

JUDICIAL COUNCIL MEETING
Minutes of February 27, 2004, Meeting
San Francisco, California

Judicial Council members present: Chief Justice Ronald M. George; Associate Justices Marvin R. Baxter, Norman L. Epstein, Richard D. Huffman, and Laurence Donald Kay; Judges Eric L. Du Temple, Michael T. Garcia, William C. Harrison, Jack Komar, William A. MacLaughlin, Heather D. Morse, William J. Murray, Jr., Michael Nash, Richard Strauss, and Barbara Ann Zúñiga; Mr. Rex S. Heinke, Mr. David J. Pasternak, Ms. Ann Miller Ravel, Mr. William C. Vickrey, and Mr. Thomas J. Warwick, Jr.; **advisory members:** Judges Frederick Paul Horn and Eric C. Taylor; Commissioner Patricia H. Wong; Ms. Tressa S. Kentner, Ms. Susan Null, and Mr. Alan Slater.

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

Others present included: Associate Justice Kathleen E. O'Leary; Judges Ljubin Aleksievski, Clifford R. Anderson III, Olga Angelevska, Ernest Borunda, Susan D. Huguenor, Vera Koco, and Veli Vedat; Mr. Gary Blair, Ms. Carol J. Borunda, Mr. Mark Brickman, Ms. Michelle Castro, Ms. Natasa Dimitrova, Ms. Kim Dover, Mr. David Friedman, Mr. Randy Grossman, Mr. Thomas M. Huguenor, Ms. Beth Jay, Mr. John Kibre, Ms. Irene Lauren, Ms. Nikola Lazarov, Mr. Saso Patovski, Ms. Valentina Saurek, Ms. Antoaneta Skartova, Mr. Wantland J. Smith, Ms. Gordana Stojanova, Mr. Dennis Sullivan; and Mr. Damian Tryon; **staff:** Ms. Heather Anderson, Ms. Melissa Ardaiz, Mr. Michael Bergeisen, Mr. James Carroll, Ms. Deborah Chase; Ms. Roma Cheadle, Ms. Lucy Choate, Ms. Kim Davis, Ms. Charlene Depner, Mr. Robert Emerson, Ms. Audrey Evje, Mr. Bob Fleshman, Ms. Sheila Gonzalez, Mr. Clifford Ham, Ms. Charlene Hammitt, Ms. Christine M. Hansen, Ms. Lynn Holton, Ms. Bonnie Hough, Ms. Susan Hough, Ms. Kate Howard, Ms. Melissa Johnson, Mr. John A. Judnick, Mr. Kenneth Kann, Ms. AhMoi Kim, Mr. Ray LeBov, Ms. Jasmin Levander, Mr. Dag MacLeod, Ms. Rita Mah, Ms. Carolyn McGovern, Mr. Frederick Miller, Mr. Stephen Nash, Ms. Diane Nunn, Mr. Ronald Overholt, Ms. Christine Patton, Mr. Chung-Ron Pi, Ms. Romunda Price, Ms. Harriet Raphael, Ms. Judy Reuter, Ms. Mary Roberts, Mr. Michael M. Roddy, Ms. Rona Rothenberg, Mr. Christopher Smith, Ms. Sonya Smith, Ms. Pat Sweeten, Ms. Marcia Taylor, Ms. Karen Thorson, Mr. Joshua Weinstein, and Ms. Pat Yerian; **media representatives:** Mr. Jeff Chorney, *The Recorder*, and Ms. Donna Domino, *San Francisco Daily Journal*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated February 27, 2004, that was sent to members in advance of the meeting.)

12:15-12:45 p.m. **LUNCH BREAK**

Item 9
12:45-1:05 p.m. **Allocation of \$11 Million Trial Court Security and \$2.5 Million Consolidated Administration Reductions for Fiscal Year 2003-2004 (Action Required)**

AOC staff will present recommendations on methodology for allocating the trial court security reduction and the consolidated administration reduction.

Presentation (10 minutes)

Speakers: Ms. Christine M. Hansen, Finance Division
Mr. Stephen Nash, Finance Division

Discussion/Council Action (10 minutes)

Item 10
1:05-1:20 p.m. **Statement of Investment Policy for the Trial Courts and Resolutions Regarding Investment Activities for the Trial Courts (Action Required)**

Many courts have established trial court operating funds separate from the county treasury, consistent with Government Code section 77009. Often funds in these accounts will remain idle for periods ranging from a few days to several months. Prudent financial management standards mandate that these idle funds should be invested in accounts that combine liquidity with safety of funds while maximizing return.

