

**JUDICIAL COUNCIL MEETING**  
**Minutes of April 29, 1999, Meeting**

The Judicial Council of California meeting began at 1:10 p.m. on Thursday, April 29, 1999, at the Administrative Office of the Courts office in San Francisco, California, on the call of Chief Justice Ronald M. George, chair.

**Judicial Council members present:** Chief Justice Ronald M. George; Justices Richard D. Aldrich and Richard D. Huffman; Judges James A. Bascue, Paul Boland, J. Richard Couzens, Albert Dover, Brenda Harbin-Forte, Steven E. Jahr, Melinda A. Johnson, Ana Maria Luna, Michael B. Orfield, and Ronald L. Taylor; Mr. Michael Case, Mr. Maurice Evans, and Mr. Sheldon H. Sloan; and **advisory members:** Justice William M. Wunderlich, Commissioner David L. Haet, Ms. Sheila Gonzalez, Mr. Joseph A. Lane, Mr. Stephen V. Love, and Mr. Frederick Ohlrich.

**Absent:** Justices Marvin R. Baxter and Carol A. Corrigan, Senator Adam Schiff, and Assembly Member Sheila James Kuehl.

**Others present included:** Mr. William C. Vickrey; Justice Marc Poché, Judges Timothy L. Fall, Ray L. Hart, Brad R. Hill, Dallas Holmes, Robert M. Mallano, Stephen V. Manley, and Adrienne A. Orfield; Ms. Elaine Bush, Mr. Drew James, Ms. Beth Jay, Mr. Jim Niehaus, and Mr. Michael Timpanaro; **staff:** Mr. Clifford Alumno, Ms. Martha Amlin, Ms. Heather Anderson, Mr. Starr Babcock, Ms. Jessica Fiske Bailey, Ms. Mary Bartholomay, Mr. Michael Bergeisen, Ms. Sandy Claire, Ms. June Clark, Ms. Eunice Collins, Ms. Monica Driggers, Mr. Jeff Fesunoff, Ms. Rita Finchum, Mr. Michael Fischer, Ms. Kate Harrison, Mr. Frank Hellum, Ms. Shaunese Henderson, Ms. Lynn Holton, Ms. Melissa Johnson, Mr. Dennis Jones, Ms. Fran Jurcso, Ms. Bonnie Kong, Mr. John Larson, Mr. Ray LeBov, Ms. Catherine Lowe, Mr. Barry Lynch, Ms. Mimi Lyster, Mr. Ben McClinton, Ms. Linda McCulloh, Mr. Felix Mendoza, Ms. Kim McCord, Mr. Martin Moshier, Ms. Vicki Muzny, Mr. Gaidi Nkruma, Ms. Diane Nunn, Mr. Patrick O'Donnell, Ms. Cynthia Passon, Ms. Isolina Ricci, Ms. Karen Ringuette, Ms. Gigi Robles, Mr. Victor Rowley, Ms. Lisa Senkbeil, Ms. Linda Sharp, Ms. Dale Sipes, Ms. Shelley Stump, Ms. Jennifer Tachera, Mr. Bradley Tahajian, Ms. Kim Taylor, Ms. Marcia Taylor, Ms. Rochelle Terrell, Ms. Linda Theuriet, Ms. Kiri Torre, Ms. Gale Tunnell, Ms. Liz Vazquez-Avila, Mr. Jim Vesper, Ms. Paula Vlamings, Ms. Cara Vonk, Mr. Joshua Weinstein, Mr. Anthony Williams, Mr. Jonathan Wolin, Ms. Pat Yerian, Ms. Kyong Yi; **media representatives:** Mr. Philip Carrazosa, *L.A. Daily Journal*; Mr. Greg Mitchell, *The Recorder*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binders of Reports and Recommendations dated April 29, 1999, which were sent to members in advance of the meeting.)

## **Approval of the Minutes**

### *Council action:*

Judge Paul Boland moved that the Judicial Council approve the minutes of the March 10, 1999, meeting.

The motion passed.

## **Council Committee Presentations**

Reports on committee activities were included in the binders of Reports and Recommendations dated April 29, 1999.

### *Executive and Planning*

Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee met once to review items for the April council meeting agenda. The committee decided to defer two items not ready for council action. The committee also discussed the budget development process and nominations to fill vacancies on the Trial Court Budget Commission and the Court Executives Advisory Committee.

### *Policy Coordination and Liaison*

Judge Boland, vice-chair, stated that the Policy Coordination and Liaison Committee met three times since the March council meeting and took positions on 37 bills. Judge Boland highlighted several key pieces of legislation regarding juror compensation, judgeships, civil procedure, and electronic filing and noted where each bill was in the legislative process.

### *Rules and Projects*

Judge Brenda Harbin-Forte, chair, reported that the Rules and Projects Committee had met three times since March to review rules, forms, and standards on the council's April meeting agenda.

### *Special note*

Chief Justice George noted that Item 1I was moved from the consent to the discussion agenda at the request of a council member.

COUNCIL ITEMS 1A–H, 1J, 1K, AND 2–4 WERE APPROVED AS CONSENT ITEMS, PER THE SUBMITTERS’ RECOMMENDATION.

**ITEM 1 RULES, FORMS, AND STANDARDS**

**Item 1A Adopt Rules to Provide Procedures for Processing Child Support Cases and to Establish Minimum Educational and Training Requirements for Child Support Commissioners (Cal. Rules of Court, rules 1280.6, 1280.7, and 1280.8)**

The Family and Juvenile Law Advisory Committee recommended three new family law rules to provide uniform procedures for courts in processing child support cases and to comply with statutory requirements regarding the establishment of minimum education and training requirements for child support commissioners.

*Council action:*

The Judicial Council, effective July 1, 1999, adopted rules 1280.6, 1280.7, and 1280.8 to provide uniform procedures for processing child support cases and to comply with statutory requirements.

**Item 1B Amend Juvenile Law Rules and Forms (Cal. Rules of Court, rules 39.1B, 1425, 1426, 1431, 1438, 1456, 1460, 1461, 1462, 1463, 1465, and 1466; and Forms JV-325, JV-550, and JV-820)**

The Family and Juvenile Law Advisory Committee, Juvenile Law Subcommittee recommended amendments to juvenile law rules and revision of forms to conform to statutory changes and to make them clearer and more effective.

*Council action:*

The Judicial Council, effective July 1, 1999, amended the following juvenile law rules and forms:

1. Rules 1425 and 1426 and *Juvenile Court Transfer Orders* (Form JV-550) to clarify the procedures and responsibilities of the courts and to shorten the procedural timelines.
2. Rule 1438 to conform to Welfare and Institutions Code section 317 (Stats. 1998, ch. 900).
3. Rule 1456 to conform to Welfare and Institutions Code section 361.5 (Stats. 1998, ch. 75).

4. Rule 1463 to conform to Welfare and Institutions Code section 366.26 (Stats. 1998, ch. 572).
5. Rule 1456 and *Letters of Guardianship (Juvenile)* (Form JV-325) to clarify that letters of guardianship are not subject to the confidential protection of juvenile court documents.
6. *Notice of Intent to File Writ Petition and Request for Record, Rule 39.1B* (Form JV-820) to include the hearing date set under Welfare and Institutions Code section 366.26, and rule 391.B and Form JV-820 to conform to *Lisa S.*
7. Rules 1431, 1456(d)(2), 1460, 1461, 1462, 1465, and 1466 to reflect repealed Welfare and Institutions Code sections 366.2 and 366.25 and to eliminate the procedural distinction for children declared dependents before January 1, 1989 (Stats. 1998, ch. 1054).

**Item 1C      Adopt, Revise, and Revoke Miscellaneous Family Law and Child Support Forms: California Rules of Court, Adopt Rules 1285.61A, 1285.61B, 1296.50, 1296.81, 1298.32, 1298.50, 1298.52, 1298.54, and 1298.56; Revise Forms 1281, 1282, 1285.60, 1285.75, 1285.90, 1285.92, 1286.50, 1287, 1296.80, 1296.31A, 1296.605, 1299.28, 1299.55; and Revoke Forms 1296.31B(2) and 1298.04**

The Family and Juvenile Law Advisory Committee recommended amendments to forms to comply with new statutory requirements in family law and child support cases.

*Council action:*

The Judicial Council, effective July 1, 1999:

1. Adopted the following new family law and governmental forms for mandatory use:
  - a. *Affidavit of Facts Constituting Contempt — Financial and Injunctive Orders (Family Law — Governmental — Domestic Violence Prevention — Uniform Parentage)* (Form 1285.61A);
  - b. *Affidavit of Facts Constituting Contempt — Domestic Violence/Custody and Visitation (Family Law — Domestic Violence Prevention — Uniform Parentage — Governmental)* (Form 1285.61B);
  - c. *Application for and Appointment of Guardian Ad Litem of Minor (Family Law — Domestic Violence Prevention — Uniform Parentage — Governmental)* (Form 1296.50);
  - d. *Response to Petition for Custody and Support of Minor Children* (Form 1296.81);
  - e. *Notice of Registration of California Support Order (Governmental)* (Form 1298.32);
  - f. *Summons (UIFSA)* (Form 1298.50);
  - g. *Order to Show Cause (UIFSA)* (Form 1298.52);
  - h. *Response to Uniform Support Petition (UIFSA)* (Form 1298.54); and

- i. *Ex Parte Application for Order for Nondisclosure of Address and Order (UIFSA)* (Form 1298.56).
2. Revised the following family law and governmental forms:
  - a. *Petition (Family Law)* (Form 1281);
  - b. *Response (Family Law)* (Form 1282);
  - c. *Order to Show Cause and Affidavit for Contempt (Family Law— Domestic Violence Prevention— Uniform Parentage — Governmental)* (Form 1285.60);
  - d. *Child Support Case Registry Form (Family Law — Domestic Violence Prevention — Uniform Parentage — Governmental)* (Form 1285.92);
  - e. *Declaration for Default or Uncontested Dissolution or Legal Separation (Family Law)* (Form 1286.50);
  - f. *Petition for Custody and Support of Minor Children* (Form 1296.80);
  - g. *Request for Hearing Regarding Wage and Earnings Assignment (Family Law — Governmental — UIFSA)* (Form 1299.28); and
  - h. *Notice Regarding Payment of Support (Governmental)* (Form 1299.55).
3. Made technical revisions to the following family law and governmental forms:
  - a. *Application and Order for Health Insurance Coverage (Family Law)* (Form 1285.75);
  - b. *Request for Hearing Regarding Registration of Support Order (Family Law — Governmental)* (Form 1285.90)
  - c. *Judgment (Family Law)* (Form 1287);
  - d. *Child Custody and Visitation Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage)* (Form 1296.31A); and
  - e. *Summons (Uniform Parentage — Petition for Custody and Support)* (Form 1296.605).
4. Revoked the following family law and governmental forms:
  - a. *Child Support Extended Order Attachment (Family Law — Domestic Violence Prevention — Uniform Parentage)* (Form 1296.31B(2)); and
  - b. *Declaration and Request for Order and Order (Support Enforcement and Earnings Assignment) (Governmental)* (Form 1298.04).

**Item 1D      Amend Rule on Record on Appeal — Clerk’s Transcript (Cal. Rules of Court, rule 5(a))**

The Appellate Advisory Committee recommended amending rule 5(a) to clarify that the appellant or any other party may elect to proceed under rule 5.1 and choose to file an appendix in lieu of having the clerk prepare a clerk’s transcript.

*Council action:*

The Judicial Council, effective July 1, 1999, amended rule 5(a) to clarify that *any party* may elect to proceed under rule 5.1 and choose to file an appendix in lieu of having the clerk prepare a clerk's transcript.

**Item 1E      Approve Form: *Notice of Appeal -- Felony (Defendant)*  
(Form CR-120)**

The Criminal Law Advisory Committee and the Appellate Advisory Committee recommended approval of a new form, *Notice of Appeal — Felony (Defendant)* (Form CR-120). The new form will be discretionary. The form will address all appeals initiated by the defendant in a felony criminal matter, including those occurring after a guilty or no-contest plea.

*Council action:*

The Judicial Council, effective July 1, 1999, approved *Notice of Appeal — Felony (Defendant)* (Form CR-120).

**Item 1F      Revise *Memorandum of Costs (Summary)* (Form MC-010) and  
*Memorandum of Costs (Worksheet)* (Form MC-011) and Adopt  
*Memorandum of Costs After Judgment, Acknowledgment of Credit, and  
Declaration of Accrued Interest* (Form MC-012)**

The Civil and Small Claims Advisory Committee proposed revising current forms for claiming prejudgment costs pursuant to Code of Civil Procedure sections 1032 and 1033.5 (Forms MC-010 and MC-011). The revisions would make the forms conform to statute.

The committee also proposed a new form (MC-012) to be used by litigants claiming postjudgment costs pursuant to Code of Civil Procedure section 685.70. Although some local postjudgment forms are available, there is no statewide, uniform Judicial Council form for claiming costs and interest accruing after judgment.

*Council action:*

The Judicial Council, effective July 1, 1999:

1. Revised *Memorandum of Costs (Summary)* (Form MC-010) and *Memorandum of Costs (Worksheet)* (Form MC-011).
2. Adopted *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest* (Form MC-012) to provide a statewide form for claiming costs and interest after judgment.

**Item 1G     Revise Family Law Form: Domestic Violence Restraining Orders Instruction Booklet (Form DV-150 [Former Form 1296(A)])**

The Family and Juvenile Law Advisory Committee recommended revising *Domestic Violence Restraining Orders Instruction Booklet* (Form DV-150 (former Form 1296(A))) to reflect changes in the domestic violence restraining order forms that the Judicial Council adopted effective January 1, 1999. The instruction booklet also contains information on how to enforce a domestic violence restraining order in a different jurisdiction, as required by recently enacted Assembly Bill 2177.

*Council action:*

The Judicial Council, effective May 1, 1999, approved *Domestic Violence Restraining Orders Instruction Booklet* (Form DV-150), revising former Form 1296(A).

**Item 1H     Adopt Notice to Consumer or Employee and Objection (Form 982(a)(15.5))**

The Civil and Small Claims Advisory Committee proposed a uniform, statewide form that would give notice to consumers and employees that their records are being subpoenaed and enable nonparties to object to the production of their records. The Code of Civil Procedure provides that where a subpoena seeks the personal records of a consumer or an employee, the subpoena shall be accompanied by a notice containing certain statutorily prescribed information. The Code of Civil Procedure was amended effective January 1, 1997, to permit a nonparty to serve an *objection* on the requesting party stating the grounds on which the production of records should be prohibited. The committee recommended new form 982(a)(15.5) since no forms existed to meet these needs.

*Council action:*

The Judicial Council, effective July 1, 1999, adopted *Notice to Consumer or Employee and Objection* (Form 982(a)(15.5)).

**~~Item 1I Identifying Mandatory and Optional Forms and Clarifying Use of Legal Forms: Add Division III (Forms List) to the Appendix to the California Rules of Court; Amend Rules 982, 982.1, and 982.9; and Repeal Rules 982.5 and 982.7~~**

This item was moved to the discussion agenda.

**Item 1J Technical Amendments to Rules and Forms (Cal. Rules of Court, rules 1257.3, 1435, 1464, 1600, 1600.1, 1603, Title Six rules 6.51, 6.655; and Forms 982(a)(17)(A) and JV-101)**

The Rules and Projects Committee recommended technical amendments to rules and forms to conform to statutory changes, reflect current practices, or correct drafting errors.

*Council action:*

The Judicial Council:

1. Amended the following rules:
  - a. Rule 1257.3, effective July 1, 1999, to add language to clarify the type of requirements necessary for court-ordered child custody evaluators in addition to training, education, and experience;
  - b. Rule 1435(a) and (b), effective July 1, 1999, to conform to the Welfare and Institutions Code;
  - c. Rule 1464, effective January 1, 1999, to conform the form references to the adoption forms as renumbered effective January 1, 1999, and to clarify procedures when a petition for adoption is filed and granted in juvenile court;
  - d. Rules 1600 and 1604, effective July 1, 1999, to reflect statutory changes to implement trial court unification and amended rule 1600.1 to delete a reference to a repealed statutory provision;
  - e. Rule 6.51, effective July 1, 1999, to include interpreters in languages that are not certified and to conform to section 68565 of the Government Code; and
  - f. Rule 6.655, effective April 29, 1999, to reflect the new address of the Commission on Judicial Performance.
2. Revised the following forms:
  - a. *Information Sheet on Waiver of Court Fees and Costs (In Forma Pauperis)* (Form 982(a)(17)(A)), effective April 29, 1999, to reflect the 1999 increases in the



- federal poverty guidelines; and
- b. *Additional Children Attachment: Juvenile Dependency Petition* (Form JV-101), effective July 1, 1999, to conform to *Juvenile Dependency Petition (Version One)* (Form JV-100) and *Juvenile Dependency Petition (Version Two)* (Form JV-110).

**Item 1K      *Approve Petition for Order Striking and Releasing Lien or Other Encumbrance on Property of Public Officer or Employee (Form MC-100) and Order to Show Cause Why Lien or Other Encumbrance on Property of a Public Officer or Employee Should Not Be Stricken and Released (Form MC-101)***

The Civil and Small Claims Advisory Committee proposed forms to be used in proceedings to remove or strike liens and encumbrances on the property of public officials and employees to comply with statute.

*Council action:*

The Judicial Council, effective July 1, 1999, approved:

1. *Petition for Order Striking and Releasing Lien or Other Encumbrance on Property of Public Officer or Employee* (Form MC-100).
2. *Order to Show Cause Why Lien or Other Encumbrance on the Property of a Public Officer or Employee Should Not Be Stricken and Released* (Form MC-101).

**Item 2      *Update to the Judicial Council's Strategic Plan***

At its annual planning workshop in February, 1999, the Judicial Council considered proposed changes in organization, format, and content to update the council's existing strategic plan. The proposed updated plan incorporates changes requested by the council.

*Council action:*

The Judicial Council:

1. Approved the updated strategic plan.
2. Directed staff to develop and implement a plan for publicizing the updated strategic plan within the branch, to the executive and legislative branches, and to other external entities as appropriate.

### **Item 3            Criteria for 1999–2000 Drug Court Mini-Grant Awards**

The California Office of Criminal Justice Planning (OCJP) has provided grant funding to drug courts in California for three years and has committed to a fourth year of funding for fiscal year 1999–2000. The Administrative Office of the Courts administers this grant, distributes the funds to trial courts throughout the state, and evaluates the effectiveness of the recipient programs. The Oversight Committee for the California Drug Court Project has reviewed applications for the three previous years of OCJP grant funding. In May 1999, the oversight committee will distribute its fiscal year 1999–2000 mini-grant application kit, which will include council-approved criteria for evaluating grant applications. The oversight committee recommended proposed criteria.

*Council action:*

The Judicial Council approved the following criteria for fiscal year 1999–2000 Drug Court Mini-Grant Awards:

- Viability of the program and its current level of financial need;
- Consistency with the California Standards of Judicial Administration and other drug court guidelines;
- Involvement of a local steering committee;
- Successful completion of statistical and financial reporting requirements for previous mini-grant funding periods (if applicable); and
- Completeness and comprehensiveness of the application.

### **Item 4            Legislative Report on Special Motions to Strike Strategic Lawsuits Against Public Participation (“SLAPP Suits”)**

The Civil and Small Claims Advisory Committee submitted a report to the Legislature on “SLAPP suits.” The Legislature had requested information on the frequency and outcome of special motions made pursuant to Code of Civil Procedure section 425.16.

*Council action:*

The Judicial Council:

1. Approved the Legislative Report on Special Motions to Strike Strategic Lawsuits Against Public Participation.
2. Directed staff to submit the report to the Legislature.

## **Item 5 Report of the Task Force on the Quality of Justice, Subcommittee on the Quality of Judicial Service**

Judge Robert M. Mallano, chair of the Task Force on the Quality of Justice, Subcommittee on the Quality of Judicial Service, presented the report, assisted by Justice Marc Poché, Mr. Drew James of William M. Mercer Incorporated, and Mr. Jim Niehaus of the Judges' Retirement System. Judge Mallano said that the task force was charged with ensuring: (1) that judges remain on the bench for full careers, (2) that older judges who are healthy and fit have the option to remain on the bench, (3) that judges who are no longer fully able to serve retire at an appropriate time, and (4) that judicial compensation and benefits attract and retain highly qualified attorneys.

Judge Mallano reported that the task force arrived at a number of proposals to meet these goals and that the council was being asked to vote on recommendations appropriate for council action that staff drafted to implement these proposals.

He stated that in order to attract and retain a highly qualified judiciary, the task force recognized the importance of offering judges a competitive compensation package. California judges' salaries are \$26,088 less than those of federal district court judges. The task force concluded that a salary adjustment and an alternative method of salary setting are needed to ensure that judges are compensated fairly and equitably. The task force also recommended removing the current disincentive for judges to consider remaining on the bench beyond 20 years of service. Judge Mallano said that although a Judges' Retirement System (JRS) judge is no longer eligible to earn retirement credit after 20 years of service, he or she is still required to pay 8 percent into the JRS every month. The task force recommended eliminating the 8 percent contribution requirement and implementing savings programs that may serve as incentives for experienced judges to remain on the bench for full careers.

Judge Mallano read a letter from Judge Enrique Romero, a superior court judge from Los Angeles, who is retiring after nine years on the bench. Judge Mallano said the letter expressed feelings common among judges and indicated the need for the types of reforms suggested by the task force. Judge Romero said in his letter that although he loved being a judge he could not afford to remain on the bench. He noted that partners in law firms make significantly more than judges. Judge Romero cautioned that without progress in judicial compensation, only attorneys who have had lucrative careers in the private sector will be able to afford to be judges. This will result in a less diverse bench.

Justice Poché chaired the retirement working group that studied ways to keep qualified people on the bench after they reach pension age. He spoke about the task force's proposal to seek legislation providing a cost-neutral "Delayed Retirement Option Program" (DROP) to judges in JRS who are eligible to retire but elect to continue judicial service. This program would allow a judge to put the amount he or she would

have been paid had he or she retired when first eligible into a tax-deferred state-managed investment account. During retirement, the judge would receive both a pension and the money accrued in this investment account.

Judge Albert Dover asked if seeking a constitutional amendment to form an independent commission to review and set compensation and benefit levels for the judiciary would undermine current agency efforts to work with the legislative and executive branches on this topic. Mr. William C. Vickrey responded that there is support in the Legislature for a number of the task force's recommendations, and there is recognition that action is necessary. Noting that a constitutional amendment would take time, he commented that efforts to pursue a constitutional amendment must not diffuse current efforts for reform.

Mr. Niehaus remarked that the task force recommended actions that would result in cost savings to the state, in most cases, or that would have minimal costs.

*Council action:*

The Judicial Council:

1. Received the report from the Task Force on the Quality of Justice, Subcommittee on the Quality of Judicial Service.
2. Adopted the following recommendations to implement the task force's proposals:
  - a. Direct the Administrative Director to continue efforts to increase judicial compensation through the state budget process.
  - b. Direct staff to prepare analysis of options regarding seeking a constitutional amendment to form an independent commission to review and set compensation and benefit levels for the judiciary. Direct staff to draft language and submit it to the Policy Coordination and Liaison Committee (PCLC) for review and recommendation to the Judicial Council.
  - c. Direct staff to discuss with potential authors a legislative proposal to eliminate the requirement that judges in the original JRS retirement plan with 20 years of service continue to pay 8 percent of salary to the plan. Direct staff to present recommendations, including draft legislation, to the PCLC for review and action on behalf of the Judicial Council.
  - d. Direct staff to discuss with potential authors a proposal to seek legislation to allow judges with 20 years of service to elect to continue to pay the 8 percent contribution in return for additional retirement compensation for each additional year of service. Direct staff to present recommendations, including draft legislation, to the PCLC for review and action on behalf of the Judicial Council.
  - e. Direct staff to discuss with potential authors a proposal to seek legislation providing a cost-neutral "Delayed Retirement Option Program" (DROP) to judges in JRS and JRS II who are eligible to retire but elect to continue judicial service. Direct staff to present recommendations, including draft legislation, to the PCLC for review and action on behalf of the Judicial Council.

- f. Direct staff to evaluate options for implementing legislation to allow all California judges to participate in the same or a similar supplemental retirement contributions program offered to state employees and members of the Legislature. Direct staff to submit a proposal to the PCLC for review and action on behalf of the Judicial Council.
- g. Direct staff to draft legislation to amend the retirement law to allow judges in JRS II to have the same reciprocity rights provided to judges in JRS. Direct staff to discuss the draft legislation with potential authors and present recommendations to the PCLC for review and action on behalf of the Judicial Council.
- h. Direct staff to prepare draft legislation to amend the retirement law to allow judges in JRS and JRS II who are eligible to retire but remain on the bench to select their retirement benefit prior to retirement. Direct staff to discuss the draft legislation with potential authors and present recommendations to the PCLC for review and action on behalf of the Judicial Council.
- i. Direct staff to prepare an analysis of amending rules 205(7) and 532(a)(9) of the California Rules of Court to increase proper judicial vacation periods, and to present options to the Rules and Projects Committee (RUPRO) and recommendations to the Judicial Council by March 2000.
- j. Direct staff to evaluate policy options establishing a Judicial Council advisory committee to promote the utilization of sabbatical leave and to evaluate sabbatical requests. Direct staff to present draft rules of court and an analysis of cost implications to RUPRO in time for submission to the council by March 2000.
- k. Direct the Administrative Director to evaluate a Judicial Officer Assistance Program (JOAP) to provide confidential counseling sessions for judges to deal with personal and work-related stress and to present the council with recommendations by July 1999 for implementation and funding of the program.
- l. Direct staff to consult with the Center for Judicial Education and Research (CJER) Governing Committee on implementation strategies to promote and further develop the judicial mentorship program.
- m. Direct the Administrative Director, after evaluating existing priorities, to establish a schedule for compiling and maintaining a judicial officers' resource manual of available services, programs, benefits, and resources that could help improve the quality of life for judicial officers, particularly those dealing with health, stress, and relationships, and provide an update to the council in September 1999.
- n. Direct staff to consult with the CJER Governing Committee and develop proposals for training to improve the quality of life for judicial officers by dealing with health, stress, and relationships. Direct staff to present the council with implementation plans, including funding implications, by October 1999.
- o. Direct staff to consult with the CJER Governing Committee and the 1999 Presiding Judges Program Committee and develop curriculum changes to training offered for presiding and supervising judges on improving case and calendar management and on emphasizing the importance of equitable division of work among judges and its effect on stress and morale.

- p. Direct staff to create a plan to ensure that all courts are provided adequate staff, security, facilities, and other resources to further the administration of justice. Staff is to present the council with the plan and proposed schedule for implementation, including funding implications, by October 1999.
    - q. Direct the Administrative Director to continue efforts to seek funding for judicial education through the state budget process.
  3. Directed the Administrative Director to present the council with a written summary of all implementation steps by September 1999 and a further progress report in December 1999.

The motion passed.

## **Item 6          2000–2001 Statewide Judicial Needs Determination**

Judge Brad R. Hill, chair of the Court Profiles Advisory Committee, presented the report, assisted by Mr. John Larson, committee staff. Judge Hill noted that in October 1998 the committee determined there were critical needs for 79 new judgeships and 10.65 new commissioner positions. The council voted to approve sponsoring legislation to establish 50 new judgeship positions and deferred consideration until Fall 1999 of the remaining 29 judgeships and 6 commissioner positions not converted from referee positions.

Judge Hill reported that the committee proposed giving trial courts the opportunity to apply for new judgeships for fiscal year 2000–2001, rather than submitting a request for 29 judgeships that was based on previous assessments and therefore may be viewed as outdated.

Judge Hill stated that recent discussions with legislators and legislative staff have led to rethinking this proposal. Judge Hill also said that having the committee undertake a new statewide judgeship needs assessment could undermine efforts to pass pending legislation for new judgeships based on last year's assessment. Therefore, after consultation with the Court Profiles Advisory Committee's Executive Subcommittee, Judge Hill recommended that the council defer a reevaluation of judgeship needs statewide until after the current legislative session ends, depending on the outcome of current judgeship legislation.

Council members discussed the available options: going forward with a statewide reassessment this year or reaffirming the 79 judgeships that were recommended last year. Ms. Sheila Gonzalez noted that many courts have been waiting for new judgeships for many years. She expressed concern that if the council voted to reassess judgeship needs statewide it might stifle efforts to seek new judgeships.

*Council action:*

Judge Dover moved that the Judicial Council approve:

1. Continuing to seek funding for 50 positions; and
2. Discussing options, including a reassessment of needs statewide, at the end of the legislative session.

The motion passed.

**Item 7      Adopt Statewide Uniform Rules in Preempted Fields: Amend and Renumber Rule 302 of the California Rules of Court as New Rule 981.1 (Preemption of Local Rules); