremental budgeting in the state of California and we don't do zero based

budgeting we only present changes on the margin. The judicial council has to approve the BCP's that will go forward before the administration and before the legislature. And this body will give us the framework from which we will be moving forward framing our discussion. This year we've reduced the number of requests to sort of focus on the key issues. In my time of the department of finance I felt that in tight fiscal times departments asking for small dollar amounts and in advocating other major policies issues they weren't focusing on what was critical and we're seeing that the issue of really providing funding for the branches is critical. I want to let you use the specific terms in what's called a budget policy letter. It tells all state agencies what it expects to see this year. It says the administration's primary budget priorities to establish a structurally balanced budget that preserves critical state services and promotes the governor's priorities.

While the 2011 budget act makes substantial progress in closing the state's structural departments, departments must cut costs and not have expanding programs what is key and what our job is we have to identify and remind folks that what we do is a critical state service and then we have to compel the governor to understand that it is a priority of his to fund the branch. So we think that we will work with the strategy to do that moving forward.

We've discussed restoration of baseline funding and we think that is a critical component and how that will go about, I think we would probably need to elicit the input of PJ's and the court executives in framing that strategy. We will also be asking for the flexibility to address whatever budget comes our way in the final -- the final budget act so that to the extent that there's some unknowns, we can similarly this year have the flexibility to allocate the budget across the branch.

The issue of the inflationary cost increases is something that I think was important to try and do this year. The last couple fiscal years we've gotten adjustments for health benefits and retiree costs. Similar to all other state agencies that gets those kind of adjustments. I don't know if the first fiscal year was 17 million and the most recent fiscal year was 17 million those are substantial funds that help cost increases. We think the next component would be what could we do to at least provide some inflationary cost adjustment for your operating expenses and equipment. While this isn't sound type adjustments it would help get sort of claw back some of the opportunity to not erode the buying power of the budget. We mentioned here about the statutory changes. We've heard that in the contracting issue about find something statutory relief in some onerous provisions and there are a couple other things that are still outstanding that I want to bring to your attention regarding prop 11. We think there may be some need depending how that goes for some additional resources and we're alerting the department of finance to the extent there's issues with that workload we may need some issues. Parole revocation we will also be alerting them that there might be a need to adjust that funding based on the data that's collected and the actual workload that's coming forward.

You see we have a couple of small issues from the Supreme Court and the Court of Appeals. We'll also be again pursuing the trial court proposals for the retiree health benefits and we think that's again a core cost that we need to have addressed. We will be pursuing the contract code implementation and we know that's going to burden the courts a little bit having to comply with the new law. We have heard from new courts about court security. We know that's an issue and we are working diligently with the courts. And our partners in the sheriff's association and CSAC to resign and revise hopefully jointly the court security proposal that is currently in place. And I'll turn it over to Justice Huffman for his presentation.

>> All right. Thank you. Zlatko, and it's referred to as classically as A & E has undertaken the requested budget change proposals for the AOC. You may recall in the charge that the chief and the council give to that committee. It includes annual review of budget change proposals affecting administrative offices of the courts, the office of court instruction although we're not addressing issues in this time of courthouse construction projects.

The budget request proposals in the AOC and the court construction that has been presented to A & E relate as Zlatko has indicated to increase costs from inflation and increased costs particularly in maintenance and insurance of buildings that we have either taken over or completed that have added additional space and additional costs. It's important to understand there's no staffing increases identified in these BCP's for the administrative offices nor do any of them expand the responsibilities or duties of the administrative office. And lastly, before I go through them quickly, the Advisory Committee wants to make very clear to the Council that we're not evaluating anything of the financial strategy of the Judicial Branch save and accept these AOC budget change proposals but we do not make any recommendations as to what ought to have priority over anything. It's not our role. And we're simply evaluating what was presented to us. The BCP's presented for the administrative office of the courts were presented to the committee on August 11th. And we've reviewed them and we unanimously have recommended approval of the five BCP's and you have them in your reports and let me go through them quickly, very quickly. The one affecting the AOC itself is a price funding adjustment. As Ron and Zlatko has mentioned there is authority for other agencies to request from the state -- from the department of finance adjustments and so-called price cost adjustments for inflation as to cost equipment and operating costs, the BCP for the AOC is about \$1.6 million at the present time. And is consistent with -- submitted and consistent with the budget letter that Zlatko has mentioned. The proposal would be implemented in the proposals that the AOC is going forward. There's also a need with regard to BCP with federal or to grant funds. In order for the branch to expend or for the AOC to expend grant money we have to have legislative authorization to expend that money. And this BCP simply seeks that authorization for continuing or new federal grants. We don't have a dollar amount at this point but we will during the discussions that go on with the department of finance.

With regard to facilities, there are three facilities based BCP's, one has to do with operating costs. We have -- again, increased costs of the facilities pursuant to government code 13038.05. This proposal would be consistent again with requests for the legislature to have fund those added inflationary costs. It's 2.197 million for that particular BCP. The county facilities' contributions are not sufficient to cover the operating costs necessary if we don't receive this inflationary adjustment, you'll have a reduction in resources available for the maintenance of those facilities.

We also have a risk management BCP that is providing insurance for the facilities that are now operated or under the control of the judicial council. At the present time only 33% the buildings for which the AOC judicial council are responsible are insured. And, of course, as anyone knows insurance is expensive. The current county facilities payment covers about half of the 5.6 million necessary to continue to provide added insurance. The amount of money left over in the construction of budgets as a result of state legislative changes is not much. And any major liability action against the branch for one of those facilities would be very difficult for us to fund. So insurance seems to be a very legitimate need. We need 2.7 million in addition to the county facility payments to fund that.

And the last one has to do with new court facilities, particularly, those that are not replacing other facilities. One of them -- the biggest expense is for the Fresno courthouse renovation which doesn't replace the facility. It adds a facilities of 191,000 square feet. Actually in this BCP is 286,000 square feet of additional space have been under responsibility of the branch and the AOC. And the estimate is we need approximately 1.33 million to provide the maintenance and upkeep for those facilities. They include Fresno, Lassen Contro Costo and for some reason Plymouth? There. What's that about?

>> It's a small number.

>> Plymouth, Sierra, Oilton Courthouse. They actually get a credit for the mammoth lakes courthouse, but the total amount necessary is 1.33 million. And, again, like all of these, if we're unable to obtain those additional funds it, removes the resources available for maintenance and ultimately the facilities will deteriorate as has been the historic lot of the courthouse in our county experience if all of you remember back that far and it's not what we would like to see going forward. So the committee recommends that the judicial council approve those BCP's related to the AOC and submit them as part of the branch budget process.

>> Yes, a recommendation, too, would be to approve the -- the AOC recommendation the judicial council approve the submission of BCP's for fiscal year 2012, '13 and the trial courts as well delegating authority for and for the entities of the baseline funding for the submission to the state department of finance. And delegate authority to make necessary technical changes.

>> Thank you. Any questions? Comments? Discussion?

>> I have a question.

>> In our discussions, our educational discussions yesterday, there was a very interesting discussion about A & E's role in looking at the budget of the AOC and in looking at the line item budget of the AOC and in this proposal, it talks about your committee approving budget request of the administrative office of the courts. Did you get a line item budget of the AOC for your committee to review?

>> We have not, Judge Westley, and I just learned of this and if we go back to the charge as A & E existed on August 11th when we met was to only review BCP's of the AOC. Now, by way of information to the Council, the committee which meets in person next week plans to start a process of going through every department of the AOC, reviewing their operations, their budget, staffing levels and their sources of income. But we had not been asked to do tasks they're outlined in the committee and the minutes of August 12 yet. Now, if we undertake that, and certainly if that's what the council directs A & E to do, we will undertake it. But I would ask the council if you want us to review in detail all of the line item budgets of the AOC and review the consultant agreements and contracts that are in significant amounts, you need to tell us what you want us to do with it. I certainly don't want to have the committee go through and say, yep, we know it's there. There it is. And congratulate ourselves.

If you want us to analyze it, analyze it for what purpose. You tell us what you want us to do, and we will undertake that process. Although this is the second year of the committee, the

chief is appointed to a brand-new committee and structured it differently. There's a different charge and it is going through the process of trying very hard to figure out what it needs to do, what priorities. And our first response, of course, if the Council --
[Inaudible]

>> We will but we need some guidance on this and yes, we did not do it here because we were not aware that we were supposed to do anything of that kind.

>> And I have one other question, chief, if I may. There is a -- here it directs the administrator director of the Court will make technical changes to budgetary proposals as necessary and could I get a definition of what technical changes are? And is a limit that a technical change could amount to.

>> I would suspect that a technical change would be final costings of the BCP 's to the extent there might be estimates at this point 'cause they are just concepts. We don't fully complete them until we get approval from the council to proceed on the final development.

>> So is it Theodorovic but is it correct if the administrative director directs to you make a budget proposal that it will come to the council for our review before you make that request?

>> The final form of the document?

>> Yes.

>> That is not my understanding that's the process.

>> That's why I was asking. I don't think it was clear to me. I see bill is grabbing the mic there so maybe you can clarify that for me.

>> So typically, you approve a proposal let's say adding whether it's in the trial courts, adding a number of judges, doing something in the AOC, so if it's hiring staff and those kinds of things and the adjustments are made are the calculations of the salary, the overhead for phones and to have specific costs at the time and those do not come back to the council. >> And we're happy to work with any process you want to see those things but this is -- these things are usually very fast-moving and they will change and they will be sent back by DOF. We resend them back and send them back. If you want to see each of these changes, you know, I guess we could email them to you or something like that.

>> The reason I brought it up, we had a discussion at A & P and what ENP should we review every single change that comes in on things or should we -- and justice Miller can correct me, should we set some kind of parameter and a certain amount of money is being spent over that parameter, should it come through A & P and come through the council so we have oversight over what you say occurring? And I don't know if there's a process for that. But when I look at this, it doesn't tell me there's any oversight. And if it's a substantial change to what's approved by the council, I think there should be oversight of some kind when it comes --

>> I think those are good things to discuss in terms of what criteria you want to consider in those areas and, you know, normally the oversight as I say in the past in approving the budget change proposal, the concept or the estimated costs and that kind of thing. If there was a change, to say: Gee, we're not going to seek funding for two staff we're going to seek funding for five staff, that would go back to the council. That would be a substantive change. But if it's a change in the calculations of the funding or the department of finance says we're not going to include health costs and that kind of thing -- and then have oversight on the front end and then oversight on the back end as opposed to trying to manage the budgets of the individual activities of the individual departments. So I think your question is a good one, Judge, but I think it's something you need to address with your ENP about the criteria and the definition.

>> Or through -- I just think -- I think all these committees are being set up for an oversight process that should be clear.

>> Right.

>> And that's all I'm asking.

>> No, it makes sense.

>> And I think you're talking about two different things. >> I was talking about different things and I knew that but it came up in that context is what I was saying. >> The governance committee is going to try to meet before this Thursday so that we can give direction to Justice Huffman and I talked to him about that and we're going to try to set that up and then the others that you bring with regards to this issue, I think that's something ENP should talk about at one of its meetings and discuss there should be some type of regard or ask staff to make a proposal in that regard or even just assign it to Justice Huffman again.

>> That was my thought.

[Laughing]

>> I just wanted to say, Chief --

>> What goes around comes around.

[Laughing]

>> But knowing how the budget development process goes and I think this is a kind of standard process that the council has had in place for a number of years. The thing that's being requested today is really a framework for the council -- or for the AOC to go forward in terms of developing budget proposals. So I don't think that at this point we're talking about dollar amounts and certainly these -- these proposals with few exceptions are really conceptual in nature in that they are requesting budget restoration, they're requesting perhaps a new kind of inflationary cost adjustment. They're asking for authority to be granted to the council to make allocations. So they're not -- it's not like we're saying we want to launch a new program and it's going to take seven staff and four judges and six, you know, clerks and we can cost those things out and put them in a budget change proposal. What we're looking for today is just to give

authority to start moving forward on the urgent business of trying to get restoration of funding for the courts and to place some broad parameters around how that would work. And I want to just offer Zlatko certainly that the CEOs is happening to work with you in whatever way you find helpful to accomplish that and I would guess that the presiding judges would also be very, very happy to get on board with helping to develop -- you know, put some teeth to some of those proposals.

>> If I might just add one thought. We had to discuss this within the A & E committee as we begin to try to understand the process. This is driven in part by time requirements. You have to have your BCP's into the department of finance by September 12th. You're still unraveling the carnage of your last budget and the best you can do at this point are to identify the concepts and some guidelines and certainly whatever oversight the Council deems appropriate is certainly a wise idea but I think contextually we're going through with ideas at the moment because we have to get it in by the 12th and so we try to give you as much information as we can so that you can at least say are these ideas acceptable or not and then how do you follow up on them is certainly a very legitimate inquiry.

>> Thank you, Judge O'Malley.

>> I would move to adopt the recommendation both 1 and 2 proposed by the committee.

>> I'll second that.

>> Judge Waters and Justice Miller second. Any more discussion on the matter? Judge Pines.

>> When I first saw it I thought we were going to be approving budget requests and then I realized -- I got through the judgment that's not what we're doing. We're in a sense approving concepts here.

>> Right.

>> It would really be helpful if I could sometimes have a copies of the budget? Why don't we get copies of the budget.

>> We will get you copies of the budget.

>> We get a lot of materials. It would just be useful to have a copy of that.

>> And I'll take an hour to explain it to you.

>> Pardon me?

>> And then I'll take time what the budget looks like. >> I mean, what I gather here what you're basically relying on the same budget that we had and are now asking for additional increments.

>> Correct. That's the method that the state of California --

>> There's no requests for any reductions in any services.

>> Heaven's no.

>> You don't ask for that.

>> We're asking for statutory relief so we can reduce workload to address the funding reductions.

>> No, I understand. I mean, I understand, for example, there's going to be a review of the AOC's functions and we've got all these committees working on this. I gather it's premature at this point to go forward with anything other than what we have as an existing budget? Because as you've heard from earlier discussions, we're going to have to prioritize our expenditures as we've discussed beforehand and decide what the priorities are going to be. Just >> Just as we've had of unallocated reductions of \$350 million. That means the legislature doesn't tell us what programs to cut or what areas to cut. The council decides that in terms of how to deal with the reductions. We're approaching this in the same way of saying restorations is what we're going to try to accomplish here. O-to get unallocated money restored to the budget so you can make decisions about how to allocate it.

>> Okay.\

>> Any further discussion or comment? All in favor of the motion?

>> Aye.

>> Any opposed? The matter carries. Thank you. Thank you, Justice Huffman, Zlatko, Kim, thank you very much.

>> I just want to comment for the council members that are retiring from the council and the chief as mentioned to you that she will see you in other committees.

[Laughing]

>> That's not a joke.

[Laughing]

>> Thank you, I think.

[Laughing]

>> Item number 8, court facilities and modifications budget and a prioritized list for fiscal year 2011-'12 action item.

Good to see you Judge Judges Highberger and Power.

>> We're pleased to be here. We're going to make two recommendations to the council today concerning facility modifications. First is to adopt the \$30 million for fiscal year '11-'12 and to adopt priority list facility modifications. And, again, with me today is Judge Power who's head

of the modification facility working group, Judge Highberger is a member and Patrick McGrath is the acting manager of the facilities management and Patrick will go through the definitions of facility modifications.

>> With the completion of the transfer process in 2009, the vision of S.B.31 became a glass and concrete nuts and bolts reality with a portfolio of approximately 20 million square feet and more than 500 court facilities across the state. The transfer process despite its enormity was only the beginning. While the capital instruction program is a major component to the judicial branch's long-term strategy, the net result of the program will replace only about 10% of the existing portfolio. The hundreds of facilities that remain which have endured decades of neglect are now ours to care for. As stewards of these buildings, the judicial branch is now in the facilities management business in a very good way. Facility modifications are a major component to the facilities management business. As one of its many functions, OCCM manages the facility modification program using the judicial council adopted prioritization methodology for modifications to court facilities. The policy provides Number 1 a methodology to identify, process and implement facility modifications. Two, it empowers the trial court facility modification working group to oversee the program and, 3, and most importantly, it provides guidance for the prioritizing funding based on the critical need and impact of each project to continued court operations.

The facility management -- the policy provides a thorough definition but in its simplest of terms a facility modification is an effort to restore, replace or improve facility systems and equipment in order to keep courts operating. A facility modification is generally considered to be any effort over and above the basic daily routines and tasks required to service, maintain, or just building components. Facility modifications do not include projects that significantly increase the size of a facility or result in a totally new facility. A large portion of this work is the results deferred maintenance. It's not addressed and deferred maintenance increases the probability of building systems failing and negatively impacting court operations. I would like to introduce Judge Power.

>> Thank you, good afternoon, Chief and the members of the Judicial Council. I really want to thank all the members for allowing the court groups to make this --

>> You might be on your button --

>> What?
[Laughing]

>> I'm new to this process here.
[Laughing]

>> Can you hear me now? Good. I've been the member -- or excuse me, a member of the working group since 2007 and the chair since July of 2008. The members of the working group are Judge William S. Highberger of the Judicial who will be making some comments shortly and the Judge of the Glen County Superior Court and Judge Laura Halgren who is Judge of the San Diego Superior Court. Mr. Jim Perry, Chief Executive Officer of the Superior Court. Ms. Kitty

Tory, Chief Executive Officer of the Superior Court and Sherry R. Carter who's the Chief Executive Officer of the Riverside County Superior Court. And I mention their names because it's important because I think we have a good cross-section of courts from across the state and large medium and small courts that are represented on our working group. The working group meetings eight times a year. We have four scheduled meetings at the OCCM offices in Sacramento. And in between those meetings, we have four telephone conference meetings. I want to commend Lee Willoughby and all the OCCM staff that do a superb job in preparing the reports, who list executive summaries four or meetings and I would like to recognize his hard work and expertise and that's Gerald FABB who's the manager -- he's of the facilities management unit. Jerry works tirelessly to newer that critically necessary products are presented for the working group for review and it has great confidence in his leadership. Also, he identifies critical facility modifications needs of the trial courts and ensures that those needs are met. The working group has a process in place for viewing, ranking and funding facility modifications that in my view is fair, equitable and addresses the critical needs of trial courts statewide. We review facility modifications requests from the superior courts, consider the staff reports with the preliminary ranked list of facility modifications and our working groups facilitate the modifications. And of the trial courts of a ranking or a funding decision made on a individual funding modification. And on occasion we have a conducted site visits to a local court on an as-needed basis.

Last year's budget allocation of 50 million allowed us to fund more than 2,000 facility modifications. However, the working group has a list presently of over 5,000 projects waiting to be funded with a preliminary cost estimate of over \$700 million. This facility modification list waiting to be funded continues to grow. With the 40% reduction in the facility modification budget from \$50 million to \$30 million for fiscal year '11-'12, OCCM and the working group will have to focus on the highest priority projects and I expect that as projects are denied funding or delayed, the number of appeals to the working group will increase. While the AOC has repeatedly requested increases in facility modification budget by way of budget change proposals, the state department of finance has denied those requests.

In addition, there is limited funding for routine maintenance. As routine maintenance is deferred, the need for a facility modifications increases putting even more pressure on the facility modification budget. The cut to the facility modification budget this fiscal year is understandable given the budget climate. The working group and the OCCM are committed to managing the allocated budget so that the most critical and necessary projects are funded. However, it is important to note that any further decreases could have a serious impact on the ability to operate and maintain court facilities. The proposed \$30 million allocation will allow us to fund the most immediate and critically needed projects in the current fiscal years. However, access to and safety of court facilities is vital to continued court operations and I do urge the adoption of the \$30 million budget allocation for fiscal year 2011-2012 and the adoption of the prioritized listing of facility modifications. And I thank the Council for hearing my comments and I'm going to turn it over to Bill Highberger.

>> Thanks, David, I too am personally honored to be a member of the trial court working group for facilities modification. The OCCM has been very transparent and very cooperative in working with us. It's a real pleasure to work with Lee Willoughby and Jerry and Pat McGrath and it was a pleasure to work with Frederick Ohlrich Stetson who retired on account of his health. While in a perfect world most of your facility modification money would be spent on

things that are said to be planned --planned improvements and rehabilitation. Redo the entryway to make it A.D.A. accessible rebuild the clerk's counter to make it more sufficient or secured and put in a secured parking for judges where there is none. Put in an air conditioner to serve a server room. The truth of the matter we've inherited such a dilapidated infrastructure that our money gets grabbed by the elevators that's failed, the roof that leaks. The building automation system that's died. The plumbing that has corroded and it's a totally reactive environment that's not how it ought to be but that's reality. We typically as a group five days or more before our meeting get a list -- a long list from Lee and Pat of the things that have been approved as emergencies. The things that have been approved by staff as small ticket items and more particularly for us a list of items of \$15,000 or more ranked that they propose we approve and those things that have not been approved we look at them carefully and we try to see whether or not it makes sense to us as judges, court executives, taxpayers, citizens to approve these things. A few things we spotted window washing and there was a proposal to include window washing for the courthouse in Plasser and we said no. When we spotted it we said get it out. We could not explain window washing in roseville because we didn't.

The other things we have questions about such as window veneer for the justice center in Vallejo and that's what's up on the screen. We get the question and we get the answer and, unfortunately, where Judge Power sits or at least his colleagues sit they get arson bombs, Molotov cocktails through their windows and so to prepare repair the window damage to prevent it from happening again and put an antibounce off the window and we're happily to approve something like this when we understand the reason. There is, unfortunately, and justice Huffman pointed this out a few minutes ago with the budget change proposal for facilities modifications not enough money going into the operations and maintenance budget. The county facilities payments that you're getting are historically locked as a number fixed in time while this hasn't been the most inflationary period, any funding sources that's fixed in dollar amounts that's not going to grow would become a problem. There was a question the general fund would step up total plate to take care of operations and maintenance. There simply is not enough money in that pot. If the budget change proposal that is proposed got approved, I don't think they'd even be enough money in the pot but the truth of the money is all that is a request to the legislature and the department of finance.

So on account of the fact that there's in the enough money in the operations and maintenance pot, we know that we are through the facilities modification paying for things which in a perfect world would not go against the critical needs account and go against the court construction account. There's an important problem, Lee, Pat and the staff are aware of this problem. They're going to look at it thoroughly and frankly and figure out what the response is and I'm sure you're going to be hearing more about it because things like boiler inspections and the rest that we wind up having to pay as facilities mods really should go against them but they don't have the money. You know you're dealing in a time of limits and so they're doing the best they can but I'm sure you'll learn more about it. One other comment I'd make you have this list that we sent to you of future possible things to do. This is actually the second item on the agenda. The truth of the matter is, it's going to be probably a long time before this gets done but we are giving you this list because you have asked historically for this list. The money in this fiscal year is probably is not going to be spent on this. It's going to be spent on the things that blow up and fail in the next nine months. Some of which are on this list by happenstance but there's other things that are going to fail and that's going to get the real money.

>> Excuse me, Judge. Let me ask you. I'm here, I'm here. The list that you referred to when you have a in your hand is that what we have as a prioritize list facility modifications priorities 2 through 6?

>> Yes.

>> Okay. And I understand what you just said so the question I had on that may be a little bit premature but just in very general terms whether you or anybody on the panel -- how are the preliminary cost estimates arrived at?

>> I'd have to defer to those who make a living doing building maintenance.

>> There's a different combination of methodologies. Depending upon whether or not a formal assessment of the facility has been made, there's a formal assessment at the facility and an RS means types that's a software program that you have a boiler and it's 100 years old. This is a make and manufacturer and this is the size and here's an equitable replacement cost. Other cost estimates derived based upon an estimate that is generated by the contractor or an investigator sent out to look at that particular project. We have as we'll talk about a little bit later, we have a dollar -- a bucket of money so to speak that we use to develop those investigative studies and those conceptual estimates to bring before to the working group and say, here's a project. Here's the scope of the work and this particular work will cost about \$5,000 or \$20,000 or \$150,000 depending upon what the scope has been defined. So it comes through multiple different formats, but typically the court or an entity has said something is broken. At that point we send out either the current wrench turning service provider or we certainty out a team of engineers to go investigate that particular project and make sure we understand all the ramifications of the project and then an official cost estimate is developed for that work.

>> Are there instances where those cost estimates that you initially received are adjusted based upon your expertise?

>> Yes. Using the dollar value that come to the working group are rough order of magnitude numbers because at that point we haven't -- it depends on -- let me step back. It depends on the scope. If it's something using Stanley Moss as an example where we know this is a million, 2 million roofing project when the county said it's 1.3 million, we said wait a minute we're not sure that's the right number. When it's a \$5,000 project, then there's -- there's a different level of scrutiny on that particular cost estimate.

>> All right. That's very helpful. And I should say that my question was not intended to turn to the Stanley Moss building being a member of the third district Court of Appeals. I don't want to get into any of that.

[Laughing]

>> That was L.A.

>> L.A.

>> Okay. That's a relief.
[Laughing]

>> Thanks, Judge.

>> Another example of how facility modifications impact court operations is a minor project in the San Diego county courthouse. Due to the deferred maintenance of the heat pump system the pumps failed during the winter areas of the courthouse were too cold with indoor temperatures dropping below 70 degrees. An investigation into the cause --
[Inaudible]

>> Thank you.

>> Oh, those poor people.
[Laughing]

>> Yeah.

>> Thank you. The building was built in 1961 and this equipment was original to the building. Unfortunately, this type of deferred maintenance is all too typical of our facilities. And the result is increased cost to the AOC and disruptions to the court. OCCM is in the final phases to the major renovations to the heating and cooling systems. Due to the strategy of short-term Band-Aid repairs rather than investing in long-term system renews the court was impacted by ongoing system failures and a building lack of temperature control. Much of the equipment was original dating from 1967 and well beyond the intended design life. Chillers cooling towers and boilers in both wings of the buildings were replaced and air handling units were replaced and the building automated system were brought up to standards. Given the limited access in order to remove the old equipment and install the news exterior walls had to be opened up and installed to put the equipment in place. In order to minimize court disruption the project was executed between Friday and Sunday evenings over the course of several months. The project now allows the AOC to provide -- to maintain comfortable temperatures in the building and with the installation of energy efficient equipment reduce long-term maintenance and energy costs. Additionally, due to the energy efficiency of this work, the AOC will receive a rebate from the utility of approximately \$89,000.

Now, I'd like to discuss the two recommendations before you today. The first recommendation is to adopt the facility modification budget for the current fiscal year. The specific allocations are as follows. A \$3.5 million allocation for statewide planning. This funding primarily covers the cost of project planning, investigative studies and the design work necessary for the execution of the facilities modification program.

Additionally, it includes continuing facility condition assessments and other long-range planning requirements. Much of the square footage that still requires assessment is in the L.A. portfolio that is scheduled to transition from the responsibility of the county to the AOC over the course of this year. 4 million is reserved for priority 1 emergency work, emergency projects arises as often as 4 to 5 times a week. This reserve allows us to take the immediate action necessary to return the facility to normal operations or prevent an imminent failure. The funding recommendation for the next two categories is based on both the limitation of the program's

current funding and the need for OCCM and the working group to remain reactive, responsive as needs arise and prevent further deterioration to the facilities. Therefore, the working group recommends the remainder of the budget 22.5 million, allocated to the category and no fund be allocated to the planned 236 categories. This allows groups to review all facility modifications and recommend funding with those with the highest priority throughout the year. This year we expect that 80 to 90% of this work will be new priority 2 requirements identified over the course of this year.

At its first meeting, the working group developed the trial court methodology for prioritizing and ranking facility modifications. Attachment to in the report to the judicial council. Potential projects are prioritized based on the following characteristics. Overall priority category, public and employee safety, risk management and mitigation, specific justifications, effect on court operations funding availability, equity among court, implementation fees ability cost analysis, design status, and planned major capital improvements. The result is the prioritized list in attachment 3 to the report to the Judicial Council. The list contains an excess of 4,200 items at a total estimated cost of \$700 million. To date, our assessments have targeted the largest port facilities across the state and that is the potential where district court impact lies. These assessments account for approximately 65% of the square footage for which the AOC has direct operational responsibility. We anticipate that as we complete the plans of the assessments, the backlog of deferred work will increase proportionately. The trial court modification working group draft annual report the proposed facility modification budget for fiscal year 11, 12 and the proposed list of prioritized projects were posted to the trial courts for review and comment on May 20th. A video providing an overview of the report and the working group's process featuring Judge Power was also posted to it. The report was also emailed to the chairs of the trial court advisory committee and the court executive advisory committee. One comment was received from the chair regarding the allocation for statewide planning. After discussions, it was -- we clarified why the allocation was justified. However, the report was modified to better clarify why this funding is required. No substantive changes were made to the budget for the prioritized list of projects that we are recommending today. I would like to hand the presentation back to Lee Willoughby.

>> Thank you, Patrick. So again we ask the council to adopt the \$30 million budget allocation and adopt the prioritization list of facility modifications. And we would be happy to answer any questions.

>> Thank you, Judge Westley.

>> I don't really have a question. I want to thank you, Lee Willoughby and all of the members of this committee. This is an extremely difficult job. There are so many -- there are so many damaged buildings that you're dealing with and there's not enough money. It's clear there's not enough money to fix it. And so you're going to get -- I suppose, you already do, flak from everybody that's in one of those buildings that something's wrong and you can't fix it right now 'cause there's no money and you have other priorities. And that's not an enviable position to be in but your patience and your efforts should not be missed for all the work that you have done. And I really do appreciate it. I will move eventually but I don't want to interrupt some of the other conversations but I will move to adopt your proposal.

>> I heard a second from Judge Waters.

>> Are you moving?

>> Yes.

>> Any further comment?

>> I just want to make clear that I agree with everything that Judge Westley has said because it can be said one time. I agree with him. No, I think you've done a wonderful job because you've squeezed 10 pounds of potatoes in a 5 pound bag. The needs are great and the money is few. I do have one comment and that is it'd be nice to see the priority list in two formats. The second format would show by jurisdiction so that, you know, all projects in San Diego can be seen together. All projects in Fresno can be seen together. As we're flipping back and forth through the list.

>> Yeah, that'd be great.

[Applause]

>> I just wanted to say as someone who remembers when the AOC before it grew and it was about 10 people, this is what one example and a very good one of why the AOC has grown.

>> Thank you, Fritz. Any further comment before I call for a vote? All in favor of the motion?

>> Aye.

>> Any opposed?

>> Thank you, Judge Power, Judge Highberger, Lee and Pat. Thank you very much.

>> A good presentation.

[Inaudible conversations]

>> Item number 9, assemble the panel for the Criminal Justice realignment allocations for fiscal year 11, 12 this is an action item. Hello again, Zlatko. Welcome, Mike.

>> Good afternoon Chief Justice and members of the Council I'm the executive officer San Diego member of the council but I'm here in this capacity as a member of the trial court budget working group. I've been asked to introduce this item. The budget act of 2011 provided \$17.7 million in court operational funding and \$1.1 million in court security-related funding associated with the criminal justice realignment act of 2011. On August 2nd the budget trial court working group met by conference call and by August just a bit the full trial court budget working group met to develop recommendations for the allocation of these funds to the trial courts for this fiscal year. And at this point I'd like to turn it over to Zlatko to go over in more detail the recommendations of the trial court budget working group with respect to these funds.

>> Yes, thank you, mike, I appreciate it. I think you're all aware of the realignment and what it means to the branch in terms of workload in the short term. We have additional revocation workload related to those that are at the local level on post-release community supervision and a couple of years from now we're going to be going to including all parolees that are currently managed by the board of parole hearings, we're going to be responsible for all revocation actions. The funds that are before you for consideration for allocation are for three-quarters of the fiscal year. We see that funding growing to \$23.5 million last year. The methodologies that were considered by the subgroup and also presented to the trial court budget working group were to look at the estimated caseload that was developed by the Department of Corrections and rehabilitation. There was an alternative methodology where we would just only fund a minimum -- a court that had a minimum of 12 hearings a year. One was to wait until the end of the fiscal year and allocate the funds based on workload. The unanimous consensus conclusion was that we allocate based on the projected workload from CDCR. What is critical here is that we track this workload in two years time we will need to go back to the administration and, in fact, we should be tracking it now to the extent that the resources are insufficient and letting the administration and the legislature know that the workload is greater than was anticipated. There were some fundamental assumptions in terms of time spent and the numbers of revocation actions, but it's incumbent upon us as a branch to track that information so that we can provide a full reporting back to the administration and justify whatever funding requests we need in the next couple of years. So with that, the budget working group recommends that the judicial council approve the '11-'12 allocation as contained in the attachment and that there's the permanent transfer of security funding associated with that regarding court security and that we track the necessary information to support our future budget requests going forward. >> Thank you. Discussions, questions?

>> I have one question.

>> Yes.

>> How would you propose tracking it? Are we supposed to -- are there going to be forms and how you will it be done to we can indicate how much time is being spent --

>> We have a subcommittee that is working on implementation of the revocation process. And so we think that -- some of the court information is clearly the number of petitions that are filed, but we think that we also should track some other metrics that we think would be important of how we deployed the resources but through that subcommittee we think it will be a way to really refine and hone in on what issues need to be tracked.

>> Thank you.

>> Chief, just add one small note real quickly. Just to note that this allocation is for this fiscal year only because given the fact that we didn't really have workload estimates other than those provided by CDCR, the committee felt that to get the money out was the right thing to do. But I think we will be back to revisit the allocation next year if we find that the workload numbers are different than what we've been told. So this is really just a one-year allocation of this money. >> Thank you, Chief.

So, you know, as we take on this new responsibility, a lot of us are really new to this whole process of trying to figure out what the appropriate solution is going to be so it's going to take us a little bit of time to get ramped up and get this program up and running. Is there an expectation that if we don't utilize all these funds this year that they're going to have to be returned or is this something we can build because some of the components that we're going to be instituting perhaps locally are going to be unique. And, you know, it would certainly be helpful moving into next year. So that's --

>> I think we need to be prepared to respond to that question from the administration when they ask us how have we spent the funds. I think they're in our budget this year. But we have to be wise about how we do this. If we find that we roll it out in a much cheaper way than was anticipated in the original estimates, we should be prepared, I think, in all honesty prepare the real financial aspect and not think this is excess funds going forward. So we should -- we should be cautious about how we use these funds. And to the extent that in this fiscal year, there may be excess the future projections might be reduced from that information that we have to provide 'cause it asks that question.

>> Kim?

>> So I just wanted to make note of the fact that it would be very unlikely for the very first revocation hearing to happen before January given the implementation date of October, we'd have to give the defendants time to actually get back to their counties, their behavior is being monitored and so forth. And so -- and then there's the 45-day waiting period from the time, you know, that the probation department wants to have a hearing to the actual day that it could occur. I'm working on a group that's looking on this and I think what we're going to find it will be very unlikely to have any hearings before January and think there may be few and far between as we're getting this program ramped up and so I think it's highly unlikely at the end of year one we may not have workload that will look like what we've got here just because of these time delays but that doesn't mean that the workload won't come. It's just that it will -- that there'll be a timing issue that we would have to address, I think, in terms of responding to the governor's office going forward. That we just simply haven't had time to get, you know -- get it fully implemented.

>> Judge Westley?

>> Don't plan on not having any hearings. I forget what the percentage was but the Department of Corrections gave us is percentage of people that gets released and fail to appear and so there will be warrants for them right away and they'll be picked up right away and there will be a revocation proceeding fairly quickly. I agree with you, Kim, I don't think we'll have a full picture for a while but I think we could have revocation hearings fairly quickly because it was like a 15 or 20% failure to appear rate. Which means those people will be before us really quickly.

>> I would adopt the proposal.

>> Second.

>> We'll address item ten. I see you're not moving.

>> You're stuck with me, Chief.

>> The trial court principle replacement funding.

>> You said this was your first appearance. Looks like you are making up for your entire year.

>> My hope is that this goes quickly so you can all leave.

>> Thanks, Steven, for being here.

>> \$7.4 million was appropriated for IT replacement. That funding has been allocated. In two years, the course to redirect, the funds have been here to recommend two issues. First the 7.4 be allocated in the method it's been provided. Secondly, that you authorize the courts to utilize the funds to mitigate the actions deemed necessary by each court. In the past the courts got two allocations, is that correct? One allocation? Thank you for that correction.

>> In 2003 and 2004, there was a separate improvement fund. it happened two years.

>> I'm visualizing last year. \$41,000 for one thing and \$21,000 for the other thing. are you saying we are not constrained how you designated the funds. are you saying they could all be used for the printers?

>> That's right. it can be used for printers and PC's.

>> Would you check on that? We'll take that offline.

>> Any more comments? If not, do I hear a motion?

>> So moved.

>> Motion and seconded by Judge Smith. All in favor?

>> Aye.

>> Any opposed?

>> Matter passes.

>> We are moving at a clip.

>> Good afternoon, this is item number 11. Welcome, Miss Benedict. These are profiles of the recipients of the '10-'11 cycle.

>> Thank you, members of the Council. I'm delighted to be here at this time. I'm sure you are too. Last time I was the last guy on the agenda. I was beginning to think you were giving me the hook. This is a feel good item, I hope. At least it made me feel good to participate in the program. On the April 29th business meeting, as you recall, you approved the recommendations for the 2010/2011 recipients for the awards and there were a broad range covering court administration. Some provide services to vulnerable and unique populations. Other programs adapted private industry and technology to automate the courts. That's an important prospect. Others made improvements in house cases were reviewed and decided. in order to minimize expenses and make the cause effective use of time, we had ceremonies at each recipient's court during July and August. I might say these were wonderful. Not only could the big shots be present, but the working people who did the projects were able to share in the accolades from the council. They were really wonderful. Each one started out, Chief, with your personalized letter which you wrote to each of the recipients. They were read out loud and presented to each representative of the court. It was meaningful and greatly appreciated. Each ceremony included representatives bill and Ron and Judicial members attended. I would like to thank Judge Smith who attended the ceremony, Judge Moss attended the Orange County. Justice Baxter attended the ceremony in the Superior Court in Fresno. Judge Davis attended in San Bernardino. Judge Jackson in Monterey County. I know that these events gave each of those participating an opportunity to learn more about the programs and a chance to meet and acknowledge the many dedicated management and staff as well as justice partners involved in some of these. Now, at the time of the ceremonies, there was a rather in depth profile prepared for the education division, a video shown to the ceremonies. They are now posted on the website. We have now prepared for you an abridged look at the videos. If we could ask them to roll the video of the seven remarkable programs which the council honored in April.

>> The Grand Jury is constituted once a year. It's by law that we have them. It's a public interest group that can investigate local government. Some refer to them as a watchdog organization. We would send out 10,000 invitations to citizens inviting them to apply. It was a paper process. 10,000 letters went out in the mail. The idea was that this could be easier to put this online. If we could gather more information we can company late the information, access it and use it for more things than the court is requiring of us. Post-It was created with the idea of creating a data base where we could capture demographic information in a way that would allow us to populate the information and analyze the information so we could look at trends to assist us in the future recruiting process.

>> What it turned into for the court was a time saving way to efficiently recruit, empanel and manage the civil grand jury process.

>> The technical term is a mail processing system for mail payments that come into the court. we call it the magic money machine. The system processes thousands of mail payments everyday versus the clerks having to do it.

Four clerks monitor, but it is an automatic mail system. The amount of mail payments we process, the whole goal was to process mail payments more efficiently and at less cost. We used to have 17 clerks processing the payments. Now they are all centralized, four clerks monitor,

one machine, one location. It's a thousand payments a day being processed in the machine. On a yearly basis in 2010 alone, it represented \$22.7 million in receipts to the court.

>> This machine does everything. It opens them, runs it through the machine, tracks it, applies it.

>> 15% can be sent to the court with four people.

>> People monitor the payments that go through the machine yet they don't have to be done at all court locations. The time saving is substantial.

>> We have smaller courts asking if we could process their payments.

>> They could have their payments sent to us to have us process them.

>> The clerks have had them reallocated and reassigned to provide better access to the courts. They do the courtroom work, the filings, they serve the public. We have been able to allocate resources to that end.

>> Court brings together all of the types of cases that relate to the seniors. Criminal cases, civil cases, conservatorship, trials that relate to a senior. We bring them all together so we can revolve all of their cases in as few court appearances as possible.

>> We identify three specific focuses when we started thinking about developing in elder court. One was the need to educate our community on the issues facing our elder community. The other was to provide resources of support so that when our elders came to court, they had the proper legal help as well as the emotional support to get them through the court process and to provide the resources for the court to operate properly. When we meet someone with another court experience and they tell us what a difference it has made that the judge makes them feel comfortable with what is going on.

>> From the litigants, I know it's effective. They know they have been heard and by someone who cares. They get to participate in fashioning the resolution. In the criminal context, restraining order context, whatever it is, I try to get their input into whatever it is that they want as the outcome.

>> The Orange County Court has a civil electronic docket. This is a user friendly interface for judges and staff to gain access to court documents.

>> We have been doing it for a decade. We didn't want to keep paper files.

>> The court made the decision to make the electronic record the official record for the court. That eliminated the need to save paper. That turned into significant cost savings.

>> E.L.F. is a place attorneys can review material from one place.

>> From a judge perspective, we asked to have a calendar printed with a case number. All you had to do was click on the case number and the electronic file would appear.

>> I can plan ahead by viewing the cases, all of the images, prepare my work and upload it into E.L.F. for the judicial officer's review.

>> It gives us an electronic format with a table of contents. All you have to do is scroll down the left side of the screen to find any document you want, see who filed it, click on it and the document opens.

>> I can come in in the morning and pull up a screen with my entire calendar. I have complete access to all of the information in all of my cases.

>> We began seeing a lot of veterans coming through the criminal justice system for a variety of reasons. In my mental health court, I had a few veterans that we were treating. One ended up overdosing and dying. We felt that was probably a result of untreated P.T.S.G. after that occurred, I became determined to see if we could set up a special court where we would deal with issues surrounding combat. It would be specifically for combat veterans from the Vietnam War or more recent wars where they were suffering from psychological issues as a result of their service.

>> Most of the veterans are high functioning, except that the biggest problem would be reintegrating themselves back into society.

>> We see strictly combat veterans. Combat veterans, unlike other veterans who are also very special, are dealing with many things. They have so many treatment needs and in court, all of the needs won't be addressed. Here, our team understands what they are dealing with and we can link them to services at the V.A.

>> The most important person is the Veteran's Administration.

>> She monitors their treatment program that they are required to follow in the treatment program.

>> It's a time for them to soak in all of the hard work that they have done. That's the day they bring their family. They are here to celebrate that they did what they need to do to get their life back together to be a protected member of society, to give back.

>> For a long time it's become evident to me that we waste a huge amount of resources on paper and time alone. In working on another project, it occurred to me that we could create a digitized writ system and eliminate much of the paper work and just the volume of materials moving around. What we have done on a normal basis as clerks is provide the necessary copy to process it. Normally, it can be 200 pages, the average size of a petition filed, making copies to be sent to the attorney general's office. Many habeas corpus were several hundred pages long. They would be moved to the writ conference Thursday morning. We would vote. It would go out on Friday.

>> We eliminated the copy of that and it was filed, 700 pages or 600 pages.

>> There were situations where I had to be out of the court. I can continue to work as though I was here. I don't have to carry physical writs anymore. If I finish one, I can move on to the next. It becomes part of the system. If they have questions or concerns, they can put that in the shared comment section. I'm not surprised when I go to conference.

>> Members prepare the writ. A writ prepared Monday has an order that goes out Tuesday or Wednesday as opposed to Friday. We have eliminated the paper and have significantly saved staff and judicial time.

>> The overall preparing of a transcript is that you did everything manually. You would disassemble the file and number the pages with what is called a bait stamp, create an index chronological and alphabetical.

>> A clerk can prepare up to six volumes per transcript.

>> With this we can submit the pages into the four disks where you scan them into the computer, title them and the computer will number them for you and create your index and title page. You can scan any document in any order you find it in the file, place it back into the file and T.A.P. will organize it for you and it will do the date stamping for you.

>> T.A.P. organizes the way we do business in court. It allows us to create a digital file and a transcript for the purposes of the court of appeals. A clerk's transcript that may take ten hours to prepare, we can do it now in a minute and a half to two minutes.

>> The program is very efficient. We use it for several appeals. We use it with our juvenile appeals which has cut down dramatically the amount of time we spend with the paper. The workload in the appellate department will be cut down at least by half in the civil division and in more complex areas such as juvenile, we expect the workload to expire about 75%. [applause]

>> Seeing these again, I am amazed how creative the courts are. People ask with all the budget cuts, are people still doing this?

>> Of course. If they leave something out of the clerk's transcript, you have to take all of the numbers out and restamp it instead of having the computer renumber it in an instant. That is one example. Another question asked of me, I thought we gave awards to elder courts. We had in the past, but this one is different. The difference between this elder court and others, it does criminal and civil and every case including trials. Most of the others dealt with one aspect. The same is true with the veteran's court. We have been asked, don't you have veteran's court? There is one with regard to combat. We are handing out our low budget black and white version on innovation in the California courts. The color version is on the Internet. This brochure describes the winners. Sitting next to me is three staff for the KLEPs program. I want you to acknowledge that. I think you can all be proud of the program over the past 20 years. There have been 170 awards. In the final version of the report, we'll list past award recipients including a list of every

one of them, so you will know all of the innovations. One final comment, you know -- some of the things that courts do today that everybody considers are -- of course, they do that -- those were creative innovations in the second and third and fifth years of the KLEPs program. The check managing operation in San Bernardino, we couldn't believe it that they took 16 people and made them four and processed checks for the huge county and all over. You can be proud. This is remarkable accomplishments of the California courts.

>> Thank you. Any comments or questions?

>> Thank you Deidre and Justice. It inspires us.

>> Before we conclude, two matters. At our lunch break we had the opportunity to recognize members leaving Council who served their three year term. We weren't able to put it on the record, so to speak. I want to name them and give my heart felt thanks for the years of hard work and graciousness and the ability to buffet the wind that have happened the last four years. Judge Keith Davis, Judge Enright, Mr. Joel Milliband, Mr. Michael Roddy. Thank you for your service. We'll always remember you, and there is a committee waiting there. [applause]

>> We close our session in memorial. We are moved by the death of Justice Silts. Our thoughts are with his family. Other recent colleagues deceased, Judge Thomas Duffy, retired, Superior Court of San Diego. Judge Phillip Jones, retired, County of Los Angeles. Judge James Marianne, Superior Court of California County of Orange. Judge Pierce, retired, Municipal Court of California. We honor them for the courts and to the people of California. Safe trip.