In order to accomplish the investment of trial court funds within statutory requirements, AOC staff recommends that the Judicial Council approve the following:

1. Statement of investment policy for the trial courts;
2. Resolution authorizing development of an investment program for the trial courts;
3. Resolution authorizing investments for the trial courts; and
4. Resolution regarding investment reporting requirements for the trial courts.

Presentation (10 minutes)

Speakers: Ms. Christine M. Hansen, Finance Division
Mr. John A. Judnick, Finance Division

Discussion/Council Action (5 minutes)

Item 11
1:20–2:20 p.m.

Access to Electronic Court Records: Interim Rule to Allow Trial Courts to Provide Internet Access to Electronic Court Records in Selected Criminal Cases (adopt Cal. Rules of Court, rule 2073.5) (Action Required)

AOC staff recommends the adoption of interim rule 2073.5, which would allow courts to post criminal case records on the Internet in a high-publicity case under specified circumstances. Rule 2073 currently allows courts to provide remote (i.e., Internet) access to all electronic court records in civil cases, but not in criminal cases, because of privacy concerns. However, in high-publicity criminal cases, the use of the Internet may be appropriate, as it will significantly ease burdens on court staff and most information in the court file is already widely disseminated through the media. The rule would become effective immediately upon approval by the Judicial Council and would be in affect only until the end of the year, at which time the council could consider whether to adopt a permanent rule.

Presentation (15 minutes)

Speakers: Ms. Melissa Johnson, Office of the General Counsel
Mr. Joshua Weinstein, Office of the General Counsel

Discussion/Council Action (45 minutes)

Circulating Orders Approved Since Last Business Meeting
[Circulating Orders Tab]

Judicial Council Appointment Orders Since Last Business Meeting
[Appointment Orders Tab]

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Christine M. Hansen, Director, Finance Division, 415-865-7951

DATE: February 27, 2004

SUBJECT: Statement of Investment Policy for the Trial Courts and
Resolutions Regarding Investment Activities for the Trial Courts
(Action Required)

Issue Statement

Government Code section 77009 authorized the Judicial Council to establish bank accounts that were separate from county treasuries for the deposit of "any and all money under the control of the court..." At its April 19, 2002 meeting, the Judicial Council delegated its authority to establish trial court operating funds separate from the county treasury to the Administrative Director of the Courts (ADC).

Many courts have established their own accounts and have moved their operating account into it from the county treasury. This has occurred either due to the following:

- A court's transition to the statewide fiscal system; or
- A notice of discontinuation of banking and treasury services issued by either the court or the county due to various factors.

This process will continue during the next few years until the trial courts have all moved their funds out of the county treasuries. Unfortunately, the funds in these new accounts can remain idle for periods ranging from a few days to several months. Prudent financial management standards mandate that these funds should be invested.

The next step in the process of handling the funds of the trial courts is the establishment of a treasury function whereby funds are invested in a prudent and safe manner while yielding the maximum possible return.

Recommendations

Staff recommends the Judicial Council:

- (1) Approve the attached Statement of Investment Policy for the Trial Courts; and
- (2) Approve the attached three resolutions, which will allow investment activities to be initiated by and for the benefit of the trial courts. The three resolutions are as follows:
 - (a) Resolution Authorizing the Development of an Investment Program for the Trial Courts. This resolution provides that the Judicial Council, or its designee, the ADC, directs that an investment program be developed for the trial courts. It also directs that the Director, Finance Division of the Administrative Office of the Courts (AOC), be the 'treasurer' relating to invested funds and activities under the statutory requirements.
 - (b) Resolution Authorizing Investments for Trial Court Funds. This resolution authorizes the investment of trial court funds into the:
 - State of California Local Agency Investment Fund (LAIF);
 - Bank of America, N.A. investment funds; or
 - Other investments as approved by the ADC.
 - (c) Resolution Regarding Investment Reporting Requirements for the Trial Courts. This resolution establishes the requirements for reporting investment activities by the responsible individuals.

Rationale

The proposed policy and resolutions meet the statutory requirements for investments by "local agencies." (See Gov. Code §§ 53630 et. seq.) As discussed further below, we have found no authorities addressing whether courts are local agencies for the purposes of these statutes, and we can identify arguments on either side of this issue. Nonetheless, the adoption of the proposed policy and resolutions are desirable as a matter of policy.

The Council's Authority to Adopt Policies on Trial Court Investments

Government Code section 77009 establishes the council's authority to establish bank accounts for the trial courts:

Notwithstanding any other provision of law, including, but not limited to, this section, the Judicial Council may establish trial court operations funds separate from the county treasury. The operations funds may supersede those provided for under this section and may require the courts to include any or all money under the control of the court in the funds.

This section explicitly authorizes the council to establish accounts for the trial courts and require the courts to use them. Implicitly, the section also authorizes the council to establish policies for managing and investing the money in those accounts.

Government Code sections 53630 through 53686 address investment of local agencies' funds. A local agency is defined as follows:

"Local agency" means county, city, city and county, including a chartered city or county, a community college district, or other public agency or corporation in this state. (Gov. Code, § 53630(a)).

This definition does not specifically mention trial courts. On the one hand, it could be argued that the general reference to "other public agency or corporation in this state" should be construed to include the trial courts. On the other hand, the trial courts are part of the statewide judicial branch, and section 77009(j) gives the council the authority to establish trial court operations funds "notwithstanding any other provision of law." The only case we have found that addresses trial courts in the context of section 53630 is inconclusive.¹

The proposed policies and resolutions are ones that an entity subject to sections 53630 et. seq. would need. They are also ones that the council could adopt in order to implement its authority under section 77009 to establish court operations funds outside of the county treasury. Regardless of whether trial courts come within the definition of local agency in section 53630, adopting those policies will help ensure that trial court funds are invested in a responsible manner. For the same reason, AOC staff, in implementing those policies, intends to comply with the restrictions contained in sections 53630 et. seq.

Statement of Investment Policy for the Trial Courts and Resolution Authorizing Development of the Investment Program for the Trial Courts
Government Code section 53646 (a) requires:

¹ That case, *Ostley v. Saper* (1957) 147 Cal.App.2d 671, 675, concerned the ownership of interest earned on funds deposited with the trial court in the County of Los Angeles in an interpleader proceeding, which the court clerk had in turn deposited in the county treasury. Government Code section 53647 specifies that interest on deposited funds belong to "the local agency represented by the officer making the deposit, unless otherwise directed by law." The Court of Appeal cited section 53647 and held that the trial court, rather than the county, was entitled to the interest earned on the deposited funds, stating that trial courts are "on a parity with other . . . 'local agencies' just as if [they] were included in the definition of that term in [Government Code] section 53630." Although the appellate court treated the trial court in the same manner as entities covered by section 53630, its language suggests that it did not view trial courts as coming within the definition of local agencies. In addition, the statute defining local agencies read differently at the time of this case; it defined a local agency as a "county, city, municipality, or other public or municipal corporation." (See Stats. 1951, ch. 437, p. 1419, §1.)

- The treasurer or chief fiscal officer of a local agency to submit a statement of investment policy annually to the legislative body of that local agency and any oversight committee of that local agency.
- The legislative body of the local agency must consider the statement at a public business meeting.
- The legislative body of the local agency at a public business meeting must also consider any change in the policy statement.

Although the statute does not specify what the “legislative body” is for the trial courts, the Judicial Council is the most logical entity to serve that role. The Judicial Council is the authorizing body for trial court bank accounts and legislation authorized the Judicial Council to move the operations fund of the trial courts out of the county. The Judicial Council is also the body that is responsible for approving all rules of court and the policies that control the manner in which trial courts operate both from a court function and administrative/operational basis.

The policy sets the overall guidelines relating to investments of trial court funds in a policy statement and objectives. The objectives include considerations concerning the funds safety, liquidity, and yield.

Local Agency Legislative Body and Treasurer
Government Code section 53646 (a) (2) specifies that:

“... the treasurer or chief fiscal officer of the local agency shall annually render to the legislative body of that local agency and any oversight committee of that local agency a statement of investment policy, which the legislative body of the local agency shall consider at a public meeting.”

As discussed above, the policy statement and resolutions recommended assume that the legislative body for the trial courts (local agency) is the Judicial Council. For the reasons discussed below, the proposed resolution would designate the Director, Finance Division of the AOC, as the treasurer for the trial courts.

In the current environment, the presiding judge of a trial court has the overall responsibility for the budget and fiscal matters that affect the court. The court executive officer and/or the court fiscal officer also have defined duties and responsibilities. Investment responsibilities for the funds of the court are not specifically mentioned in the duties specified in policy, procedures, rules, or statute for any of the above officers of the court.

Because of the investment processes and responsibilities discussed above, it is not possible or practical to have 58 separate trial court ‘treasurers’ responsible for the

investment activity of the 'pool' at the state level. For this reason, it is the recommendation of staff as part of the first resolution relating to the investment program that:

'The Administrative Office of the Court's Director of Finance shall be considered the 'treasurer' with respect to all investment activities relating to trial court funds required by statute to be duties of the treasurer.'

This would also include those trial courts that are not on the statewide fiscal system but elect to have their funds invested through the statewide treasury function.

Resolution Authorizing Investments for the Trial Courts

This resolution concerns the types of investments that will be allowed at the current time for trial court funds and is very conservative. It is anticipated that all investments will comply with the provisions of Government Code section 16430 et. seq., which governs investments of state funds, as well as the statutes governing investments of local agencies discussed above (see Government Code section 53630 et. seq.) It recommends that the investments of the trial courts shall be approved by the Judicial Council, or its designee, the ADC, and shall be in eligible securities as defined by the statutes cited above.

The trial courts are currently mandated to move onto the statewide fiscal system during the next five years. As the trial courts move onto the system or if courts elect, the courts may have their funds invested to maximize there yield. In order to accomplish this, the funds will be effectively 'pooled' while still maintaining their specific trial court identity. What this means is that the pooled funds will result in greater earnings but the trial courts will have their funds segregated in a strict accounting so that the funds will always be accounted for at the individual trial court level.

It is contemplated that the LAIF, which is managed by the State Treasurer's Office and which consistently results in higher than market returns, will be used specifically when a court has significant funds that are not immediately needed to fund current cash flow needs. LAIF returns and restrictions regarding transactions (six debits per month) dictate this investment strategy. LAIF has already indicated that they will accept the funds if the Judicial Council provides a resolution authorizing the trial courts to invest in LAIF. This fund is set up specifically for local agencies and is similar to the State Surplus Money Investment Fund (SMIF), which is only for pre-distributed state agency or entity funds.

The AOC is finalizing negotiations with the Bank of America, N.A. (BoFA) to be the primary 'banker' for the funds of the trial courts. As courts come on to the statewide fiscal system, the funds will be deposited into their BoFA account. Every day any funds not required for compensating balance requirements, or set aside for longer term investments, will be swept into an overnight qualified investment fund established for and used by public agencies. Any court that has separated from the county and desires to

utilize this arrangement will be permitted to do so even though not on the statewide fiscal system.

Other investments, as approved by the Judicial Council, or its designee, the ADC, that comply with the Statement of Investment Policy will be allowed as investments of the trial courts. These investments must be submitted for approval to the ADC if they are not in either LAIF or the specified BofA investments. This situation is specifically for trial courts who have separated from their county and need to comply with established policy.

Resolution regarding Investment Reporting Requirements for the Trial Courts
Government Code section 53646 (b) specifies the investment reporting requirements the local agency. The resolution recommended follows the statutory requirements.

Alternative Actions Considered

Currently, trial courts that have separated from the county and are not on the statewide fiscal system have no investment authority to guide them in the prudent and safe investment of their funds. In some cases, the funds are idle and producing very little income. Some courts are investing without authority.

Given the restrictions of the Government Code the only alternative at this time would be to take no action and leave the funds idle, producing no income. At the current rates this will ultimately result in the courts foregoing significant annual investment income. If anticipated rates begin increasing this 'lost income' will increase proportionately.

Comments from Interested Parties

This authority that would be provided by the resolutions has been requested by several of the trial courts and informally discussed with numerous Court Financial Officers, all of whom have been receptive.

Implementation Requirements and Costs

Implementation costs would be marginal and consistent with the rollout of CARS. The program itself has no cost to the participants and actually would be a program that would provide a positive cash flow.