

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 captured live captioning, formatted and unedited, of the last meeting. The official record of each meeting, the meeting minutes, is 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 www.courts.ca.gov.

[Please Stand by for Real Time Captions] the meeting is about to begin. the meeting will begin shortly.

>> This is the **business meeting of the Judicial Council for July 29th, 2014**. The meeting is now in session. As always I remind council members that the meetings are audiocast live with real-time captioning on the California Courts website. For the benefit of council members joining us by phone, whom I will address in a few moments and our online audience, please speak into the microphone and address each other by name so that listeners and captioning readers can follow the discussion. As you know, segments of the meeting are regularly videotaped for future posting and play back on our California Courts website. I want to acknowledge the new Judicial Council members joining us as observers today. Welcoming Presiding Judge Marla Anderson, Superior Court of Monterey County; Presiding Judge Brian Back, Superior Court of Ventura County; Judge Daniel Buckley, Superior Court of Los Angeles County; Commissioner David Gunn, Superior Court of Butte County; Mr. Richard Feldstein, Court Executive Officer, Superior Court of Napa County; and Ms. Donna DeAngelo Melby, State Bar of California representative. Welcome. Thank you for being here. Our first item of business is the approval the minutes of our June 26th and 27 meetings. Before I ask to move for adoption, are there members of council joining us by phone, online at this time?

>> Yes, Chief. This is Doug Miller on the phone.

>> Good morning. Anyone else? Then do I hear a motion to adopt the minutes from June 26th and June 27 meeting? Thank you. Judge Jacobson, a second by Judge Rosenberg. Please say aye. Minutes are moved.

>> Next on our agenda is my regular report, I believe, to council summarizing the engagements and ongoing outreach activities since the last meeting, which was June 27th. I did in fact defer my report to address the issue of unifying Judicial Council and its staff. This report covers the time frame from April 25th to today. Beverly Hills, Costa Mesa, Los Angeles, Malibu, Newport Beach, Oakland, Palm Desert, Rancho Cordova, Sacramento, San Bernardino, San Diego, San Francisco, San Marcos, San Rafael, and last week West Virginia. I promise I'm not adding to geography to the civics lesson but these are the places, given California judiciary is statewide and also watched nationally, that we -- that I visited doing outreach as well advocacy in my responsibility as Chief Justice of California. This reporting period covered the Governor's May Revision through the final enacted budget, involved us all, not just me in rigorous advocacy and negotiations on behalf of our judicial branch budget. Many, many, many meetings, hearings, late

night calls, airport shout outs, texts, weekends, midnight calls, all of those with the Governor's office, senators, assembly members, high-level staff for the last six months. For the second year as we all know we received a partial but not enough reinvestment in the judicial branch after five years of severe budget cuts. At various stages there were more optimistic signs throughout the whole budget advocacy process. In the end we have to live with the budget we have for this fiscal year, continue to advocate by way of deficiency letters, as well as capitalize on the positives in the budget, and advocate always for future restoration. I am truly grateful to everyone who advocated on behalf of the branch, from Judicial Council members, appellate and trial court leaders and individual justices, judges, court staff, bar and legal services organizations and justice partners. All who listened, all who acted. Our budget advocacy, as you know, is ongoing.

Another great example of partnership was one of our council programs that finally came to fruition with the dedication ceremony for the new 35-courtroom San Bernardino Justice Center. I see Presiding Justice Slough in the audience. Congratulations, amazing building. We also had in that subject a decade of hope and need wrapped up in more than seven years of planning, design, and construction to deliver a safe, secure, and accessible facility for one of the most diverse and fastest-growing and the largest-by-area counties in the country—a great example, too, of collaboration and partnership between local government, the courts, the city, and the county to benefit their community. I was also pleased after a two-year hiatus to recently perform duties again as chair of the Commission on Judicial Appointments with my commission colleagues, Attorney General Kamala Harris, and senior presiding justices from the Courts of Appeal, First and Second Appellate Districts, Presiding Justice J. Anthony Kline, and Presiding Justice Joan Dempsey Klein. The nominations and confirmations will help both appellate districts with their workloads and also make their benches even more reflective of the communities they serve. Congratulations to Presiding Justice James Humes, Ms. Therese Stewart, Presiding Justice Frances Rothschild, and Judge Audrey Collins. I also look forward to the coming commission hearings in August. One of those as you know will consider an appointment to the Supreme Court of California and the vacancy created by Justin Baxter's retirement that we discussed at last month's meeting. The court rode the circuit, as is our custom, and held oral argument in San Francisco and Los Angeles in the last month since April. We also took the opportunity as a court to interact with both local legal communities attending the State Bar annual Supreme Court dinner and the Beverly Hills Bar Association luncheon. We also had another retirement announcement for the end of another stated term, and that was Judge Steven Jahr, our Administrative Director. After completing his two-year commitment to the council and branch he will re-retire or attempt to do so in September. We will have future opportunities to recognize and celebrate both Justice Baxter and Judge Jahr but let me say now that we have both of them here at our meeting that we all know they have served the cause of justice with distinction. Both have established a high bar for the value, integrity, and meaning of public service, and both have done so much throughout their careers to advance the cause of justice and the rule of law. They have served the people of California with dignity, courtesy, and integrity for many years, on the bench and off the bench. In so doing, they have inspired others to serve and improve the administration of justice and equal access to justice in California. This year, nearly 450

volunteers were nominated, self-nominated, or reapplied to serve the branch and the Judicial Council in its many committees this year. The individual committee chairs review the nominations and make recommendations. Our Executive and Planning Committee reviews the nominations and make recommendations, and ultimately, as a result of the power from the constitution, I make the appointments as Chief Justice. During this period, I made appointments to three of our advisory committees, the one providing access and fairness, Court Facilities Advisory Committee, and Trial Court Facility Modification Advisory Committee. You will hear from two of them today I believe on our agenda. Our Judicial Council and committee members serve no constituency other than the cause of justice and the people of California. They bring their day jobs, backgrounds, and experiences to bear on issues that impact the statewide administration of justice and solutions for the judicial branch of California. I value and appreciate their service. I look forward to reviewing the many recommendations and making appointments to 18 more advisory committees this August. Receiving input and reviewing recommendations as well as the volunteer spirit is also a key component of my civic learning initiative and related activities. The task force on K-12 civic learning is ably cochaired by Administrative Presiding Justice Judith McConnell and Sacramento County Superintendent of Schools David Gordon, and I bring this up because in one year they have accomplished so much. This multidisciplinary task force hosted seven public hearings throughout the state and an online survey for key stakeholders and interested parties. I look forward to the release of their final report in the first week of August. As one initiative draws toward its conclusion another initiative has had its inaugural meeting, the Keeping Kids in School and Out of Court Initiative Steering Committee, again ably led by Justice Huffman and Judge Stacy Boulware Eurie. This group will address the issues for the courts and their communities caused by the exclusionary discipline, absenteeism, and truancy that come into the juvenile courts with the hope of supporting engaging environments for students and families. Engagement is definitely not in short supply among the students of the JusticeCorps program in successful places like Los Angeles, San Diego, and the Bay Area and at High-Tech High School in San Marcos. This is my second attempt to present High-Tech High with their Civic Learning Award of Excellence, only one of three in the state. The first time I tried to present the award was postponed due to wildfires in that area. Their seniors have opportunities to intern at local public schools, community-based programs, and even at a local assembly member's office. Their Government and Politics class focuses on civil discourse and community engagement, and they combine United States history and American literature in the context of historical trends, current community issues to foster critical thinking skills. On Law Day, May 1st, I was very pleased to honor the collaborative effort between participating California superior courts, college campuses, and local community agencies with my annual award for exemplary service and leadership. The Judicial Council-sponsored program of JusticeCorp began in Los Angeles superior court 10 years ago and recruits and trains more than 250 college students and recent graduates each year to support our self-help centers in our local courts. This is an innovative, effective, and efficient program under any budget condition and that benefits all the partners involved and the local communities served. Those who serve on the JusticeCorp, these college graduates, are unique people. About 70 percent of them are bilingual, and last year they provided assistance to approximately 16,000 self-represented litigants in their native language and more than 110,000 litigants in total throughout California.

Statewide issues were also on my mind when I created the Commission on the Future of California's Court System to take a fresh look at legal and structural challenges to long-term efficiency and stability for the branch and the public. Under Supreme Court Associate Justice Carol Corrigan's leadership, I believe the commission will be able to develop practical, achievable recommendations that may be implemented by council, the Legislature, or the Governor. As a member of the board of directors, I attended the Conference of Chief Justices annual meeting and moderated an education session and panel discussion on improving court responses to elder abuse, neglect, and exploitation. This is where California leads the nation in collaborative courts, particularly our elder courts. One panelist described elder abuse as a hidden problem and another said his investigations are often characterized by silence. Our retired judge, Joyce Kram, of Contra Costa County, led the discussion with a showcase of our elder court there. Thankfully in California we have these programs and they can be replicated in other jurisdictions. We also know elder abuse may be an underlying factor in a variety of court cases and that, astonishingly, by the year 2030 the number of Americans over 65 will triple to 70 million. Access to justice for an aging population is another ongoing concern. Carefree and at the other end of the spectrum, I could describe the law school graduates I addressed as part of the commencement ceremonies for Pepperdine and Whittier Law Schools. Over 400 beginning their careers. You know I recommend to them that they use a compass, not a road map, for their future because life can be unpredictable and you need to be able to course-correct as you go. I told them that their reputations will be their calling cards and their lifelines and that it's okay to disagree and they are in the business of disagreeing, but there is no need to be disagreeable. This is enshrined in the new civility oath—embracing dignity, courtesy, and integrity—that the Supreme Court adopted for new lawyers. Some life lessons never grow old. This concludes my report to the council. Now, we will have Judge Steven Jahr's regular Administrative Director's report.

>> Thank you very much, Chief. Good morning, council members. As is always the case, a report appears in your materials which summarizes the support activities of your staff for the council, standing advisory committees and the courts during the period of time since the most recent Judicial Council meeting highlighting just a few of those activities. I should observe that with the closing of the previous fiscal year on June 30th, our fiscal staff and Trial Court Administrative Services staff have been busy at work toward closing all of the books, including ensuring that all related appropriations are in balance with the State Controller's Office and finalizing year-end financial statements for all of the special funds that are administered. Our fiscal folks and TCAS are working now to develop an annual year-end return-on-investment report in Phoenix for all of the trial courts; initiating also this year's support work for the Trial Court Budget Advisory Committee and council relative to budget allocations for fiscal 14/15; and providing support for the Chief and the development of BCP's, which are due to DOF on September 2nd. On the Open Meetings Rule front -- as everyone is aware, the Open Meetings Rule applicable to all council advisory groups went into place on the first day of the fiscal year. Training sessions were held for all chairs of all standing advisory committees and other advisory groups of the council, as well as their lead staff, for the -- smooth -- implementation. A significant effort was made by staff in that respect. They have had and will continue to have follow-up sessions. The work is to ensure that there are as few disturbances as possible, even

though this involves considerable adjustment in the way business has been previously conducted in terms of giving notice of meetings, arranging the opportunity for the public to be present in a meaningful way, and the like. I appreciate the investment by both the chairs appointed by the Chief and our staff in that process. On the labor relations front, our HR office has assisted 16 trial courts in their labor negotiations. Two have recently concluded, with a ratification vote now pending. On the classification and compensation study front, there are a couple of developments. The compensation phase is under way even as the classification component is being concluded. Comparator organizations for the compensation side had to be identified. Fox Lawson and Associates, who are of course conducting the entire classification and compensation study, provided the Executive Office and the internal chairs with an array of potential comparators from which or whom were selected by the internal chairs and executive office the following (that is to say compensation comparators): the University of California system, the California State University System, state executive branch agencies, the 10 largest trial courts, and 40 selected cities and counties within our state. Also private sector comparators have been and will be consulted in connection with certain of the occupations and professions that are more likely to be identified in the private sector than the public sector, IT being an illustration. The second development on the class and comp front is that the projected completion date has been moved by contract amendment two months to the end of February to allow for sufficient time to work through the complexities of the study. As you will recall, when Curt Soderlund made the initial explanations to all of you and in the course of his ongoing meetings with all staff concerning the process, he emphasized that the most important thing is to get it right. It was decided we needed in the Executive Office, and I think the internal chairs as well, more time to ensure that we digest all the complexities of the study process as it moves forward. Thus the two-month shift. There are, however, no associated cost increases in connection with that adjustment. More than 150 youth, court staff, and court partners attended the Annual Youth Court Summit at Sonoma State's campus with a focus on youth court best practices. This summit was held in partnership with the California Association of Youth Courts, the leading educational and training conference for youth court staff and community service leaders. Also as many of you are already aware, CJER has put CJER Online online. The new education website for the council has been launched this month. It replaces the education section previously on the Serranus website and combines the judicial education site into a single site with court staff education website, programs calendars, and course registration site as well. It allows users more easily to search publications, distance education materials, and/or register for programs. Two work groups of judges and court staff and leadership provided guidance and input on redesign effort, which I submit has been an entire success. I'm grateful to them and grateful to Dr. Cowdrey and her CJER leadership. The Chief has already mentioned that the JusticeCorps celebrated its 10th anniversary. The Chief accorded the Chief Justice's Award for Exemplary Service and Leadership at Law Day in Los Angeles in celebration of that decade of service by JusticeCorp members in our self-help centers. Also I'm informed that the State Bar has elected to award the JusticeCorp its Education Pipeline Award for 2014, and it will be presented at the Bar's annual conference in San Diego in September. Finally I would like to thank the Chief and the internal chairs—Judge So, Justice Hull, and Judge Herman—for their participation in a series of all-staff meetings this past month in San Francisco and in Sacramento. Our Burbank staff were present by televideo. The staff

much appreciated the opportunity to hear directly from the Chief and from council members on their perspectives relative to the challenges and opportunities for both the Judicial Council organization and for our branch. Unfortunately Justice Miller was out of state and unable to attend, as was Judge O'Malley, who has been encumbered by a most challenging trial. They sent their regrets. That concludes my report, Chief.

>> Thank you, Judge Jahr. Before we hear from or take any questions from our other chairs of our internal committees, I would like to call upon Senator Noreen Evans to present resolutions the California State Legislature. We are flexible. When we are ready for those resolutions, please let us know.

>> My assistant is parking the car and they are in the trunk.

>> Next up is Executive and Planning Committee Judge David Rubin, Vice-Chair, because Justice Miller is joining us by phone.

>> That's right. Thank you, Chief. Justice Miller regrets that he can't be here. He is tormenting fish in Utah. He can't be here in person but he asked me to deliver his oral report. His written report is posted online. The Executive and Planning Committee sets the agenda for council meetings, and today's agenda reflects the committee's intent to focus primarily on budget-related matters. Our July 21st agenda-setting meeting via telephone was historic and it was something in which we were especially proud in that it was the first public Executive and Planning Committee meeting held under the new Open Meeting Rule that requires that Judicial Council advisory committee meetings be open to the public. That was done telephonically and went off without a hitch, I might add. I/We know there was a lot of concern within the branch on making these meetings public; however, we are convinced it was the right thing to do and we did it and as I say it went off without a hitch and was very successful. Again Justice Miller's report is online. I refer everyone to it. With that, I conclude the report. Thank you, Chief.

>> Thank you, Judge Rubin. Next we will hear from PCLC, Judge Kenneth So, Chair.

>> Thank you, Chief, The Policy Committee has been quite busy in the last few months. We have met seven times since the last report to the council, two times in May, three times in June, and two times in July. We have taken positions on behalf of the council on 22 separate pieces of legislation and recommended one proposal for council sponsorship. I'm not going to go over each piece of legislation but I will talk about some of the highlights. At its May 15th meeting, the committee voted to support, if amended, AB 1887 dealing the sealing and destruction of arrest records for offenses relating to solicitation of prostitution. At its June 5th meeting, the committee voted to support, if amended, AB 2098 and SB 110, both dealing with veterans. We also supported AB 2397 concerning a defendant's appearance by video. At the June 10th meeting, PCLC took a support, if amended, position on AB 1585 related to human trafficking and SB 1227, which would create a pretrial diversion program for members of the military. Additionally, PCLC took an oppose, unless amended, position on AB 2332. This bill of course replicates last year's AB 566 that would impact the trial court's ability to contract out for

personal services. On June 19th the committee acted to support and continue a sponsorship of AB 1657 related to interpreter services and also took a support position on AB 1591 related to firearms. At the July 17th meeting, PCLC took support positions on two pending pieces of legislation. The first is SB 940, the California Conservatorship Jurisdiction Act, that provides for interstate jurisdiction transfer and recognition of conservatorships. The second is SB 1412, which applies procedures currently governing persons incompetent to stand trial to cases when a defendant subject to mandatory supervision or postrelease community supervision faces revocation of their conditional release. That's a clean-up piece of legislation for realignment. PCLC also has had an open meeting. That was on July 24th. At that open meeting, PCLC recommended for Judicial Council-sponsored legislation a legislative proposal to use the \$40 million one-time cash available for courthouse capital projects due to the fiscal year 2014-2015 budget act Immediate and Critical Needs Account reduction from \$50 to \$10 million for trial court operations and that would be item D. The Legislature will reconvene from summer recess on August 4th for the final push before the session concludes on August 31st. I'm grateful for the way that PCLC committee members have all made time in their busy schedules to attend our meetings. Thank you, Chief.

>> Thank you, Judge So. Next we will hear from Justice Harry Hull for Rules and Projects.

>> Thank you, Chief. Good morning, ladies and gentlemen. My report will be brief this morning. As most of us know, we are sort of in the -- a quiet period in the rule cycles. In any event since the April 25th Judicial Council meeting, the Rules and Projects Committee met once and communicated by e-mail on one matter. On May 1st, RUPRO approved by e-mail modifications to a proposal that it had approved for circulation for comment at a RUPRO meeting on April the 16th. The proposal has circulated with modifications following further review by the proponent advisory committee and RUPRO. This proposal is expected to come before the council at the October 2014 business meeting along with other proposals that circulated during the spring comment cycle. On July 17th RUPRO met by phone to consider a proposal for rule amendments to retire the name Administrative Office of the Courts. RUPRO approves this proposal, which is item B on today's discussion agenda. That concludes my formal report. I will say since Judge Rubin has already taken the opportunity to abuse Justice Miller for his love of fly-fishing, I will add that during a conversation I was having with him, when he was wading into his favorite river recently, we had to be interrupted because he said there was a water snake staring him in the eye. He had more important things to do than talk to me at that moment. Justice Miller, I'm glad to hear your voice this morning. You are still alive and well. Thank you, Chief.

>> Thank you, Justice Hull.

>> Thank you.

>> Next we will hear from Judge James Herman on the Technology Committee.

>> Thank you, Chief. Since our in-person meeting in June, we have met once on July 21st. At that meeting, the committee reviewed the Technology Planning Task Force's final report on

governance, strategic plan, tactical plan, and funding and they are -- will be recommending that plan to the council at our next meeting in August. The plans were approved unanimously by JCTC. We also received a report on a proposed budget change proposal that would provide a new document management system for the Supreme Court and for the Courts of Appeal. The system will capture, manage, store, and preserve essential case documents and administrative records, and the JCTC gave conditional approval for this budget change proposal to move forward through the council and as a change proposal to be included by September 2nd. We also received updates on the budget impacts to the Improvement Modernization Fund and about 40 percent of that fund funds technology projects to serve the trial courts. We also looked at the issue of data exchange with our -- exchanges with statewide justice partners as courts are transitioning to new case management decisions. This is going to be a fairly big issue for the courts. About 27 courts are now in deployment of new case management systems, and we need to work together collectively with the courts, with state-level justice partners, with the vendors in order to figure out what the best solution is for those data interfaces. We also reported on a meeting with Carlos Ramos, the director of the California Technology Agency, that Curt Soderlund and I had back in June. And we also went over a survey that has' been distributed to the V3 courts. As the council may recall, the council directed JCTC on recommendation from Trial Court Budget Advisory Committee to work with the V3 courts in order to move the V3 courts over a period of time off of funding. That survey has gone out, and we are expecting responses in terms of what the V3 courts are planning for their systems by August 7th. We also received an update on the California State Auditor's report on system integrity, which I will go over in a moment in some detail. The Technology Planning Task Force will sunset, having delivered its final report, and I again want to acknowledge the efforts of that task force that support, its support by ITSO, as well as the leadership of Rob Oyung, who was project manager, Judge Slough, our incoming council member, who led the finance track, Jake Chatters of Placer for the governance track, and Brian Koda for the strategic planning and tactical planning track. As the council may recall back in December of 2013, the California State Auditor's report addressed the issue of information technology, security with the recommendation that a template and a blueprint be developed to assess information technology, security issues, both at the branch level and within the trial court with the idea that this blueprint template would be completed at state level by the end of the fiscal year and by December 31st for the trial courts. At this point that template has been prepared by ITSO staff and they're working with chair of PJ advisory committee as well as chair of CEAC. We have sent out a letter to the trial courts including that information to assist them in assessing their own IT systems to progress toward bringing them up to speed. Budget is going to be the real challenge going forward I think for the trial courts: that is the ability not just to adopt a blueprint but also to go forward with upgrading security in light of a budget situation which doesn't allocate money for technology for the courts. That concludes my report. Thank you.

>> Thank you, Judge Herman. I believe Senator Evans is ready with the resolutions.

>> I apologize for the delay. Thank you, Madam Chief Justice. It's with mixed feelings that I have the honor of making these presentations. Mixed because while all of us are grateful for their

service we are sad to see them leave. I'm going to present a resolution thanking both the Honorable Marvin Baxter and the Honorable Steven Jahr for their lengthy years of service to the people of the State of California and honoring them for their contributions both to the administration of justice during a very, very difficult time for the State of California and for your long years of service to the people themselves. It's deeply appreciated, and speaking for myself and on behalf of the Legislature we are sorry to see you leave but thank you for your service. [Applause]

>> Let me just express by great appreciation, Senator, for the resolution. Also, let me just say that it's been a special privilege as chair of the Policy Committee to have worked with the Legislature for approximately 18 years during my tenure on the Policy Committee. And let me also say that during that period of time the relationships that I have developed with members of the Judicial Council and with the staff of the AOCAOC will always be with me. I greatly appreciate the debate we have had, the focus on issues, and the professional manner in which the council has conducted business. Special pleasure working with two terrific chief justices while I have been on the council, not to mention a third chief justice, Chief Justice Malcolm Lucas, who got me started as chair of the Appellate Advisory Committee. Thank you. [Applause].

>> Thank you, Senator Evans. Very -- like you say bittersweet experience. Next we have public comment. I turn this over to Judge Rubin.

>> Is there anyone -- this is the time to make public comment about general matters relating to the administration of justice. Is there anyone here who would like to make a comment? Raise your hand or step forward. Chief, for the record I'm seeing nobody stepping forward or raising their hand. I will turn it back over to you.

>> Thank you, Judge Rubin. I call special attention to a written comment we received from Presiding Judge Michelle Verderosa from Lassen Superior Court. I believe all members of council have this letter. We thank Presiding Judge Verderosa for the nine-bullet-point letter, which clarifies certain issues and is part of the record. Thank you.

>> Next on the agenda is our consent agenda. We have one item on consent. It's the audit of the Superior Court of California, County of Marin. It's from our Advisory Committee on Financial Responsibility and Efficiency for the Judicial Branch. Is there a motion to move this agenda item?

>> I will make this motion.

>> Thank you, Judge Jacobson. Seconded by Judge Herman and Judge So. All in favor say aye.

>> Aye.

>> Matter moves.

>> Next we begin our discussion with item B. It's the judicial branch administration retirement of the name Administrative Office of the Courts and AOCAOC. It's an action item. Before we hear from the presenters I believe Judge Rubin will ask for public comment on this issue?

>> Yes. On this issue I'm asking for public comment. Sorry. I was busy with my neighbor. I'm sorry. All right. Chief, for the record I'm seeing nobody coming forward with public comment.

>> Thank you. I turn this over to Justice Hull.

>> Thank you, again, Chief and good morning. With your permission and the council's permission we will just present our report from where we are at the council table instead of the usual presenter's table. As those of you in the room know, I'm Harry Hull, the chair of the Judicial Council Rules and Projects Committee. I'm here today to present the recommendation of the five internal chairs of the council on the proposal to retire the names "Administrative Office of the Courts" and "AOC." These are names by which the council since 1961 has referred to its staff that works for the council carrying out its policies and directives. Unfortunately, there has been a great deal of confusion over the relationship between the Administrative office and the council and I submit to you today that its time to end that confusion. As you will recall at the council's June 27th meeting, the idea of retiring the names Administrative Office of the Courts and AOC was proposed by the Chief Justice and discussed at some length by council members. A move that makes a great deal of sense. There is a compelling reason for the change as the Chief has pointed out in the past: that is that for years there has been widespread confusion among those unfamiliar with the judicial branch that the staff of the council was an entirely separate entity from the council and in some way independent of the council. This confusion in my view at least was sometimes exploited by those who didn't always have the best interests of the judicial branch or the public in mind. During discussion at the council's June meeting members expressed support for the retirement of the names. The Chief Justice asked the five internal chairs of the council to develop recommendations for amendments to the rules of court to retire the names. The Chief also asked the director to address implementation issues. After the June council meeting, the internal chairs looked closely at the proposal to retire the names and prepared a report before you today to implement that proposal. The report contains the following recommendations:

First, the Judicial Council should, effective immediately, amend the rules 10.1, 10.80, and 10.81, which will replace the references to "Administrative Office of the Courts" with "Judicial Council staff"; will provide that throughout the rules of court and on all Judicial Council forms all references to the Administrative Office the Courts or AOC are deemed to refer to the Judicial Council, the Administrative Director, or the staff to the Judicial Council, as appropriate; and to provide that the Judicial Council, its staff, or Administrative Director, as appropriate, will continue to perform all functions, duties, responsibilities, and obligations imposed on what has been known as the Administrative Office of the Courts. The preceding amendments to three rules were developed by the five internal chairs of the council and reviewed on July 17th as I noted in my report a moment ago by the council's Rules and Projects Committee, which recommends the proposed rule changes. The expeditious amendment of these three rules is consistent with the

rules of court, which allow for rule changes to be made without a comment period if the changes are (1) nonsubstantive or (2) warranted by compelling circumstances. As I have mentioned, the proposed changes are nonsubstantive; they merely retire the names used to describe the Judicial Council's staff without changing in any way the functions, duties, responsibilities, or obligations of the council or its staff.

Also there are compelling reasons to retire the names Administrative Office of the Courts and AOC at this time to clarify the relationship between the council and its staff and avoid any future confusion. In addition to recommending the amendments of rules 10.1, 10.80, and 10.81, the internal chairs recommend that the Judicial Council direct them to undertake a systematic review of the California Rules of Court and propose additional rules and amendments in the future to eliminate the references to the names Administrative Office of the Courts and the AOC, replacing them with references to the Judicial Council, the Judicial Council staff, or the Administrative Director, as appropriate. This rule revision process will be careful and deliberate, with an opportunity for public comment. There are presently 90 references in the rules referring to the Administrative Office of the Courts or the AOC, including the references in the three rules recommended for amendment today. In the months ahead all of the references will be closely examined and revised to clearly and effectively state their intended meanings. Finally, the report we have before you today recommends that the council direct the Administrative Director and his Executive Office to implement whatever identity, organizational, and operational changes are necessary to effectuate the retirement of the names and to do so in an expeditious and cost-efficient manner. I believe, Judge Jahr, you have comments on that issue at this point.

>> Thank you, Justice Hull. Yes. Effective upon your instruction today, immediately the Executive Office will distribute to all staff an implementation guidelines material which will lay out terminology for correspondence and reports, word templates, e-mail signature blocks, outlook e-mail addresses, voicemail instructions, and other style and form guide elements to undertake measures for the retirement of the name Administrative Office of the Courts and the familiar term AOC. This will be a phased implementation approach to make all necessary changes and I would like in advance to thank Tina Carroll, the Executive Office liaison, who has spearheaded this rational and well-organized approach and has spent considerable time with staff throughout the agency to develop this phased approach. Most changes to signage and other fixed objects will occur very quickly. They involve in most all instances simply deletions, which is to say that most all signs will remain in use with the letters and name removed. In addition an examination has been made with regard to the expertise necessary to make the adjustments depending on the kind of signage involved. We have hundreds of signs throughout the branch that have the name Administrative Office of the Courts on them, for example in each trial court in which public notice must be given who operates a building. The name Administrative Office of the Courts appears below Judicial Council of California. An in-house solution to adhere strips that delete the Administrative Office of the Courts name just as an example to the existing signs and continue to use the signs is one solution. In some instances we have vendors who will come in to make the deletions on the more sophisticated signs, the glass-backed signs and so forth. At present, the cost estimate for all sign adjustments is around \$3,700, which we think is suitable in

light of the number of signs involved. Preprinted materials, it's important to observe, will continue to be used until they are exhausted or no longer serviceable. Business cards are an example of preprinted materials which are printed in house but nonetheless printed in volume, and we will exhaust them before they are replaced for individuals with business cards that delete reference to the name Administrative Office of the Courts. Our letterhead, which of course once upon a time was preprinted on stock, is now in electronic letterhead template that appears to people my age magically when a letter is crafted. That of course will change over straightaway. I think what you will find is that the format approved by the Chief is engaging and very straightforward in replacement of one that is a bit arcane in appearance. That will of course be also the case with letterhead for the internal chairs, for the standing advisory committees, also with respect to the formatting for memos and reports and the like. That begins tomorrow. There will be some of these templates and the like which will be developed downstream and they will be concluded or completed by the middle of August. The main costs, in other words for this transition, are staff time costs. We live that the phased process should go smoothly and without undue dislocation. First phase is this week. Most of the signage as mentioned previously, electronic templates, principal pages on the website, main pages in other words will be adjusted. Phase two will be a two- to six-week rollout period in which essentially we're just drilling down in those same locations with more detail, and then the third phase will be an extended phase for some remaining elements. That is our plan upon the council's action. Justice Hull.

>> All right. Judge Jahr, thank you for the information. In conclusion, Chief, ladies and gentlemen, on behalf of the internal chairs I request that the council today approve the foregoing recommendations so that the names Administrative Office of the Courts and AOC used for many decades to describe the Judicial Council staff may be promptly, effectively, and permanently retired, and I or the other internal chairs will be glad to answer any questions the council may have.

>> Judge Walsh.

>> Chief, I think this makes a world of sense. It eliminates confusion, which we all encounter as we go about the state, and it evidences a clear organizational structure. We are not a two-headed monster but a smoothly running single organization. I would happily move approval of all of the recommendations made by the five chairs, which are contained in their report of July 22nd, 2014.

>> Thank you, Judge Walsh. Judge Rosenberg?

>> I'd be happy to second that, but I do have a question. I think it's a very well-thought-out logistical plan. You had mentioned, Judge Jahr, that you were going to use preprinted stock, for example you mentioned business cards, until exhausted, used up, or no longer serviceable. I would suggest that we do create a statute of limitations. I don't want to see preprinted stock used 12, 15 years from now. Perhaps you should modify that and say yes you will use the preprinted stock until used up with a cutoff—five-year cutoff. Pick a reasonable number. At some point you have to finally bury the name. That's just a suggestion.

>> Thank you.

>> Any further discussion on the matter. I will say I was at the Conference of Chief Justices, which also brings together a lot of national, other organizations including court managers, as well as the chief judges, that being all the appellate, those states that have appellate benches, and then the chief of that appellate conference, as well as other organizations, grant-making organizations statewide, as well as the National Center for State Courts, and I know those who were there with me can say, it shocked me by the interest taken, by the claim that it caused initial panic amongst other administrative office of the courts but came out as described to me as brilliant. I could not and I do not take credit for it. It was not my idea. It came to me and was discussed and vetted amongst all. It was a national conversation, believe it or not. There you have it. Not seeing any further hands raised in discussion of this matter, all in favor of adopting recommendations one through six say aye.

>> Aye.

>> Any opposed? Matter passes unanimously.

>> Thank you to all the internal chairs and staff who worked on amending these rules.

>> Next on our agenda is item C, trial court allocation funding for general court operations and specific costs in 2014/15. It's an action item. I turn it first over to Judge Rubin.

>> Is there any public comment, anyone want to make a public comment on item C? If so, please step forward. I'm seeing no raised hands and no one stepping forward.

>> Except Zlatko.

>> Except for Zlatko, who'd going to do the presentation.

>> Thank you. Zlatko, are you doing this presentation solo?

>> I am not, thankfully. Judge Earl is on her way. I do -- ably assisted by Collin Simpson and Steven Chang.

>> Thank you. Can I inquire more specifically about what *on the way* means?

>> Chief, she just texted me and said she will be here any minute.

>> Okay. Well I would like to wait to get started so the full panel is here. We will take a five-minute recess, bathroom break. Thank you.

>> Back on our business meeting on the air. Item C. We previously described it as an action item. I invite Judge Laurie Earl, cochair of the Trial Court Budget Advisory Committee and Zlatko Theodorovic, cochair of the Trial Court Budget Advisory Committee. Good morning and welcome.

>> Good morning, Chief, members of the council. We bring to you several recommendations for allocations the Trial Court Trust Fund. Those recommendations came from a committee meeting we held on July 7th in Sacramento. With the exception of recommendation number two, which I will discuss in a moment, all of the other recommendations were approved unanimously by those members in attendance at the July meeting. By my count I think we had 24 of the 30 members in attendance. The first item deals with a -- shortfall in the Trial Court Trust Fund. I'm supposed to follow the PowerPoint so I will do that. Try not to get ahead of it.

As you know, the council has statutory authority to allocate funding appropriated in the annual budget act from the Trial Court Trust Fund. It's done—preliminary allocations—in July with final allocations in January. I think I already said that, sorry. Sure.

>> Just to give you an update on the fiscal status of the Trial Court Trust Fund, if you recall the council approved a budget change proposal to pursue \$70 million to address projected continuing declines in Trial Court Trust Fund fund balances and revenues. Based on that and the potential actions that may be taken today, this would put the Trial Court Trust Fund in a negative fund balance position. The budget did include \$30.9 million to address the shortfall but there was a balance of \$22.7 that was unaddressed in the budget and to the extent we again move forward with the recommendations in this report, we would put fund balance in a negative position. So we go to recommendation 1, which relates to this shortfall of \$22.7 million, which Judge Earl will discuss.

>> Just by way of background on the reason for this shortfall and perhaps provide the basis for the committee's first recommendation, I wanted to remind you that over the past several years, when the state was in the throes of a severe fiscal crisis, the state significantly reduced general fund support for trial court operations and relied in part on revenue from court user fees as a source of trial court funding. The risk in doing so obviously is that if user fees decline so does the revenue they generate. In April, we brought to your attention a significant decline in these projected user fees, revenues, and you approved the submission of a spring finance letter to the Department of Finance requesting an ongoing General Fund augmentation to the Trial Court Trust Fund to address this projected shortfall. In his May budget revision, the Governor proposed to provide up to \$30.9 million in ongoing augmentation to backfill this shortfall, but he declined to provide an initial \$22.7 million reasoning that that amount represented revenues from locally based charges, which were not part of trial court's allocation from the trust fund. Further conversations clarified and Department of Finance acknowledges that that was incorrect, that all of the amount including the \$22.7 was based on these user fee revenues and not locally based charges. Despite that, the enacted budget failed to include an augmentation to cover this amount. In our July 7th meeting, we discussed this projected deficit and what actions to take to address it. It is the Trial Court Budget Advisory Committee's opinion that the stability of state trial court funding should be protected despite fluctuations in user fee revenues. It appears that the Department of Finance shares this is opinion as their chief deputy director testified at the June 5th budget conference committee hearing that "to the extent that there is uncertainty in the revenue forecast, we would commit to backfilling fees going forward." It's not unclear to our

committee why the Department of Finance would not commit to backfilling this year's projected shortfall, and we recommend continuing informal discussions with them regarding their commitment to stable trial court funding. If this projected 22.7 million shortfall is not backfilled, it would have to be absorbed by the trial courts as a reduction in general fund funding. The committee discussed this potential reduction and unanimously agreed and now recommends to you that it not be allocated to the trial courts at this time. Rather, that you approve a preliminary allocation, as is done every July, which includes the 22.7 in revenue and that a formal request, by way of a deficiency request, be submitted to the Department of Finance after September 30th to backfill the revenue loss. If the deficiency request is not adopted by the Governor, the Budget Advisory Committee would be prepared to make a recommendation to you at the October Judicial Council meeting on how the shortfall should be allocated among the trial courts. To that extent if you look at the recommendation that we make, recommendation number 1, 1C I would ask to slightly modify, to include language that our committee provide the council with that recommendation at the October Judicial Council meeting. We also recognize that trial courts need some idea of what their share of the reduction would be if backfilling this revenue shortfall is not forthcoming. So we include on Attachment D what we consider the most viable options for allocating the reduction if we have to could so. However, we have not thoroughly vetted or arrived at a recommendation on either one of them at this time, and we would do so in time again for the October meeting. Scenario one, which appears on Appendix D, p. 21 of your materials, assigns each court a share of the \$22.7 million shortfall based on their pro rata share of the 2014/15 base allocation. Scenario two is very similar. If you look at the end results of those you will see how similar they are. The calculation for scenario two, each court's nonsheriff security costs are first removed from the base allocation before the pro rata share is calculated. This protects those courts like Shasta, Trinity, butte, and any other courts that use marshals or other court employees for their security needs from having funding for those costs included when calculating the base. Scenario two just for your edification is how the 2 percent statewide reserve is allocated. As you can see in comparison the results are very similar but they serve to allow the trial courts to see what their share of the reduction would be under either of these options. The reasons for our recommendation are this. This shortfall we believe is rightfully a problem that state needs to take responsibility for. While the projection is 22.7 million, that shortfall has not yet materialized, and we'll have more current projections in October. Additionally it is unclear whether, if the state is prepared to backfill this 22.7 million but is committed to backfilling fee-based revenue declines going forward, does that include the 22.7 in future years or would the trial courts have to absorb this as an ongoing reduction? Lastly, while allocations made in July are preliminary allocations, which are finalized in January, we propose keeping a closer eye on this one and not waiting until January but readdressing this issue in October so that trial courts have some level of budget assurance. This may be a time to take a break before I go on to the next item.

>> Thank you. Questions or comments? Senator Evans.

>> Thank you, Chief Justice. I appreciate the opportunity to comment on this. I think it was a well- done presentation. I want to say that personally I support this recommendation and I

wanted to weigh in a little bit from the perspective of the Capitol. We have a letter from Assembly Member Richard Blume, who is the chair of the Assembly Budget Subcommittee 3, which has jurisdiction over funding for the courts, and his third paragraph I think is in a nutshell what I would say to you and I would like to elaborate on what he said. He makes a couple of points. One is that proposals that would knowingly result in deficit spending are not fiscally prudent and secondly that he fears that doing so might send a message that could jeopardize the improving relationships between the judicial branch and the legislative and executive branch. I wanted to give a little perspective on how we got here. For at least the last 15 years, state General Fund support for almost every in service the state has been dwindling. I can look at other -- I can look at state agencies such as parks, other services such as schools, where the General Fund support has been steadily going down, down, down to the point where less than 50 percent of those operations are provided by the state General Fund. The same thing has been happening in courts. Since 2008, state General Fund support for courts has dropped by over 50 percent. What's happening in all of our state services is each agency is being asked to look at other sources of funding. You can argue with whether that's a good policy or a bad—personally I think it's a bad policy—but nonetheless that's where we are. When that policy gets applied to courts, you create an inherent conflict because the last thing we want courts is take a look at their bottom line and say, we need to increase the fines that we assess or we need to increase the fees, thereby cutting off access by the public to our courts. So philosophically I don't agree with where we have headed and I think we are coming to the end of that. What I want to mention is the two points made by Assembly Member Bloom. First of all the, the Judicial Council can't pick a fight with the Department of Finance. It is not winnable. I don't think that's where the Judicial Council is headed, nor do we want to go there. They hold all the cards. They hold all the dollars, and we need to work cooperatively with them. I can't explain why this one thing got overlooked. What I can explain is that this year in the Capitol I saw a sea change in the attitude towards the judicial branch. I have been a practicing trial lawyer for 32 years. I've been in the state Legislature for 10. When I first came in the state Legislature in 2004, I was on the Budget Committee. I was appalled to see Chief Justice Ron George at that time walking hat in hand from one legislative office to another begging for funds. What was even more appalling was that the people in the Legislature didn't seem to have a real understanding of what the courts did or why the courts might need funding from the state and why the courts had to be seen as an independent branch from the executive and Legislature. It was appalling. Over the last few years, particularly because of efforts of members of the Judicial Council, the Chief Justice, myself, and a small handful of other legislators and trial courts and appellate court judges from around the state, there has been an enormous amount of education and talking and really, I can say now this year for the first time the Legislature gets it. They now understand what the problem is and why it's a problem and the importance of funding to the judicial branch. So, it's a long way of getting to my point, which is don't upset the apple cart at this point. There has been a lot of goodwill built up. There has been a lot of new education and understanding that's happened, and we need to keep that moving forward. So what I would suggestion on this, if the Chief Justice hasn't already done this, that conversations be held with the legislative leaders and right now we have a new Assembly president, Tony Atkins, speaker and we have an incoming pro tem in the Senate, Kevin De Leon, and we also have Darrell Steinberg, so those legislative leaders should be

engaged in the conversation on this particular issue, and the Legislature will go out of session on November 30th. If this Legislature needs to take any action it needs to be done before then. We actually go out of Sacramento at the end of September. So if possible we could maybe even try to get something done the end of September. I think it's a small amount of money as far as the overall state budget is concerned but it's a huge issue for the trial courts. Whatever happens we need to make sure that we keep the goodwill and keep working cooperatively with the Department of Finance. That's my two cents.

>> Thank you. Judge McCabe.

>> Thank you, Chief. Question to Judge Jahr. Have there been communications with the Department of Finance, in particular its director, Michael Cohen, about the proposed action here today—specifically, i.e., deficit budget?

>> I have had conversations about the issue with Michael Cohen directly but not since the Budget Advisory Committee met, deliberated, and arrived at its proposal. I have had no communication with him or his office since that came to pass.

>> Has Mr. Cohen or anyone from DOF expressed to the branch its stance on the issue or its concern regarding deficit spending by this branch.

>> I have spoken with Michael Cohen personally on this matter. I don't know when the Budget Advisory Committee came to its conclusion or its vote, but like always, prior to the budget being built, during the building of the budget, while the Legislature and the big three are convened around the table, I have had personal conversations with Michael Cohen in the evenings after all is said and done. As well as I know the outreach done by Judge Jahr, by Curt Soderlund, by Jody to the administration, by Curt Child, by all of you in your meetings with Diane Cummins and Nancy McFadden. The same with leadership across the board, including impending leadership, like Kevin De Leon and Tony Atkins in dinners about the budget, but in this particular issue yes. I can't say vis-à-vis when the unanimous decision was made by the Budget Advisory Committee and I remind you that Michael Cohen comes here to present on the budget in August and that this issue has been discussed. Deficit spending has been discussed. Not different from what Senator Evans has said here today.

>> So I'm clear on it since I'm a simple mind I have to ask simple questions, forgive me. The sentiment from Mr. Cohen and/or the DOF is that they are not in favor of the branch engaging or adopting a negative budget or deficit budget. Is that correct?

>> I can't speak to what their personal or professional view was but it was the reaction was one of amazement.

>> Okay. Thank you.

>> Justice Baxter.

>> Sometimes a recommendation with the best of intentions can have unintended consequences. I suspect that in this case that would be true. I think the simplest way to state it is, how do you allocate something you don't have? Being unable to allocate something you don't have doesn't mean that you can't with all the force available advocate that the Department of Finance fix the problem that they created. In a sense if we were to proceed as recommended, the problem that the Department of Finance currently has will become our problem. We will be telegraphing to the trial courts that this money is available. Then what do we do? I do think that we proceed carefully. I don't think we should provoke our sister branches of government. We know what the Governor's view is in terms of rainy day funds, living within our means. So, with that I would strongly recommend that we not proceed in that fashion.

>> Thank you. Justice Hull and Senator Evans.

>> Thank you, Chief. Maybe this question is best for Judge Earl. I guess I'm a little bit puzzled on this when you report that there will be -- there has been given some consideration already by the trial courts as to the position that they would be in if this \$22.7 million revenue shortfall does not appear. I'm having trouble understanding why we would -- if there was time for them to prepare for that and I understand that some of them already have prepared for that -- I'm having a little trouble understanding why we would want to allocate money that we don't have and I'm having trouble understanding why the wiser course, especially in light of the political ramifications, wouldn't be to allocate and have the trial courts budget without money that they don't have and then come back in October if we are fortunate enough to get the money back then it can be allocated then. But if we're not, then we can see the future clearly enough as far as budgeting goes. I have a little trouble understanding why we would want to do this way in the first place.

>> Justice Hull, the consensus of the committee was that by doing that we would solve a problem that's not ours and that it should' be solved by the Department of Finance and they should not be let off the hook on that.

>> Senator Evans, then Judge McCabe, then Judge Elias, and Frank McGuire, please remember your order.

>> I apologize. I think I was a little unclear in my beginning of my statement. I do not support deficit budgeting. I hopefully my comments made that clear. I also misspoke as far as when the Legislature leaves Sacramento. It leaves at the end of August, not the end of September. If the Legislature is going to be involved in helping to solve the problem it would have to be before the end of August.

>> Thank you.

>> Thank you, Chief. More comments than questions this time. Number one, the proposed action doesn't solve a problem that was created by someone else. It's a fiction. Who are we kidding? It still exists. We are given X amount, that's how much you spend, and we have a

budget proposing you spend y. I'm deeply concerned about not only the consistent statements that were made by Senator Evans, Assembly Member Bloom, the sentiments from DOF, is they want us to act prudently, fiscally responsibly and that they consider a deficit spending to be contrary to that. I'm slow but I'm not that slow. I get the picture. I think that this is going to create political fallout and undo what I think we have worked extremely hard over the last several years to build, which is a relationship with our sister branches. This is ill advised. We can still propose a balanced spending budget and ask for a BCP, right? I mean they are not mutually exclusive and I recommend we do that but the writing is on the wall. They want and are watching listening to what we do, and I think we should act appropriately, and in this case deficit plan, I don't think meets the mark. I would recommend this council reject this.

>> Judge Elias?

>> Mine is just a question to Judge Earl. Looking at the revenue shortfall options that you talked about, are these—it's my understanding these are one-year solutions. Is that -- this is not ongoing and doesn't go into the base of the parties of all of the courts, is that -- that was your recommendation? Am I correct?

>> [Captioners transitioning]

>> We didn't get that far because we did have the question of whether or not this is an ongoing reduction or it's just for the current year. We could assume that it's for the current year and readdress it next year.

>> I'm just trying to understand what your recommendation is. Scenario one and that [garbled] one year or whether this is an ongoing allocation plan.

>> Zlatko Theodorovic here. Judge Elias, given the circumstance and the fact, as Judge Earl said, that we did not dive deeply into the concept of how to evaluate the different options for reductions, one would want to assume that these are only one year, given the fluctuation of the revenues, our continued advocacy for branch reinvestment, and so I think if we were to have a discussion and come to a concrete conclusion, we would say it would be a one-year, given our continued advocacy for the restoration of the overall revenues to the Trial Court Trust Fund.

>> Thank you. Frank McGuire then Judge Rubin and then Mary Beth Todd.

>> Hi. My name is Frank McGuire. I'm the executive officer of the California Supreme Court and I wanted to offer the perspective of the court executive officer on the recommendation. In my view, as shared by others, the recommendation runs contrary to all principles of sound fiscal management by allocating and spending money we do not have. As an appellate court clerk/administrator, I am particularly troubled by the fact that such funding would inure to the detriment not just to the trial courts, but to the entire branch, including both the Supreme Court and the six district Courts of Appeal. Finally, like Senator Evans, Assembly Member Bloom, and other council members, I am gravely concerned that in one fell swoop the council, were it to

approve this recommendation, would be jeopardizing the improved relationships between the executive, legislative, and judicial branches that we have worked so hard to achieve over the past several years. In short, the recommendation puts the perennial cart before the horse. If there is a deficiency in trial court funding, as Senator Evans suggests, we should go in and obtain funding for the deficiency, and then, and only then, should the council allocate the funding.

>> Thank you, Frank. Judge Rubin, then Mary Beth Todd, then Judge Fox.

>> This is obviously a very difficult and painful subject that we are discussing. I want to first thank Judge Earl and her committee for struggling with this and wrestling this demon and making a very thoughtful recommendation. My sense is after reading Assembly Member Bloom's letter again, and I think Senator Evans' directing us to the third paragraph, especially the last sentence, which says, "Moreover, I am concerned that doing so [that is, recommending deficit spending], would send a message that could jeopardize the improving relationship between the branches and risk future judicial investment." It is that delicate language that is sometimes used in Sacramento that is actually telegraphing something more significant. I think that Judge Evans, [Inaudible - Low Volume] Senator Evans' comments and Judge Baxter's comments that this is, it has unintended consequences that would hurt us in the long run, just when we are starting to make headway, for the reasons that have been stated and I think that Judge McCay has also made some really important points. I would move that in terms of the allocation, that we would adopt not the recommendation but in fact scenario two outlined in Appendix D, which while not—I understand what was recommended by the committee—would at least, I think of the two that I am looking at, be the most fair. That would be my motion. And also, part of the motion, I would like to see us come back relatively quickly so that we could have the trial courts start assessing for us the actual damage. I am coming from a court that I know will be damaged by this if we look at this statewide and in the long haul. And having the courts report back to us so we can put in a request for deficiency spending and maintain that — relationship with the Department of Finance. So that would be my motion.

>> Point of order, I am really un---[Inaudible - Low Volume]

>> All right, well, first of all, I move that we adopt scenario two in Appendix D. That is to say that, in terms of the allocation, we *not* allocate so we that we end up with a \$22.7 million shortfall.

>> And this is [Inaudible - Multiple Speakers] can I say something in?

>> Sure, I will recognize you, Justice Miller.

>> I am on page 22 of 58.

>> I think what the motion that David is making is that the preliminary allocation be based on Scenario two and that the deficiency request and the evaluation of the fees and fines be returned to the council at its October meeting so the council can make a decision at that time as to

whether we continue with that preliminary allocation, or if there is money from the deficiency request or new fees and fines, then we look ask the Trial Court Budget Advisory Committee to reevaluate that amount and come up with options for the rest of the year. Can I add that to your motion, David?

>> Sure.

>> Chief, if that is Judge Rubin's motion, I would second that.

>> May I clarify one thing?

>> Yes.

>> In order to do that, Judge Rubin, if you look at recommendation number 1, under 1A, the base allocation of \$1.557 million would have to be reduced by 22.7, which means it would be 1.535.

>> Right. That was assumed.

>> Yes, I assumed that is what you meant.

>> And 1D would be to adopt scenario two rather than review preliminary options. Correct?

>> [Inaudible - Static]

>> First let me go back to, first let me return to the question posed by Judge Rosenberg on the clarification of the motion. Judge Rosenberg?

>> It is getting clearer now. As you look at the actual language of the recommendation, which you find at page 2 of the report, you, it relates to recommendation number one, A through D and it would modify under Judge Rubin's motion the amount in 1A and you would also modify 1D, to, Judge Earl, to come back to council in 1D?

>> I understood to approve scenario two is Judge Rubin's motion.

>> You specifically have to refer to scenario two.

>> Yes, appendix D, correct.

>> Which can be found if Appendix D. Those would be the only changes to recommendation 1A-D.

>> I don't think 1C would be applicable any longer.

>> Judge Jahr, you have an amendment also to 1A, but people are speaking on this issue so we are not going to vote immediately.

>> Yes, it is simply a point of clarification in following on Judge Rosenberg's editing proposals. I believe in paragraph 1A, in order to give force to it, at line four, the word *not* should appear between the words *will* and *be*.

>> [Inaudible - Multiple Speakers]

>> Okay, that is important.

>> So before I move on, ask Mary Beth Todd to comment and some others, so the recommendation is that item 1 remains the same but item 1A is changed. The 1.557 billion now reads \$1.535 billion.—Under-- third line down under A, after the word *be* should be inserted *not*.

>> [Inaudible - Low Volume]

>> Will *not* be. I am sorry, will *not* be.

>> That is the fourth line down.

>> Thank you. B remains the same. C is deleted in its entirety. D is amended to read the council should adopt scenario number two of Appendix D.

>> That was precisely Rubin's motion. I don't know what all of the problem is here.

>> Okay, so it has been seconded by Justice Hull, but there is further discussion on the matter. I call in this order then Mary Beth Todd, Jim Fox, Judge O'Malley, and Judge Elias.

>> I will withdrawal my request to comment. I think it would be more confusing than clarifying at this point. We're in a good spot right here. I don't want to confuse anybody with where we are.

>> Okay, thank you. And I just saw Judge Walsh and Commissioner Alexander so next is Jim fox.

>> Yes, very briefly, obviously, we are not like the federal government, which prints money, but still engages in deficit spending. And I agree with wholeheartedly with Justice Baxter's comments: we cannot nor should we attempt to allocate resources we don't have. So I'm supportive of the motion.

>> Thank you, Jim Fox. Judge O'Malley.

>> It was my understanding from the committee's recommendation that both scenario one and scenario two had not been completely vetted by the committee and yet, we are making the decision before that committee really having an opportunity--and that committee is made up of 15 presiding judges and 15 CEOs from all over the state. And I think it is really only fair, before this body, who has really not had an opportunity to know the ramifications, really, to each court, other than just a chart that we have, as to which is best, scenario one or two, that if this body

does not want to adopt recommendation one, that it ask the committee to decide scenario one or two and what is best and to come back with a recommendation with regard to that. I mean, I am under the understanding that there still needs to be much discussion with regard to scenario one and scenario with regard to the committee, yet, here we are, ready to pounce on one of those scenarios. So I would ask us just to take a step back for a moment. If you do not want accept scenario one, which I'm hearing from a lot of council members, then we should be prudent and cautious, as we always are, and send it back to the committee, giving them a choice. You've got one or two, or a modification of those, but not recommendation one. And with regard to recommendation one, you know, I feel for those PJs and CEOs. They have been cut and cut and cut. And, I don't think anybody wants to pick a fight with anybody. I just think they do not want to be yet hit again with another \$22 million cut. And so it is not a matter of, you know, picking a fight. I just think at this point, they are beaten down pretty darn good. And so it is just a matter of hoping that a wrong can be righted for the right reasons. And again, I am not quite sure how it plays to the Legislature. We're adoring and so grateful that the Legislature now understands us. And by taking this position, it is not in any way insulting anybody—the Legislature. They finally realize the importance of the courts and the wonderful people that we serve, who need our services on a daily basis. It is not in any way sending a message of disrespect or anything like that at all. And, again, it is just hoping that a wrong can be righted.

>> Thank you, Judge O'Malley. Judge Elias, and then Judge Walsh, and then Commissioner Alexander.

>> Mine is whether you would accept an amendment to make it clear that this is a one-year plan.
[Inaudible - Low Volume]

>> It is your motion.

>> [Inaudible - Low Volume]

>> No, it is Rubin's motion.

>> Oh, I thought it was David's motion.

>> That is what they say it is supposed to be.

>> I am fine with that. But you also have to ask the person who seconded it.

>> I don't know who seconded it.

>> Hull.

>> Okay, that is okay.

>> The other David.

>> I know, I will continue the second.

>> And then I have one question: Judge Earl, is there a preference between your group? Are you comfortable with either one?

>> Well, I would not say there is necessarily a preference but we started with four different options, two of which we preliminarily rejected, and these are the two that we thought were the most viable. They are very close.

>> I have a question.

>> Yes, but you are after Judge Walsh and Commissioner Alexander.

>> But I'll still invite you to talk, Judge Rubin, but I want to follow up on Judge O'Malley's comments, and then I'll suggest a friendly amendment, and then I would like to make some comments about the whole motion. Indeed, as to which scenario to use to absorb the \$22.7 million cut, there has been no full discussion, excuse me, by the Budget Advisory Committee. Indeed, we tried to discuss it at the July 7th meeting but the numbers had changed so drastically leading up to that that we said we needed more time. Because the issue of what to do under WAFM, if you have a cut, was never addressed by the WAFM subcommittee. It is on a parking lot, we were going to get to it but, because of our wonderful relationships with the Legislature this year, we didn't think we were going to have to face that problem. And suddenly it came up. And we, as a Budget Advisory Committee, and we are really [Inaudible - Low Volume] thorough, and we are really thoughtful, have not had a chance to decide which of the four scenarios. We put the two here just to say we are showing you our work but we have not finished our work and we have a meeting on August 8th to do nothing but take a look at the four scenarios, and there is disagreement. Our court disagrees with some other courts. But there is going to be a statewide view that needs to be taken because this may not be the only time we look at cuts, and I would hope that your amendment, your motion would allow an amendment that would request that the Budget Advisory Committee continue to review the WAFM model and to recommend a method for absorbing cuts, including the \$22.7 million cut so that if one of the four scenarios, other than the one you are going forward on today, is found to be preferable, they can bring it back to the group and the group could make that tweak. Obviously, if you are going to absorb the cut today, you have to pick one. And here is one, but it has not been recommended or fully vetted. So I would ask that you accept an amendment to allow the Budget Advisory Committee not to change the 64 to 86 but simply to finish its work on telling this group through a recommendation what it thinks is the best of the four scenarios.

>> Judge Walsh, before I take any amendments, can you be more specific? You are asking that the matter be referred back to the Trial Court Budget Advisory Committee to choose or, to determine the, to allocate the reduction?

>> This matter, I think is going forward.

>> Right. This matter being--

>> But in addition, not allocating the \$86 million and picking a scenario, just because you have to have one.

>> [Inaudible - Multiple Speakers] So your recommendation is?

>> Go ahead and do that, if that is what this body believes. But in the meantime, ask the committee to do its work in finding a methodology for absorbing cuts to WAFM (something we still haven't done), and in the course of doing that, if we find a scenario different than the one that you are relying on today, to bring that back to the council. It's a tweak. You are not asking us to revisit the \$86 million. I think we are going hear loud and clear what your view is on that. But simply to allow us to continue to do our work. Otherwise, with this group, the body will have done, is adopt a scenario for how you deal with WAFM cuts before—

>> Okay, I get that part but you are asking us not to adopt scenario two?

>> No, you have to adopt one so go ahead and adopt.

>> Okay, but with the referral for any further refinement.

>> A point of order, Chief. I will defer to Judge Rosenberg, but it seems to me that that friendly amendment swallows the motion at this point.

>> I am sorry, that is not my intention. It would be the \$86 million but have us keep doing our work to choose a scenario. But this scenario would in place in the interim, if we come up with a better one, as is our job.

>> You are saying scenario two would be in place unless—

>> Yes, allocating only the \$64 million. Scenario two would be in place to do that, but we could still go about doing our work.

>> I see a number of heads shaking, so I'm going to defer to the chair [overlapping].

>> I want to correct the record a little bit so there isn't a misunderstanding. The Funding Methodology Subcommittee met twice by telephone to discuss this very issue, and when we first started out, we did have four options on how to allocate the \$22.7 million and we also talked about what if we just subtract the 22.7 from the new money, the 83.6. At the conclusion of those two meetings, we did whittle it down to the two scenarios in front of you. And the subcommittee did reject running a reduction through WAFM because those courts that benefit from WAFM, meaning that they get a higher percentage of the allocation under WAFM than they do their historical pro rata methodology, would also absorb a greater percentage of the reduction, if it was run through WAFM. And that is counterintuitive to WAFM. And we did discuss that, and at the end of our subcommittee meeting, we presented to the Trial Court Budget Advisory Committee

meeting all four scenarios, but the Budget Advisory Committee also concluded that the two most viable options are scenario one and two, not running them through WAFM. If we were to subtract the 22.7 from the 83.6, there would be less new money, it would also be -- it would serve the same intention of running it through WAFM and would not be what WAFM is intended for. So I think what Judge Walsh is asking is that if you do adopt scenario two, as the motions calls, is that you refer it back to the Budget Advisory Committee to report to you at a future meeting (I am here in October) on whether or not we agree with that. I am not sure what we do if we don't. I just want to be clear that we have talked about four scenarios but the two that are the most viable are before you today and I think there is a--[Inaudible - Low Volume]

>> Thank you, Judge Earl.

>> And if the question is, am I accepting the friendly amendment, the answer is no.

>> Well, if I could clarify, it is not an unfriendly amendment. It's not a substitute motion. If that is made as an amendment, it does not swallow the motion. The motion is still viable. It just adds E, if you will, saying you are going refer this issue back to the budget advisory group to get further input on what they think about our choosing scenario two.

>> Can I ask a question? It is my understanding, but scenario two is based on the way that the 2 percent reserve is formulated. So scenario two is the same formula as the 2 percent reserve issue?

>> Yes, with is related to recommendation 6.

>> Can you explain that a little built bit more?

>> The 2 percent methodology? Basically, you establish what is the base funding for the trial courts. It has various adjustments that have gotten everybody to a point in time, the figures. Then we, in order to equalize and I think this is what it describes at the bottom, is that there are some differences within those base funds and they are related to security funding. When re alignment happened and security money was taken out, there were courts that had 100 percent of their security funding provided by the sheriffs and therefore they had no more left in their budget related to security. There are some courts that still had security left. So in order to equalize the budget, we pull security out so that they are as equal as possible in their share of the total pot of dollars, and that is what we use when we do the 2 percent hold-back to create the statewide reserve, we use that methodology because it has a little bit of WAFM rolled in, but not much—because it's the beginning of the process—but it primarily reflects the historical shares. That is what the 2 percent methodology has been, and it's been what we've adopted for the last two years. This will be the third year we will be doing this. That methodology has been discussed, and it is what is recommended to deal with the 2 percent.

>> Thank you. So let me first get through the queue of Commissioner Alexander and then Judge Rubin.

>> I spoke.

>> Okay. Good.

>> Judge O'Malley said most of what I was going say. I had a question for Senator Evans with regards to letter B. It says submitted after September 30th. Does something need to be done before August 30th? I'm not sure the timing.

>> Well, it is all about whether you want the Legislature to pass a bill prior to the end of the session. If we submit it as indicated in the recommendation, then we would hope and anticipate that it would be included in the Governor's budget and the legislation would be part the supplemental appropriations bill that tends to go in conjunction with the budget. But we would know in January if the administration is supportive of it. The idea that Senator Evans was suggesting, I believe, is that if it happens earlier, then trial courts would know sooner that those the funds would be there if we could get the administration to support that adjustment. Is that fair, Senator?

>> Is there is a bill called Budget Bill Jr. that is passed in August that augments the Budget Bill Senior, the bigger budget bill that is passed in June. What that would require, however, is agreement from the Governor and the Department of Finance to agree to backfill the deficiency this year. If that agreement isn't forthcoming, then you would have to follow other options.

>> Do we need to amend this to say we would try both of those things or do we not want to try both of those things?

>> Well, I think part of this issue is what has been communicated by the Department of Finance in terms of when they would look and revisit the topic they would want to see, additional months of revenues into the Trial Court Trust Fund to ascertain its [Inaudible - Low Volume]

>> And the answer to that question, to you, Judge Jahr.

>> So on the Chief's behalf, following on the comments that I made in response to Judge McCabe's question but before the Trial Court Budget Advisory Committee met and acted, I met with Michael Cohen in his office concerning this array of issues surrounding the 22.7, all of the documentation that has been eluded to today, the comments in the Joint Legislative Budget Committee that were made, language in the May Revise, and so forth, and ultimately, explained, given his clear statement that what was all there was, that we would necessarily be filing with, through the appropriate processes, a request for deficiency appropriation associated with the 22.7. And I asked him, what it is that you want to see among the other things that we put in, so that we are sure we anticipate any questions you might have so that the document we provide is comprehensive as far as you're concerned. And what he essentially indicated was that anything we presented would have to have new facts, something beyond that which exists now. And what he said was essentially, new revenue information, the trend in terms of what has actually been received in the trial court trust fund from first-paper civil filings and criminal assessments, for example. Also, he wanted to know what the close out is on the 1 percent reserve to the extent that there was a surplus and finally, I said, we would necessarily include that which is the overall

General Fund revenue experience for the state government, in comparison with DOF's own projections for 14/15. He did not disagree. So what he made plain to me—and it wasn't by implication; it was by expression—that absent new facts, what it was is what it was going to be, but that obviously, they would entertain that which was submitted. And the gist of our conversation was that the close of the first quarter would have numbers that would be meaningful in that regard. I think that is where we went by the October 1. So now I have reported the particulars of that. I know I have summarized this for others at different times.

>> Justice Hull, Judge Brandlin, then Judge Rosenberg.

>> Thank you, Chief. Returning to Judge Walsh's proposed friendly amendment, which has not been accepted by Judge Rubin at this point, I am a little uncertain. You point out that neither scenario one nor scenario two perhaps has been vetted to the comfort of the committee at this point for whatever reason. But it seems to me that we do not have to make the committee's reconsideration, or new consideration, part of the motion because I would think that the committee, if they want to revisit this, if they think the council, if we pass the motion, has made a mistake today, I think the committee could come back at any time and say what you did in July is not going to work, or is not going to work as well as it should, and here are the reasons why and can ask for some relief at that time.

>> Okay, Judge Brandlin, and then Judge Rosenberg.

>> Thank you, Chief. It's just a comment. First, with regards to not seeking a deficiency request at this point and in continuing to discuss this with the Department of Finance and with our sister branch in the Legislature, of course, it is my hope that they see that the council is acting in good faith and that they will attempt to assist us with the shortfall. Because certainly we are at a tactical disadvantage by allocating the shortfall because the rebuttal answer to that is, you really did not need that \$22.7 million because you were able to figure out how to fill the hole. But I did want to address one issue with regards to Judge Walsh and that is that WAFM was a collaborative effort and a painful process for every court in the state to eventually get to the point where we are at. So I would be very cautious about making recommendations with regards to WAFM. It is something that the Governor's office wanted. It is something that the Legislature is looking to. It is something in the Chief's blueprint. So be very careful about making substantive tweaks to WAFM.

>> Thank you, Judge Brandlin. Judge Rosenberg.

>> Thank you, Chief. I think I am detecting general consensus for Judge Rubin's motion as it has morphed through the process. And I think the only last remaining issue is the one raised by Judge O'Malley and Judge Walsh and that is to make sure that the Budget Advisory Committee, we give them the courtesy, if nothing else, of going through their process regarding scenario one and scenario two, which we find in Appendix D. I don't see any reason why we *should not* adopt scenario two. But, I would like to see and an additional sentence in 1D and maybe this is a friendly amendment that Judge Rubin will accept, that the council request further input from the

Trial Court Budget Advisory Committee as to its decision going with scenario two. We should ask.

>> In October?

>> Yes. Exactly.

>> Okay.

>> Do you accept that as a friendly amendment?

>> Let me just clarify it. You have to be a lot more clear before I can accept that.

>> I didn't understand that last sentence.

>> Yes, so we are up against a statute. Part of the issue about why we cannot really wait. You're not saying—

>> I am saying we do not wait. I'm saying we adopt your motion but we add a sentence that you know, the council is adopting scenario two and we request any further input from the Trial Court Budget Advisory Committee with regard to choosing scenario two.

>> Is that a yes?

>> It is a yes. Thank you for being much more clear the second time.

>> And my second remains.

>> Okay, so I am going to call a question on the motion. But I want to say something before I call the question and that is I fully understand how painful every day this is for the courts to yet again take additional cuts. I have, I worked in the trial courts for 14 years, I know what this this means to courts that have to cut in some way, shape, or form. I have known nothing but cuts every day for the last four years. I understand fully the passion behind the strategy in our sister branches. I can't say enough about the work that people have done to try—and all of this is an effort of public access; none of this is about more for us for us and how hard the struggle has been to first explain who we are and what we do and that we share the constituents of the Governor's office and the Legislature and we have made great strides because of everyone's advocacy here, as Senator Evans has spoken to. And so, this year, when the Legislature came to bat for us, all of our hopes were raised about what it would mean for us and behind closed doors, not having a seat at the table, but getting the phone call thereafter, it was terribly dissatisfying about how things went down. But it's also, I have continued to meet with members even after the budget to find out and talk about how we go forward and what I keep hearing is basically, in the last five years, all were cut and in the last two, all are getting some. But no one is getting all. And so we have to continue in that regard and the PJs' passion and the unanimous vote to the Trial Court Budget Advisory Committee here, we share the ultimate result of getting back 22.7 plus

more. What we happen here today is to differ on how we get there. And that's how I view this, as a shared goal that we will continue to have, and we will pursue the deficiency letter, and we will call up and try to get the legislation before August 30th and we will question Michael Cohen when he comes on August 29th. And we will also, I think, because this is what the Legislature may want, is they are going to want to know what we have cut as a result not getting \$22 million. How is that hurting the public when you do not get the \$22 million? It may be that there are no new facts on money, but there are definitely new facts on pain. I think that we have to recognize that we all share the ultimate goal, we have a difference in how we pursue it, but ultimately, we agree and feel the passion and pain of our employees as we go forward in trying to restore a branch to provide public access. So we will act on this immediately in terms of a deficiency request and calling the leadership for a bill, even if, even if they are out of session, we know how to get a hold of them in order to start to galvanize this process and get the leaders together on how we can do this and who will carry it. And so in that regard, I am going to ask for the vote and, if necessary, move to a roll call vote. But I will take that as a secondary issue. So all in favor of the amended motion regarding only item one at this point, as amended, all in favor, please say aye.

>> Aye.

>> Aye.

>> All opposed, please say opposed.

>> Opposed.

>> One opposed. Thank you. Thank you. And at this point, we will proceed with the recommendations remaining, Judge Earl.

>> Well, if that was not enough, we are going talk about benefits. So recommendation 2 has to do with allocation of new on benefits funding for 2014/2015. This year, the Governor's budget provides for an augmentation of \$42.8 million specifically for benefit cost changes in 2012/13 and 2013/14. This amount falls \$22.1 million short of trial courts' ongoing benefit costs. The Governor reasoned that the \$22 million was the amount that trial courts could save if they did not cover current employee share of cost for retirement. We also discussed this at our July meeting and how to discuss the benefit funding shortfall. I should tell you that we bring a recommendation to you; it is for this year only. Our Funding Methodology Subcommittee intends to meet this fall to specifically address the issue of benefits funding needs through WAFM and whether there is a way to do that. So the recommendation is for this year only. The committee discussed several options, which appear on page 7 of our report. In summary, three of the options, including factoring in to some extent, a court's estimated employee retirement subsidy, and as you can imagine, there was healthy debate as those courts that do provide a subsidy do so as a result of contract negotiation that they cannot arbitrarily change. On the other hand, not factoring in the subsidy means that those courts that do not provide any subsidy would be subject to a lower allocation. Ultimately, we recommend that for this year, we not account for

courts' provision of a subsidy and that we allocate the benefits funding by prorating the \$41 million to the trial courts based on each court's percentage of the total 2012/13 and 2013/14 benefits cost change of \$63.9 million. This would result in all courts receiving approximately 67 percent of their total benefits funding need. The premise of this recommendation is that it would be unfair to penalize courts that do pay a portion of their employees' share retirement at such a late stage in the fiscal year when such practice was negotiated with their employees, was done before HEPRA [??] took effect, and was not against any Judicial Council policy. But trial courts should be on notice that this may not be the position of the committee in the future. The remaining \$1.2 million in new benefits funding is for court interpreter benefits and needs to be and needs to be scheduled to the correct program, which is 4545 by the Department of Finance. Thus, staff will coordinate with the Department of Finance to augment that program appropriation. It does not require that you take any action. So the only action we bring to you today is the allocation of the \$41 million, based on our pro rata process.

>> Thank you, Judge Earl. Who wishes to be heard on this? David Yamasaki.

>> Thank you, Chief. I want to make a motion to approve recommendation 2 for a couple of reasons. This was an issue that was taken up at the Budget Advisory Committee meeting and there was a healthy discussion and for the reasons stated by Judge Earl, specifically as it references the fact that contracts that were entered into for the 12/13 year fiscal years, as well as the 13/14, they are past, and for us to suggest that for those actions, we should adopt a new methodology for funding employer benefits, to me, it is very unfair and problematic. I move approval of recommendation 2.

>> Second.

>> Okay, thank you. Second by Ken So and Judge Stout Any discussion? All in favor, say aye.

>> Aye.

>> Any opposed? Motion carries.

>> Regarding recommendation number three, which deals with 2014/15 WAFM allocation adjustments, WAFM provides for three different types of allocations: first, a five-year implementation schedule, where each year, a percentage of trial courts' historical base funds would be allocated through WAFM. This is year two of WAFM, which means that 15 percent of historical base funds are subject to reallocation using WAFM. When WAFM was adopted, it recognized a historical base fund amount of \$1.44 billion, which is reflected in Appendix G of our report, column A. Fifteen percent of that \$1.44 billion is \$216 million, which we recommend be allocated using WAFM. Each court's share of the \$216 million, by the way, in case you're following along, is depicted in Appendix G, column F. Second, WAFM provides for the allocation of new money appropriated for general trial court operations entirely pursuant to the WAFM model. Last year, the trial courts received an allocation of \$60 million in new funding for general court operations. We now treat that amount separately from our historical

base funds and must allocate \$60 million pursuant to WAFM, and that is also reflected in Appendix G, column M. This year, the trial courts received an allocation of \$86.3 million in new funding for general court operations. We recommend pursuant to the model that this be allocated entirely pursuant to WAFM, and that is reflected on column N of Appendix G. Third, and finally, WAFM provides that for any new money appropriated for general trial court operations, that there be a reallocation of like amount of historical base funds. Thus, we recommend reallocating \$60 million of historical base funds to complement the \$60 million in new funding received last year and \$86.3 million of historical base funds to complement the \$86.3 million in new funding received this year, for a total reallocation of \$146.3 million of historical base funding pursuant to WAFM.

>> So instead of taking each of these in seriatim, what I am asking is after each recommendation and your explanation, if there is a question, please raise your hand. Otherwise, I ask you to move on to the next one, and we'll take them as a whole unless there turns out to be a reason to take one or two out of order.

>> I can address recommendation number four, funding floor allocation adjustment. You may recall on April 20th of this year, the council approved our recommendation to establish both an absolute funding floor for those courts whose allocation would fall below what we recognized as a minimum level of necessary funding that is required for a court to serve the public—that was \$750,000—and a graduated funding floor for those courts whose funding is slightly larger than the absolute floor, but who also have some workload-driven costs that require slightly higher funding. As reflected in Appendix I, this year two courts are eligible for the absolute funding floor of \$750,000 and seven courts are eligible for graduated funding floors, all totaling \$1.2 million. Thus, we recommend allocation of each court's share of the 2014/2015 WAFM funding floor adjustments. As a result, these nine funding floor-eligible courts would receive funding floor allocations totaling \$1.2 million and those courts not eligible for a funding floor would be allocated a pro rata share of the cost of the funding floor. And that is reflected in Appendix I, column E.

>> I would note regarding recommendation four that there would be a minor adjustment to the values given the action on the 22.7. So we would ask that that is considered as part of the motion and recommendation 4 that that be technically updated to be consistent with the actions on recommendation number 1. With respect to, if there are no questions, recommendation number 5 is related to specific budget bill language that requires \$325,000 of Trial Court Trust Fund resources be distributed to the California State Auditor to complete their work regarding implementation of the *Judicial Branch Contracting Manual*. We bring this to you for action. Next is recommendation number 6, which pertains to the calculation of the 2 percent reserve. We've already discussed that methodology. This continues that methodology in calculating and gathering the \$37.9 million related to the 2 percent. Recommendations 7, 8, and 9 are related inasmuch as they relate to the 1% fund balance cap. This is the first year in which the statute will now have an impact on trial court allocations. The statute requires that a preliminary allocation be made by the council reflecting any excesses above the 1 percent and that trial court allocations

be adjusted relative to the 1 percent commensurate with any overages relative to the 1 percent. And then those final figures be made no later than the January meeting. Based on the submissions from the 58 trial courts, there is a \$2 million that is above the 1 percent. That is still subject to finalization. We have a court not completing and closing their books until early September, so the figures can change. We know they will change because we have been told there will be some revisions. But as of this July meeting, we are at \$2 million. So in theory, that is retained in the Trial Court Trust Fund and could, if sought by the council to help address the \$22.7 million problem. But again, it is preliminary so we have a bit of caution about assuming that that is absolutely money in the fund. Recommendation number eight relates to the process by which we would evaluate their 1 percent cap. We feel it is important that in terms of transparency for this branch that we review the amounts that are identified as encumbered. As you'll recall, we developed encumbrance guidelines to help trial courts manage their year-end funds, similar to state agencies, their issues with statutorily restricted funds that could be excluded from the calculation. So we are recommending that a five-person committee that includes the chair and vice-chair of the Court Executives Advisory Committee, two members of the Budget Advisory Committee, and myself as being the folks who would look at those and ask questions of each court in terms of the appropriateness of any of their encumbrances. And then, that would be, then for this year, but then going forward, have an annual process for doing a preliminary and final computation of year-end fund balances ongoing for the 14/15 fiscal year and 16 and ongoing. So those are related all to the 1 percent. And those conclude the recommendations for this report.

>> So before council are recommendations 3–9. Thank you. Any discussion? Judge Stout.

>> Regarding recommendation number nine, obviously on the 1 percent computation, the preliminary computation, we want to get that as accurate as possible. With approvals, is July 15th a reasonable date? I need to be educated. I'm wondering if maybe a few days later might help courts be a little more accurate.

>> Well, in order to provide you the materials, and the Open Meeting requirements, we have to have certain timelines met and so while it is, they are preliminary, we are hoping that a lot of the material information is already contained Phoenix, in the financial systems, that we have a lot of it there., The first year is probably the most difficult. But, given that we have to have this meeting and the timelines that are required, that was probably the best that we could in terms of compiling the information, and we only received one, I think, a couple of days ago, so there were some late folks, but we are doing the best we can.

>> Thank you. Judge Morrison.

>> I move approval of recommendations three through nine.

>> Second.

>> Thank you. Seconded by Judge Walsh. Judge Jahr.

>> Once again, just a technical matter, Chief. I noted that because of the action that the council took with respect to item 1, I believe Zlatko indicated that to conform, recommendation 4 should be, the motion with respect to recommendation 4 should be amended such that it be noted that there be a technical adjustment to delete the 22.7 in the computations reference in that recommendation, if I understood that correctly.

>> It would be very small but rolling through the entire system, there would be some small changes to what is presented with respect to recommendation 4.

>> I just make that as an observation, obviously. It is at the council's pleasure.

>> All right, Judge Jacobson, do you accept that friendly amendment?

>> I do.

>> And the same, Judge Walsh?

>> Yes.

>> Seeing no hand up for further discussion, all in favor of recommendations 3–9, number 4 as amended, please say aye.

>> Aye.

>> Any opposed? Motions carry. I want to say to the Budget Advisory Committee, I know you are a relatively new but you have been saddled with some of the most difficult issues and new issues and emerging issues, and we all thank you greatly for your attention to detail and work. Thank you. [APPLAUSE]

>> We are going stand in recess for 30 minutes and we will back at 1:20, please. Thank you. [The event is on a recess. The session will reconvene shortly]

>> We will reconvene on item D. This is court facilities legislation. And we welcome Judge Pat Lucas and Curt Childs.

>> And also for public comment on item D, is there anyone who wants to come forward? I know we have two people who want to comment. Is Mayor Jon Huerta here? Outstanding. And we will have Presiding Judge of Sacramento Bob Hight here in a minute. Judge Huerta, come forward and we would love to hear from you. Three minutes.

>> Chief Justice and Judicial Council members, I thank you for this opportunity to speak today to the council. My name is John Huerta, Jr., and I am the mayor for the City of Greenfield and I appreciate this opportunity that the public process provides. I was reading the item D, it changed the court facilities legislation. I see that maybe I should have put that in my presentation, to be included in that legislation. But I will continue with my comments. Give you some background

on this, on why I am here today in San Francisco, the City of Greenfield has made a huge commitment and investment to the State of California and the Judicial Council and the Administrative Office of the Courts and the former – the City of Greenfield and the former RDA have expenditures of over \$4.5 to \$5 million on the South Monterey County Courthouse. We were designated the preferred site in the year 2010, total expenditures were \$4.5 to \$5 million, street improvements to El Camino Real, land acquisition, a lot of planning went into that process for a growing agriculture community of 20,000 people. To get to some current events, the South County Courthouse in King City was closed in September of 2013. As far as the South County project, the South County Courthouse project for Monterey County, we are currently on the indefinitely delayed list. South County residents make up 70,000 residents, unofficially. They need to travel 20 minutes, 40 minutes, up to two hours to get to courts: traffic court in Marina, California; family law court in Monterey, California; and other courts proceedings in Salinas. Quite frankly, if the Salinas powers were to have it their way, what I have heard out in the community, is just let them drive up, meaning the residents of South Monterey County. I do not believe it is fair or justifiable. I know our presiding judge is here with us today, and I appreciate her support. Our populations are predominantly farm worker families and good-working, hard-working rural people. We need court services and court access. We have the land, well, actually, the State of California has the land but we need access to justice. So I would like to first formally request that the new courthouse be respectfully removed and I understand the budget constraints. I've been the mayor of the City of Greenfield for 12 years. I understand those wholly, that the courthouse be respectfully removed from the indefinitely delayed list and move to the proceed list, understanding that the South County Courthouse can be modified for cost savings in the future. Again, thank you for the opportunity. I will be present at the next meeting in August.

>> Thank you very much.

>> Thank you. And now Presiding Judge Robert Hight from Sacramento.

>> Good afternoon, Madam Chief Justice and members. I am here to support item C, happy to answer any questions, item C has been a kind of a long and windy, rough road. With the help of Curt Childs and his people, we have now arrived at a solution to start on the plans process for the New Sacramento Courthouse, and I want to thank you and Curt for his hard work. Happy to answer any questions.

>> Yes, Justice Hull?

>> I will just add to Judge Hight's comments, the Chief Justice having served on the Sacramento court for 14 years, and me for a full two and a half, I certainly understand the need for a new courthouse, Judge Hight. I am hoping we can help you out here.

>> Thank you. I did not add all of the bits of information because I knew that everybody knew it anyway. So, thank you.

>> Thank you.

>> All right, good afternoon, Chief Justice and members of the council. This topic is unusual given what you've been working on this morning. There is money available for an important project. Justice Brad Hill could not be here today and asked me as vice-chair of the Court Facilities Advisory Committee to present to you a recommendation that our committee and the Policy Coordination and Liaison Committee join in making to you today. As you know, many of our committees' recommendations to you have involved painful decisions that needed to be made as a result of the extensive budget cuts the branch endured since 2009. Some of these decisions have affected your courts. These decisions include the indefinite delay of 11 projects, about \$1 billion in today's dollars, as well as the need to delay on a short-term basis many other funded projects due to the redirection of construction funds. These decisions also include cost-cutting measures to ensure that each remaining construction dollar is being spent wisely. Recently, we were faced with a different challenge, what to do regarding new one-time funds that will return to the construction program in this year's budget. We are not used to dealing with good news, but we rose to the occasion. So, first, how did these one-time funds come to be? The ongoing \$50 million redirection of SB 1407 funds was reduced in this year's budget to only \$10 million, freeing up \$40 million for expenditure this year. This is a one-time reduction, creating a one-time \$40 million increase in cash available for the construction program. The hitch is that no spending authority was enacted, so we cannot spend these funds until legislation is passed to allow us to do so. Today, we ask the council to sponsor legislation to appropriate funds for the preliminary plans and working drawings for the New Sacramento Criminal Courthouse. And this would be subject to the usual review by Courthouse Cost-Reduction Subcommittee of the Court Facilities Advisory Committee. The selection of the Sacramento project for this spending recommendation is based not only on the many hours of data review and meetings that our committee has had over the last few years, looking at each project in the context of budget reductions, but also more recent efforts. Earlier in the year, we had hoped that we might be in a position to reactivate one of the indefinitely delayed projects. For that reason, at our meeting last March, we asked staff to look at the last four indefinitely delayed projects. The Sacramento project is one of these four projects. In January of 2013, the council indefinitely delayed this project, along with projects from the Fresno, Los Angeles, and Nevada Superior Courts. However, the council recognizing the urgent need to create a safe, functional, and secure courthouse for criminal calendars in our State Capitol, allowed site acquisition for the Sacramento Project to proceed. I am pleased to tell you that on July 18th, the State Public Works Board approved acquisition of the so-called Railyards site, securing the site for this new courthouse. In allowing the Sacramento project to move forward with site acquisition, the council established the relative priority of this project over the other indefinitely delayed projects. Hence our committee was able to put together quickly a recommendation on how to spend a portion of the \$40 million in one-time funds. We recommend that these funds be used in part to design the New Sacramento Courthouse over the next two years. This action is consistent with the incremental funding approach taken by the council, out of necessity, to move this important courthouse project forward. You may be concerned about moving forward with design while we do not have a revenue stream identified to support construction, as was our committee, and so we had multiple conversations with other branches concerning this issue. First, the fact that \$10 million has already been appropriated for the acquisition, and this \$27 million will, we

hope, be authorized for the planning and design, demonstrates the commitment by other branches to fund and move this project forward. Additionally, Senator Steinberg sent a letter to Justice Hill on this issue, received just last week. This letter shows that the Legislature is committed to moving the project forward, building on the state's investment of funds for site acquisition, and that the Legislature intends that approximately \$27 million of the appropriated \$40 million be used for the planning and design of the Sacramento project. The letter also states an understanding that if construction funds were not authorized for the Sacramento project, then the project would be delayed. Senator Steinberg shared his understanding that the branch is not inclined to eliminate or delay other SB 1407 projects to fund the construction of the Sacramento project. We have a further recommendation, because the design of the New Sacramento Courthouse will not require all \$40 million. Staff estimates that the design will cost about \$27 million, leaving about \$13 million for other purposes. We recommend that options be considered for the use of these remaining funds and that our advisory committee develop a recommendation to you on the best way to allocate these funds. We anticipate coming back to you by the end of the year with that recommendation. If there are no questions, that concludes my presentation.

>> Thank you, Judge Lucas. Judge So?

>> I don't have any comments, but I would make a motion.

>> Second.

>> Seconded by Judge Jacobson.

>> Let's move approval of recommendations 1 and 2 on pages one and two of the report.

>> Thank you. Any, I do not see any hands raised in discussion of this matter. All in favor say aye. Any opposed. Motion carries, thank you, Judge Lucas. Thank you, Curt. Thank you, Judge Hight. Okay. Thank you, Mayor Huerta. Next, item E, an action item. Court Facilities Budget Allocations for Statewide Trial Court Facility Modifications and Planning in Fiscal Year 14/15. We welcome Judge David Power, who is the chair, and Mr. Gerald Pfab, Judicial Council staff, from Real Estate and Facilities Management, and Curt Soderlund.

>> Thank you. Good afternoon, Chief Justice Cantil-Sakauye, Judge Jahr, and members of the Judicial Council. I asked Curt Soderlund to participate in this afternoon's presentation. I thank you for this opportunity to speak in support of item E, the Trial Court Facility Modification Advisory Committee budget report. The advisory committee recommends the Judicial Council approve the, or adopt the proposed \$65 million budget allocations for fiscal year 2014, 2015. The advisory committee charge includes reviewing, prioritizing, and funding facility modifications, oversight of operations, and maintenance, energy management, environmental management, and sustainability. In addition, we have been recently tasked with making recommendations to the council regarding the disposition of closed court facilities. The key concerns -- we had slides, they are not popping up, so I will proceed without the slides. The key concerns of the committee

include insufficient funds for facility modifications or routine maintenance. Many courthouses have building systems or components that are unreliable or routinely fail. The examples include the recent flooding of the Orange County Central Justice Center, due to a failed HVAC system, which has a potential cost of \$96,000, the failure of an HVAC unit at the Riverside Family Court, which required the replacement of a 185-ton chiller on roof. This facility modification has the potential cost of \$250,000. I understand that elevator entrapments occur more than a dozen times a month at facilities throughout the branch and at least once in a week in the Los Angeles County Superior Court. These types of projects, which are categorized as priority one, immediate or potentially critical projects, not only consume substantial facility modification funding or maintenance funding but they also adversely affect court operations. Due to the budgetary limitations, we are funding priority one, emergency or critical projects; priority two, necessary facility modifications. We are not currently funding priority three, needed facility modify modifications. Additionally, inadequate facility modification funding increases day-to-day maintenance costs. During a recent site visit to the Orange County Superior Court, members of the committee observed a rusted and deteriorated air-handling unit, part of an HVAC system that requires constant maintenance to keep it running. We currently cannot afford to replace the entire HVAC system, and higher maintenance and facility costs are the result. And regarding the site visits, I want to thank former member of the advisory committee, Judge Gary Nadler, from Sonoma County, for his participation with me in facility site visits. These visits may be critical to understanding a facility. They are useful and informative. We have a budget shortfall for O&M priority one facility modifications and priority two facility modifications. The operations and maintenance budget has not received inflationary adjustments or other significant contributions from the General Fund. The operations and maintenance budget will continue to absorb cost increases associated with courthouses under construction becoming operational. And the New Madera Courthouse is an example. It is substantially larger than the existing court, has complex fire, life safety, and building control systems. But there are no increases in O&M funding to address these changes. There is also a need to address buildings either removed or indefinitely delayed on SB 1407 capital project replacement list. The Sierra–New Downeyville courthouse project was canceled in 20 11. The advisory committee approved a roof replacement for the existing Sierra courthouse, with a potential cost of \$90,000. This courthouse also needs other significant repairs. The increases in facility mod funding from \$50 million to \$65 million is a good step toward restoring judicial branch facilities, and while the new capital project courthouses are a welcomed edition to the program, it is important to note that even with the new courthouse construction program, the majority of space used by the courts will be in existing buildings and so a healthy facility modification budget, I think, is critical. Jerry Pfab will now discuss the proposed allocation. Go ahead.

>> The specific allocations are listed on the first page of the report. The \$65 million budget is broken into three parts: \$5 million for statewide planning, \$7 million for priority 1 emergency type actions, and then \$53 million of undesignated, unplanned work that will be approved by the committee throughout the course of the year for those most critically designated projects that need to be done. This is pretty much in line with what we have done in the past years. It is a \$1 million increase in planning. The emergency money is staying at the same rate. And the bulk

of the money is going into the unplanned priority 2–6 work, although, the reality of it is that that will probably almost exclusively go to priority two, with the potential of some priority three projects. One area that I have been asked to speak about specifically, that has been funded over the last few years, is we spent about \$2 million on energy conservation projects. That \$2 million investment is saving us about \$700,000 a year in energy costs, so it is less than a three year payback and it conserves the O&M funding to take care of the routine maintenance on a better basis, ongoing. In 2014, 2015, the committee plans to spend about another million dollars on these types of energy projects to save energy and conserve O&M money.

>> Thank you. Jerry. The, we had a slide, I am not sure it is in the materials. The advisory committee will continue to advocate for general funding to support the facility program. The committee has concurred with the three budget change proposal concepts planned for fiscal year 2015/16 submittal to the Department of Finance, a \$12 million additional funding for facility modifications, \$23 million additional funding for operations and maintenance, and \$7 million for operations and maintenance of new facilities. The last issue that I would like to address is staffing. We are receiving increased funding for maintenance, we are receiving increased funding for facility modification and the square footage under management by the facility maintenance unit has increased. I believe that increased staffing for the facility maintenance unit needs to be considered to appropriately and effectively manage the expanding program. And I would like to just take a moment to identify the work flow for a facility modification. You have to identify the facility modification, you have to scope the work, you have to rank that work in terms of whether it's a priority one, two, or three. It has to go to the advisory committee, where it's reviewed and approved. It needs to be funded. It needs to go into contracting as important project execution and closeout. So there is a lot of work involved even staff work involved in even the smallest facility modification project. Despite the budget and staffing challenges, I believe that the branch facility, oh, there it is. Can we roll to eight?

>> [Inaudible - Low Volume] [LAUGHTER]

>> Oh, there we are. This is the slide. I will start again with the staffing. The next slide concerns staffing and this is the slide we are onto now. And as you can see, the responsible square footage in millions has gone up. The budget has gone up. And the staffing has remained flat, or the same. I am going have Curt Soderlund speak briefly on this issue. Despite the budget and staffing challenges, I believe that the branch facility program addresses the most critical needs in a timely and effective —manner, and I would ask that we adopt the budget, and Curt, if you could footnote my comments.

>> Sure, thank you, Judge Power. And just to add a little bit more information in terms of the \$15 million augmentation, that is actually a repayment of a loan of money that was given to the Department of Finance and the administration, which was redirected. So the \$150 million, right now, current plan is it is going to be spread over 10 years. So that is the good news side of things. But in this brick and mortar kind of function, as we get additional funds, there is the obvious need for additional staff in this program, as well as many others. So from the staff perspective, we support that going forward. Obviously, there are some political issues that if we

cannot get the \$15 million out the door, that raises other issues for the council. So, Judge Power and staff are correct in their recommendation that additional staffing be added. We have the resource constraints that we are currently under for this program as well as many others from the JCC.

>> Commissioner Alexander.

>> I just had a question about the plan facilities modifications. You put zero, and you said there is a lack of staff resources to do that function. If, if they were to do the function, there is no money to do the projects though, is there?

>> Well, the idea of the planned projects would be projects that April, May of this past year, we would have already pre-identified and said that these are the projects we want to do in 2014, 2015. Because of the lack of staffing and the ability to be able to plan far enough in advance, we had none of those projects ready to go at the first of July of the year. So that is why none are listed as planned.

>> What I'm trying to get at is, Is it beneficial to put money into staffing to do that? Is that more economical or we have limited funds so it doesn't really matter?

>> That is exactly the point is if we had more staff, where we could plan the work in advance and have it sitting there in effect on the shelf, ready to go when the money was available verses constantly just trying to deal with what is coming up next week, or what broke yesterday. The idea is to get ahead of these things to start trying to fix them before they break, not wait until after they break.

>> So it would be more beneficial to have some staff looking at that. It would be more beneficial in the long run.

>> That is correct.

>> Is there any public comment on this item? I am seeing no hands, Chief.

>> I appreciate that, thank you. Any further discussion on the recommendation? [Inaudible - Low Volume] Judge Rubin?

>> One question. On page 1 of the report, item 1, it is \$5 million for statewide facility modifications planning allocation. Down on page 3 to page 4 describes what it is. And my question is, is that industry standard? It's like 8 percent of the total budget.

>> Normally, somewhere between 5 and 10 percent of your budget is going toward planning. Our program, because the buildings are in, in not pristine condition, it creates a bigger planning need, because we are trying to, in many cases, go back and figure out what the original intent was of some of the systems in the building. What were they originally designed to do, and either

try to get them back to that original standard or say, no, there's a newer standard that we should be trying to go to. So, yes, to answer your question.

>> Okay, thank you.

>> This is Curt Soderlund. So as an example of the ripple effect on the deferred capital outlay projects, then that has an impact on the existing facilities that are in the worst conditions. And so it adds the burden to try and increase the facilities modification moneys towards those older facilities, and it obviously upsets the planning to an extent.

>> Judge Nadler?

>> I will make a motion at this time to adopt the recommendations of the advisory committee.

>> Thank you. Is there a second?

>> Rosenberg, I will second.

>> Thank you, Judge Rosenberg. I see no hands raised in further discussion. All in favor please say aye. Motion carries. Thank you, Judge Power.

>> Thank you very much.

>> Thank you, Mr. Pfab and Curt.

>> Another action item next, item F. This is the Trial Court Budget Minimum Operating and Emergency Fund Balance Policy. We welcome back Zlatko and Stephen.

>> And before we start, is there any public comment on this item? If so, please raise your hand or come forward. And, Chief, I am seeing nobody raising their hand or coming forward.

>> Thank you.

>> Thank you, Chief. This issue is related to the 1 percent fund balance cap. As you may recall, back in August of 2012, as a related action to the language that relates to the 1 percent limitation on fund balances, we brought to you an issue regarding the council's policy on minimum fund balance policy, and we thought that it was important that at that time, we suspend the requirements for the 3 and 5 percent of your general expenditures to be set aside because the statute now was limiting us to 1 percent. The reason it was suspended was because we were hopeful that there was continued advocacy for eliminating that cap would come and we would then be able to reinstate the council's internal policy regarding minimum fund balance. This issue was brought to the Budget Advisory Committee at its July 7th meeting, and staff provided three different options terminating the policy, suspending the policy indefinitely, and suspending the policy for another two years, similar to what the council had done previously in August 2012. The Budget Advisory Committee unanimously recommends that the council terminate the

policy, notwithstanding our continued efforts to undo the 1 percent. Maintaining it on the books for our fiscal policy just does not seem warranted at this time, and that is the recommendation of the Budget Advisory Committee.

>> Thank you, Zlatko. Judge Rosenberg?

>> Thank you, Chief. Let me can a question. Would another option available to us be simply to suspend the policy for another two years?

>> And that was one of the three options that was presented to the Budget Advisory Committee, and they unanimously voted to terminate the policy. So yes, it was an option that was brought to their attention. We've presented it to you, but it was not what was the recommendation of the advisory committee.

>> I am kind of inclined to say that is a nice option.

>> Commissioner Alexander and then Mary Beth Todd.

>> From a political perspective, having the policy seems like it is more encouraging that we would get the money back than terminating a policy and having to reinstate it if we get the money back. So can you explain why it was decided to terminate as opposed to suspending it for two years or indefinitely?

>> I am trying to recall the discussion. There was a bit of that discussion, but I think it was just a matter of, we're continuing our advocacy. The suspension has made little difference in the conversations at this point with the administration, and having it there just seemed unnecessary.

>> Mary Beth Todd.

>> I would agree that this policy no longer really maps to what is going on. But I do want to bring up that depending on what we do with item H, there could potentially in the future be a need for some form of a policy and—these are more comments for item H, and I will hold onto them—I think we have to have a safety net somewhere and that at some point, whether we discuss it now or with H, this policy right now does not map to the reality of the statutes but I'm a little hesitant to just say it goes away and there is nothing else in place. But some of my comments will make more sense when we start to talk about item H.

>> Thank you, Mary Beth. David Yamasaki, then Judge Jacobson.

>> Thank you, Chief. I just wanted to add a little bit to the conversation by recalling some of the points that were discussed during the Trial Court Budget Advisory Committee meeting. This particular provision has been used for a few years, and history has shown that it has not been drawn down each year to address some of the issues. And what has been the result is, the moneys would come back to the courts late in the fiscal year and obviously create a bit of a challenge,

especially with the 1 percent cap that we have to live with, and I think part of the discussion was that we are struggling right now, and the sooner that those moneys can come back to the court—

>> [Inaudible - Low Volume] H.

>> I withdraw my comments.

>> Okay. They do dovetail.

>> But I wonder if what you're saying means that we should consider this item with item H before we decide it without the benefit of the comments of the Budget Advisory Committee.

>> I think that is probably beneficial.

>> Okay.

>> So what we'll do is we'll continue this item to discuss with item H, and we'll move to item G.

>> Are we going to suspend it or terminate it?

>> No. Do not confuse it anymore.

>> He is here all week, okay.

>> Okay. Stay seated. We will turn it over to Judge Jahr on action item G.

>> All right, is there public comment on item G? If so, please raise your hand or step forward. Chief, I'm seeing no one raise their hand or step forward.

>> Thank you.

>> Good afternoon. The matter before you is a follow-on to an action item at last month's meeting pertaining to the Improvement and Modernization Fund, which is under tab G. I will be referring to the displays that are attached to the report, and you will find you have pink sheets which replace those displays. I believe it is correct to say that none of the numbers changed but the pink sheets have simply attachment labels to them. If you do not have your pink sheets in hand, I can tell you that the numbered pages, numbered at the bottom, four is Attachment A, page five and page six are Attachment B, page seven and page eight are Attachment C. If you have already intersorted the pink sheets, you will see the attachment designation at the top of the page. So the Improvement and Modernization Fund—and I am pleased to be joined, incidentally, by Curt Soderlund and by Zlatko, who have the depth of knowledge in these matters of a technical nature—like other funds, has been drawn down in the sense of historic annually carried forward fund balances. The Improvement and Modernization Fund, in fact, was—when things really became difficult in the trial court funding realm a few years ago—tapped annually to the tune of about \$20 million as a transfer to the Trial Court Trust Fund to assist in trial court

funding. That's just an example. So at June's meeting, with that backdrop, a presentation was made to you to alert you that in fiscal 14/15 there would be a likely shortfall between available resources, on the one hand, and the proposed expenditures out of the IMF on the other. The council took action at that meeting, made some adjustments in terms of fund responsibilities for V2 and V3, for example, which left a projected gap, if you will, of \$8.3 million between recommended expenditures once again and projected available resource us. The council consequently directed staff on a division-by-division basis to do a reduction exercise to the tune of 11.7 percent across the entirety of the IMF programs, supported on a division-by-division basis in an effort to see if we could find a solution to close the \$8.3 million gap, which is essentially 11.7 percent, and to do so in cooperation with the applicable advisory committees and the council leadership. And we embarked on that process. The division chiefs each began that exercise with the offices within their divisions and simultaneously tapped Fiscal Services, soon to simply again be Finance—

>> [Captioners transitioning] to examine on a line-by-line item the fund condition of the entire IMF as of June 30th, the close of this just recently concluded fiscal year, to ascertain if surpluses existed, which would effectively diminish the projected shortfall. That process led, I am happy to say, to a near-term near solution, a solution that is proposed for your consideration today, which has been presented to and approved by the Trial Court Budget Advisory Committee and the Executive and Planning Committee. That solution also raises a question, to which you're certainly entitled to have an answer, which I will seek to address. When we examined line by line the funds that would be available in surplus at the end of the year 13/14, we aggregated a total, which appears on Attachment A. If you would have a gander at that—column C, the far-right column—you'll see below the beginning balance figure, a figure of \$3,077,000. You might want to circle that. Immediately below that, a figure of \$218,987. Circle that, as well. And finally \$4,375,061 dollars. Please circle that. The savings from 13/14, that is to say surplus not expended from the 13/14 budget, is the \$4.3million figure, something like 6 percent of the overall IMF budget. In addition, at Curt Soderlund's direction, staff examined all disencumbered funds. For those of us not in the world of government finance—as I surely am not—disencumbered funds are dollars that were previously budgeted in an earlier fiscal year for a multiyear activity, such that that portion which isn't expended in the year that they're budgeted is encumbered for the following year, and as we all know from the sad exercises that we've had to go through in dealing with the trial court 1 percent reserve, and the encumbering of funds for things such as technology projects and the like, the year of encumbering plus two is all the longer that encumbered funds can be kept encumbered, and then they drop into the bucket, so to speak, to be reallocated to other activity. It was determined that for funds that were budgeted in fiscal 11/12, \$3,077,650 became disencumbered for fiscal 14/15, and similarly, \$218,987 became disencumbered for 14/15 from the 12/13 year. Thus the three numbers that I asked you to circle, which aggregate to \$7.6 million, as we informed E&P and the Trial Court Budget Advisory Committee. The details are laid out line item by line item in Attachment C. You'll see that the bottom-line total, the far-right column at the bottom of that two-page attachment, is the \$7.6 million that I just referred to. You'll see also that the display is broken out by the encumbered funds that became disencumbered from 11/12, column B, the unencumbered funds

that were disencumbered for 12/13, column C, and once again the estimated savings from this past budget year. They all total down and across the page. So for those who wish to examine where these items came from, you can do so in detail. You'll see, for example, that in the Judicial and Court Operations Services Division, line 1, the overall disencumbered and saved dollars is 400,000. As you go down, however, to line 38, which is the total for the Judicial Council and Court Leadership Services Division, the number is a million and change, a goodly portion of which, as you will see on the very next line down, has to do with dollars that were budgeted in our Litigation Management program prudently to ensure that we had adequate resources for cost of defense and indemnification that weren't ultimately drawn upon. Similarly in the Judicial and Court Administrative Services Division at the top of the second page, the total is quite significant, \$5.4 million, and you can see that much of that relates to tech projects. Now, go back to Attachment A, where we started. There's an additional ingredient of savings that is helpful and only came to light after the Trial Court Budget Advisory Committee and E&P met and that's because it's a reconciliation figure that was provided to us following the end of June by the State Controller, which estimated an underaccrual of the actual revenue that came in from 12/13, of \$526,296, which you can now circle. So there are four numbers together totaling \$8,197,994, which are available this year one time to offset the projected \$8.3 million gap between projected revenues and recommended expenditures. What that enables, if you go down on that same page, to the bottom, to line 28, is a -- an allocation in the aggregate of \$71,466,600, with a fund balance left over of \$510,229. Not much, but something by way of a cushion provided one step is taken, which I'll explain now. If you move to Attachment B, which we have yet to look at in detail, you'll once again find that \$71,466,600 total net programs and projects allocation figure in the far-right column at the bottom. Essentially, what that reflects is a Judicial Council-approved reduction and allocation for all of IMF funds, deleting the proposed reduction, which we believed last June we would have to make, and adding one specific categorical reduction at line 62, which is a one-time one-year suspension of the ongoing Jury Management Grant System, which will enable us to get to the \$71,466,000 number, not curtail any of the other IMF programs from top to bottom, and maintain a \$510,000 reserve. The program was first put into place—I say now the Jury Grant Program, or Jury Management Grant Program—in the wake of the one-day one-trial initiative of this council some years ago. It was started in fiscal 2000–2001 to assist trial courts in improving their jury management systems, and it has been administered in large measure by the Information Technology Services Office. When the program began, obviously, courts were using outdated computer systems; frequently everything was by counter and telephone. This enabled courts, and through the years 55 of 58 courts have availed themselves of these grants to improve their jury system processes measurably, benefiting potential jurors in terms of the modernization of the communication systems that are utilized, and the summoning and delay systems that are put into place to assist jurors in serving. The communication has been streamlined both by way of computer system improvements and obviously voice phone-tree systems, IVR systems. Courts have also benefited, of course, because that has freed up staff that previously was manually addressing individual inquiries from jurors by way of the supplementation of automated systems, and ultimately, of course, we've been able to capture more accurate statistical data regarding juries as a consequence of this automation work. It's our view, and Curt Soderlund has assessed this in some detail, that a one-year

suspension of that program, because it has been so long-lived and because most all courts have at least once dipped in to a grant, will not measurably damage our Jury Management Program, but it will enable us to carry a small fund balance. What that means for present, should you agree with the recommendation and approve it, is that the IMF funded activities will essentially be status quo for fiscal 13/14 with that one suspension. It does not solve the problem for outgoing years, however, because fiscal 15/16 has already a projected significant increase in the imbalance. But what it does do is keep us from having to make immediate and perhaps simply arithmetic reductions across the board, which will have harsher impact on some programs than others and enable a more rational prioritization process. It also raises a question how and under what circumstances were these surplus funds located later rather than sooner, and that takes us back to the way historically we've experienced fund balances. Fund balances have always been sufficient in the past, so that they can be used in effect as trial courts use their fund balances to manage cash. The dollars would, of course, not be lost; they would simply drop back into the budget, or in the pot, as it were, the IMF fund, and be reallocated in subsequent budgets. But when the numbers are as tight as they are now, the exhaustion of fund balances are as close as they are now, it's necessary that we have a tool that can dig down not at the end of the year when you reconcile, but constantly throughout the year. When the Strategic Evaluation Committee conducted its examination, among its many recommendations was a recommendation that the financial program that we have, processes that we have in the council staff agency, be improved considerably. The Executive Office, once again Jody and Curt Soderlund, in furtherance of that council directive flowing from the SEC report, engaged last year a retired annuitant with enormous background, training, and experience in matters of government finance. He was the chief fiscal officer for the Department of General Services, for example, had also served as an assistant director in the Sacramento Superior Court, has provided troubleshooting services to trial courts at our request, in the past, among them, the Placer court. His name is Gene Peracci, and we engaged him as a retired annuitant to examine the budgeting system that we use within the council staff agency with a view towards simplifying it, centralizing it, and ensuring that it's strengthened, so that we can timely address the challenges that have become more, shall we say, acute, with the diminishment of fund balances. He completed his work some months ago, and Zlatko implemented as of July 1st of this year, a new—I will call it, as a layperson—centralized budgeting process within our staff agency that strengthens the role of the budget analysts in Finance, to enable them to much more readily track surpluses as they arise or surpluses as they appear to be solidifying, so that when we come to you again with projected discrepancies between revenues on the one hand and the proposed expenditures are that you would make on the other, we can factor in those things that this go-round we only did after the June meeting, and frankly were only able to do after the June meeting. So going forward next year at this time, that system will be in place, and it's expected that it will pay those benefits that we would like it to pay. So there is a happy outcome for this year and our commitment for next year that we'll be able to drill deeper in our projections going forward to assist you in your decisionmaking. At any rate, it would be our recommendation, and I surely dropped the ball here or there, so Zlatko, Curt, Stephen, you may feel free to jump in, it would be our recommendation that you adopt the proposal that's contained in the report, which fortunately does not involve an across-the-board percentage cut, but does involve a one-year curtailment in the one program I identified and

otherwise an approval of the IMF expenditures that were previously addressed and concurred in by the council in June. Thank you, Chief.

>> Thank you, Judge Jahr, very comprehensive report. We appreciate the walk-through of the attachments. Judge Walsh?

>> Well, I think it's a great report? It's like we found \$20 in an old coat somewhere, and we're better off. So, way to go, Judge Jahr. I would move approval of the recommendation.

>> Second.

>> Second by Judge Stout. Judge Herman and Judge Brandlin.

>> I would say this is tremendous work by staff to find the 20 bucks in the coat pocket. Particularly grateful on the technology side, because, again, 40 percent of IMF goes to fund technology services primarily for the trial courts in terms of Phoenix and CPQR, et cetera. So really nice work.

>> Thank you.

>> Just a question. It's a procedural question—I intend to vote for the motion—but normally when we receive reports of the council, we usually have an advisory committee that's involved, either TCBCAC or TCPJAC or CEAC or somebody, and I know that this came directly from Judicial Council staff. Is it because of the short time frame involved, or --

>> Actually, you're quite right, Judge Brandlin. The matter came before you for your consideration first in June on the recommendation of the Trial Court Budget Advisory Committee. You took various actions they recommended including an assignment to staff directly to perform this examination, which led to the new information. So it was for that reason that we reported directly to you in this instance.

>> If I can add, Chief, the recommendation that's before you today was presented to the Budget Advisory Committee, also. It was shared with them at their meeting on July 7th. So -- and Judge Walsh can confirm this—they were fine with the recommendation.

>> That was the good news part of the meeting. How could we forget?

>> Thank you. Judge Stout, you wanted to be heard, and then Judge Herman again.

>> Thank you, Chief. I just wanted to echo the compliments of staff. This is an amazing piece of work, and I recognize it's kind of a one-year solution, but following up on the comments of Judge Herman, I look at some of these other programs like Self-Help Center and Self-Represented Litigants statewide support. If we had across-the-board cuts in those programs, it would be devastating to those programs, and in turn to the operations of the trial courts. So I'm very grateful for at least this interim relief.

>> Thank you. I agree. Not seeing any more hands raised, all in favor of the recommendation please say AYE.

>> Aye.

>> Any opposed? Appreciate that. Good news is always welcome here. Next we move to an action combined that's combined, as you know. That's item H, Trial Court Trust Fund Allocations, the 2 percent state level reserve process, and it's also being heard with item F.

>> Is there public comment? Is there anybody who wishes to speak to this? Please raise your hand or please step forward. Chief, I see nobody's raising their hand or stepping forward.

>> Thank you, Judge Rubin. You may proceed.

>> Yes, thank you. As I mentioned previously, there was legislation that enacted a number of reforms as seen by the Department of Finance to us, we've seen as, you know, limiting our ability to manage our funds as a branch. The 1 percent cap was placed as a part of the legislation that's referred to here, and as well was a creation of this 2 percent set-aside, of which you've already acted to generate the \$37 million, and it would be for the upcoming physical year. There was a process created by the counsel in terms of how do trial courts access those funds. And so in essence, the Department of Finance created the 2 percent emergency pot that superseded the issue that we brought before you a few minutes ago regarding the policy on fund balance management, so they saw that as creating a statewide 2 percent pot in lieu of the process that existed for the branch and council policy. So the issue was raised and there's been some not complaints but problems with the 2 percent, and as Mr. Yamasaki alluded to, the process is that by October of each year, the trial courts can request an allocation out of the 2 percent pot. And then they have other opportunities up until February to make requests, and then the statute provides that any unallocated funds from that pot are returned back to the trial courts no later than March 15th. With the 1 percent cap getting an unknown amount of money, which as Mr. Yamasaki alluded to as well, that not many draws have been made on the 2 percent, you're getting basically your 2 percent back, and depending on how you budgeted, that could be problematic, especially coming at the end of the fiscal year and you only have a quarter of the year to manage to expend that, what do you plan for. So the Budget Advisory Committee raised this issue about evaluating the 2 percent process, and to come back with some recommended adjustments to that process, both within the current year, in the current process that would fit within the statute, and the statute itself in terms of how the governing statutes regarding the 2 percent. So the first issue was regarding how you -- the timing of the distributions, and when would trial courts have the opportunity to make requests for funds? As I said, you have your October process, in which trial courts can make requests, and then they have November, December, January, and even through February, when the council would have to act to make requests for funds, and that leads to the allocation return back to the trial courts happening in March. What they would like to do is have the October process and the November process, and have the council's final action on this 2 percent allocation occur at the December meeting so that the funds can be returned sooner in the fiscal year to the trial courts so that they have a sense of

what the funds are coming back to them. The issue there is that it shortens the period that you have to make those requests. It ends the process earlier. We've had requests come in January, and the council has considered them in February, but they felt that the overriding issue there is that funds need to be returned to the trial courts so they can best plan how to spend those moneys before the end of the fiscal year, and therefore are not subject to being over the 1 percent cap. Recommendation 2 relates to statutory change, and it was a recommendation that the 2 percent set aside be repealed in its entirety. There was discussion about that fact that WAFM is in theory moving trial courts to more appropriate funding levels, and therefore with WAFM do we need have this 2 percent set aside. And I'll remind you, the 2 percent set aside comes from each trial court's budget. So it's not as if it's from other funds. Each court starts the year with 98 percent of the allocation that you approve, and only toward the end of the fiscal year do they return those funds, and so the idea is that it does create a burden in planning budgeting if you only get 98 percent of what it is that you are approved by the council until the end of the fiscal year. There was a good discussion. There was concerns about the fact that this, in essence, has – the branch would no longer have sort of state-level resources to assist trial courts, and I think that's where Mary Beth is talking about. Should trial courts have local contingency funds separate and apart from the 1 percent? How does it all interact? It presents a difficult issue on both sides. You take money from your own budget to create this pot, which then makes it more difficult to manage, but then to not have the pot then provides no opportunity for the branch to respond to urgent needs that trial courts may have, unless they have set aside within their own budgets for those contingencies.

>> Thank you, Zlatko. So Mary Beth Todd, then David Yamasaki, then Judge So.

>> Thank you, Chief. First, I'll talk about both recommendations. With respect to advancing the payout in January, I agree, you know, we -- in the last couple of years, we haven't had a whole lot of draw down on these funds, but in the last couple of years, we had fund balance, and this our first year with no fund balance, so I am kind of approaching this very cautiously. I think I can agree with recommendation 1 in the sense that to the extent we can get back to the trial courts this 2 percent that's taken out at the beginning of the year sooner rather than later, that will be very helpful. What we don't want to have happen is that trial courts get back their piece of the 2 percent, and then there's not enough time to spend it, and now it's swept away with the 1 percent fund balance. What I want to be careful, though, is that we are establishing pretty much a process that says no unforeseen emergencies in the second half of the fiscal year, and so I think we need to go into this with a plan for how those will be addressed. I think there are a lot of different ways we can address that. Perhaps you take the cash advance in the second half of the fiscal year and turn around and make your unforeseen emergency interest in the next fiscal year. I think there are a lot of ways. I would at least recommend that if we move forward with approval of recommendation 1, that we send back to the Budget Advisory Committee, directing them to come forward with some sort of a plan or policy in place for when those things occur in the second half of the fiscal year. With respect to recommendation 2, I think we need to tread very, very lightly. What we would be doing—I think we've kind of gotten the cart before the horse. I 100 percent agree that we don't need a statute to tell us how to manage a reserve and to

protect ourselves in the event of unforeseen emergencies. I think that is a policy that should be developed by the branch and administered by the branch. That being said, I'm hesitant to support going out and repealing the legislation absent having our own internal policy that dictates how that will be managed. For some courts that are large in size, it may make total sense for them to manage it within their own budget. For the smaller to medium courts that feel fluctuations in their budgets, due to the advent of a couple of extra high-profile filings, or things like that, 2 percent may not be enough. So we've got to come up with an internal policy for how we are going to manage these unforeseen emergencies, and I think to move forward with actions to repeal the legislation absent that policy, or at least absent commencing work on it, we can certainly start the process of the repealing, but before we put that into place, we have got to have our own internal policy. We have gone and have advocated for the return of our fund balance. We've talked about how important a fund balance is. We've said we need it for cash flow, and to all of a sudden pull out any kind of a reserve, I think we -- it will start to look like we're contradicting ourselves. So I think we just need to move forward smartly. I think this might be just a little premature, and in any event, I would recommend that whatever we do, if we move forward, that we also, in tandem, work on these internal policies to bring back to the council, so that this can all move forward together, and we know we have not, we have not totally eliminated the safety net for courts. I'm very concerned for the smaller courts that, you know, I don't want to put them in a situation where they go, hey, my computer system just crashed and died, or, you know, my files just burned up, or whatever happened, and there's nothing, there is no help available to them, other than to get a cash advance, or take out a loan, which will only, you know -- it will have a domino effect of putting them in the red for future years. We've got to be able to address these emergencies.

>> Thank you, Mary with. Did you want to talk about how this affects F in your mind?

>> Well, what I was recommending was that we come back with a policy, so it depends on how we move forward today. If we determine that we want to repeal this and we are going to decentralize the reserve policy, such that it's held at the local trial court level, then I think we need to have a policy such as F. It won't look like F, but we have to have a policy such as F to set standards for -- and expectations for how courts will manage their reserve for their unforeseen emergencies.

>> So these are all component parts?

>> They are all component parts. It depends on how we move forward. If we decide to centralize, come up with a reserve policy that is more centralized and held at the branch level, and I will note that in the May Revision, I mean, even the Governor's proposed budget, he states going forward reserve funds for the trial courts will be held at the state level. This allows the Judicial Council to set statewide priorities and allocate reserve funds for the benefit of the trial court systems as a whole. The state reserve is available to address cash-flow issues and provide a contingency fund for unforeseen emergencies. So we have a glimpse of what the executive branch's expectation is with respect to this, but if we did decide that a more decentralized approach is appropriate for the branch, then we would need a reserve policy in place.

>> Thank you, Mary Beth. David, and then Judge So, Judge Jacobson, Judge Rosenberg, and Commissioner Alexander.

>> Thank you, Chief. Just to tag along to the comments I made earlier. The way Zlatko framed the discussion was very accurate. I was on the Budget Advisory Committee and voted in support of the recommendations, but certainly recognized some of the issues that courts face, that as you have a little more time to consider some of the issues that courts face, I think it's important to build some contingencies into the fund as a resource for courts that are facing unforeseen circumstances. But, at the same time, there are foreseen circumstances that many of the courts have, and they need the money. They need the money as quickly as they can, because of the absence of the fund balance latitude, and that's something above the 1 percent. We really have had to change the manner in which we are operating our respective operations; having the money a little bit sooner, certainly helps us plan in a longer period of time, rather than a couple of months. So maybe we can consider another option, and that is taking into consideration how the money was used historically. I think the maximum that was allocated in a year did not exceed \$1.5 million. Maybe that could be a target we can look at to preserve, and, therefore, give the majority of the money back to the courts sooner, all the while leaving an option for this body to consider providing a resource to courts that may find themselves in a predicament that necessitates and some emergency funding. So a slight modification for consideration, but I don't want to make a motion. I think there is probably more comments that we might want to consider.

>> Can I ask you a clarifying question? So it seems to me from you and Mary Beth's comments as CEOs of the trial courts, that there's a little more work to be done here. It seems to be more of a layered approach. We realize that these courts need this money sooner than later, but we also on balance realize that sooner means that we need a plan in place for those unforeseen funding emergencies in the latter part of the year, and that ultimately it may be that having some kind of policy on a fund balance for a trial court might play -- have a role in that latter part of a solution. That's -- has the CEO/CFO looked at this? Or has this been a Trial Court Budget Advisory Committee issue?

>> Primarily it's been discussed as part of the Budget Advisory Committee, and as you know, we have membership of many CEOs, and it's a complex issue, but clearly the recommendation that they presented was what you see today, but, again, as you, you know, let it sink in a little bit, and you start hearing and contemplating different scenarios, you know, new options come up, and clearly we want to, you know, have a resource for courts that find themselves in a bad predicament, and that's part of the reason for my commenting this afternoon.

>> Okay. So when then we'll hear from Judge So, Judge Jacobson, Judge Rosenburg, and then Commissioner Alexander.

>> I'm going to defer until the further comments.

>> Then it's Judge Jacobson.

>> Thank you, Chief. On item F, the -- whether we suspend or terminate, we tried our hardest, it seemed to me, to fight off the 1 percent fund balance, and we got our answer, ultimately, and so that's what I think the expectation is with the executive branch and the Legislature, is that we conform to that, and it seems to me as a matter of respect and showing our good faith that we should terminate our internal policy of a 3 to 5 percent reserve as a minimum, and that we should go forward with the 1 percent, and if that doesn't work, then we have something to say. And I would much rather go back to the Legislature next year asking for more money, and go back to the Governor next year asking for more money having shown that we tried the 1 percent and it failed, rather than we didn't really give it our best shot, that we have a suspended policy here that's more of what we want, and so that's my sense of it. And some of those same concerns carry over with the statewide 2 percent emergency fund, and I certainly appreciate the courts' need to get the money back as soon as possible, but what happens, as Mary Beth Todd was saying, what happens if an emergency occurs, particularly with a smaller court? I think they're more vulnerable to that—, a telephone system crashing, a mass protest in an area where there's suddenly a large new caseload, that we need to have some sort of contingency in place to provide centralized money as we have been directed to do. So I think that puts us in a much stronger position to go back and ask for new and additional fund, if some of those things that they've suggest have had failed, but I think we need to show our good faith.

>> Thank you. Judge Rosenberg.

>> Thank you. Mary Beth Todd and David Yamasaki have identified the issue, and I think it's important to reinforce the fact that the Governor certainly expects us to maintain a statewide reserve. His concept, he has this expectation that the branch will take care of its own issues internally, and the statewide reserve is part and parcel of that, so I think we're going to have to do that. But I do have a question. Do we not have, and this is probably directed to Zlatko, do we not have the ability to temporarily tap into other funds, even construction funds, to take care of a short-term emergency situation such as a computer system or telephone system crashing?

>> The ability to tap into these funds is purely for cash flow, not for budget, so as these -- currently the 2 percent is not a payback amount, unless that's the way in which the funds are provided to the trial court, so as Mary Beth Todd was suggesting, on loans, those end up having to be paid back. You will have to take action at some point in the future to reduce your budget in order to return those funds. So they're not available for budgetary expenses, only for cash management.

>> Understood, but if a computer system crashes, and a court has to spend cash to fix it?

>> They would then create a budget hole. Not only would they have a cash flow issue, but would also have a budget problem, and that's what the 2 percent is attempting to fix is budgetary shortfalls.

>> So just so we're clear, you're saying the only available funds, what we're keeping is the 2 percent reserve.

>> In terms of a readily available allocatable by the Judicial Council. If in fact there was something where there were no resources available, the law provides that the funds go back by March 15th, so the council acts in February, applications come in in January. In effect, you only have really six months that you have those funds available because they go back anyways. So as it stands now, you know, we don't have 12 months of ability to really allocate these funds. The alternative is to submit a deficiency request to the Department of Finance, because, as we know, the Trial Court Trust Fund is tapped out. To the extent that we had an accumulating account balance in the Trial Court Trust Fund either because revenues will hopefully turn around, and we can start to accumulate a fund balance, along with additional resources into the branch that we can allocate more resources, then we would sort of have now our own branch pot, if that was what we would like to do going forward, but absent any branch resources [inaudible], we have to go and get additional appropriation. The only other thing as we look down the road is, if there were funds above the 1 percent, could those be used to deal with that issue if they're set aside for those types of emergencies, but we haven't yet had that conversation about what do about any excesses above the 1 percent.

>> Commissioner Alexander, and then Judge Herman.

>> I just wanted to briefly say I met with my liaison courts, which are four small courts, and they totally support the position that there needs to be something left in a fund. They need money ahead of time, but there needs to be something left in case of an emergency, because they are very concerned about only having 1 percent and some of them are borrowing now to make payroll—that if somebody happens, they have nothing to fall back on.

>> We have Mike Planet who was head of the subcommittee on the line, if he would like to make any comments.

>> Judge Herman, did you wish to be heard?

>> Just a question. What has been the history of the DOF in terms of backfilling deficit requests?

>> Well, this would be a specific unknown emergency that if we did not have the funds, we [indiscernible] could always try.

>> But have they ever done that for us?

>> I think there has been some history with some unforeseen issues, but I think those are a decade in terms of what was requested. There were some issues, but they've been -- it's been a while.

>> I have a question. Zlatko, could you tell me how much is the 2 percent?

>> \$37.5 million will be for this upcoming fiscal year.

>> So is there any problem with holding back \$4 or \$5 million, and then distributing the rest?

>> You can do what you would like until the March 15th cutoff where any undistributed funds would have to return to the Trial Courts.

>> So then wouldn't it be prudent, then, to pick a number for a reserve and then distribute the rest earlier, so the trial courts can plan but still have some pot left over for these emergencies, and then distribute that if emergency does not exist?

>> That is certainly one possibility.

>> Can I ask you a question, though? I know that the council is required to return that money by March, but there's no bar to council returning that money sooner, or some portion of it, correct?

>> And that's what the proposal is, is to return it sooner than the statutory requirement.

>> So my thought is, from what I'm hearing, is that that is what we want to do as a council, feel a little uncomfortable about just picking a number out of the air, and maybe that the advisory committee ought to think of how Mary Beth Todd has described this. One, we would like the bulk of it returned before January. Would like a holdback of some amount that's discussed amongst courts that commissioner Alexander referred to, and we need to have an internal mostly about that, and then we also probably need address suspension or termination of a policy, but it also seems to me two-fold, that, one, maybe more advisory committees might be affected by this proposal, including as to recommendation number 2, as Judge Jahr pointed out. It's very clear, probably, that before we seek legislative action, probably it should go to PCLC, just so that everybody is on the same -- not that we disagree with that particularly, but again as pointed out, the budget language is clear that there is this expectation that Judicial Council would hold some percent. Well, I'm sure we could come up with some counter to that, but that out to be in the hands of our legislative internal committee working with the Trial Court Budget Advisory Committee and CEAC and the PJs, as necessary. Seems this is more of a collaborative approach to this problem. So I'm not sure that we're ready to make a -- vote on either recommendation 1 or 2 or F, but I could be wrong. That's just my thought on hearing these comments. I see David Yamasaki nodding, so I'm going to ask you, David.

>> Yeah, I think the suggestions that were raised relative to coming up with a solution to return the moneys in a more expeditious fashion, as well as contemplating a contingency for some of the courts that may face a problem the second half of the year, and I would probably -- while I would be willing to go out on a limb to say, I think the Budget Advisory Committee would be more than willing to reexamine some options for the council to consider.

>> And I realize the Budget Advisory Committee has their hands full, and they've been very good about working through these with all of the affected courts, and I realize this is additional work, but I think it's pretty important that we get their specific input. Judge Walsh?

>> Just this afternoon during the break, I was discussing with Judge Earl and Marsha Slough the schedule for meetings, and the plan was to have a Budget Advisory Committee meeting early

October in advance of the October Judicial Council meeting to discuss other things, and I'm sure we could do this and put our subcommittees to work in September, and the subcommittee that chewed on this could take these comments, and I'm assuming that if the council did something in this area in October, there would nobody harm in waiting until then.

>> I don't think so. I mean, I think that hopefully trial courts are hearing the conversation about the potential changes and, you know, are anticipating, you know, what their needs might be, but I think, if, you know, an alternative plan that has some graduated distribution of the funds, so that some comes back earlier, and still there's some small amount held in regard to what is required per the statute would seem to be workable. Again, if there's anything from Mike Planet. We don't want to forget him on the line, since he headed up the subcommittee.

>> I was just wondering about the other item, the fund balance policy. I think it expires on, it -- something happens on August 31st.

>> It does.

>> So I don't know if we need to temporarily extend that or do something because -- or deal with it the next meeting, but I think we can't wait until October on that.

>> You mean extend the suspension?

>> Yeah, that's what I meant. Thank you.

>> Mike Planet, are you online?

>> I am, Chief, good afternoon.

>> Good afternoon.

>> I appreciate the conversation, and I think you can all see the rock and the hard place that we are between in looking at these two issues here. We were also having our discussions in June while budget discussions were still going on, and so I found the discussion involved listening to the meeting today. I learned a lot that I didn't know when we were working on these particular issues. So, you know, if the -- if it's the wisdom of the council to put this matter back before the Budget Advisory Committee, we'll be glad to take another look at it, and recognizing that it's a very dynamic area.

>> Understood. Thank you. I see three hands up. David Yamasaki, Mary Beth Todd, and Judge Rosenberg.

>> Yeah, and I think -- I just wanted to comment on the proposal that Judge Walsh made, in terms of bringing it back to this body sometime in the fall. I think the proposal that the Budget Advisory Committee made suggested that the moneys somehow come back to the courts before the end of the calendar year, and I think that if in fact the recommendation is to move forward

with some version of this, we would fall well within the proposal that was made by the Budget Advisory Committee to act before the end of this calendar year, so I think don't anything would be lost, per se, by putting it over.

>> You're more familiar with the workload and the meetings that this would take. Do you have recommended month that this should come back if that's the vote of council?

>> Was it October that --

>> Yeah, October.

>> Yeah, I think that would be very, very workable.

>> Mary Beth Todd?

>> I just want to thank everybody for the discussion. It's very helpful. We have an excellent opportunity here. I think if we take a little more time and think this through, we can craft a plan that will meet the needs of the branch more effectively, and then once we've got that in place, we can move forward, demonstrate our responsibility to take care of this issue, and ask for that legislation to be repealed so that we can put in place something that really meets our needs most effectively.

>> Thank you. Judge Rosenberg?

>> I was simply going to make a motion, two-part motion. Number one, that we continue the suspension till, for now, December 31, 2014. Currently, the suspension would expire on August 31. So we just need a little breathing space. And, secondly, that we -- I don't want to use the word *table*. We defer this item to the October Judicial Council meeting and request that the Trial Court Budget Advisory Committee provide further input.

>> And by defer, you mean items F and H to the October 2014 Judicial Council meeting?

>> Yes, that's correct.

>> With a referral back to the Trial Court Budget Advisory Committee and any other committee that they deem relevant to the issue?

>> That's the motion.

>> I hear a second by Judge Nadler. Any further discussion of this two-part motion? See no hands -- oh, yes, Judge Stout.

>> I just want to express my appreciation and agreement with a more measured approach here. I think it's prudent and wise. Obviously, it has been well discussed, and there are very difficult and competing interests here, in trying to return this money to the courts as soon as possible, but I also appreciate the effects of emergencies in the second half of the physical year and especially

how it can affect the small rural courts, and I think the points have been well made, and I think this is a very prudent approach.

>> Thank you, Judge Stout. In all favor, please say AYE. Any opposed. The measure passes. I thank the presenters. I thank Michael Planet for being online and the excellent discussion we had about moving the branch forward in this area. We conclude today's meeting as we always do, unfortunately, with a brief remembrance of our judicial colleagues who have recently passed. Judge George Brunn out of Alameda County Municipal Court; Judge Raymond Cardenas, Superior Court of Los Angeles County; Judge [Thomas] Curtin, Contra Costa Municipal Court; Judge J. E. Rutter II, Superior Court of Orange County; Judge Dennis Scott, Superior Court of Fresno County. All were retired from the bench, and we honor them for their service the courts and the cause of justice. The next regularly scheduled meeting of the Judicial Council will be August 21 and 22. The meeting is now adjourned. Thank you all.

>> Thank you. [event concluded]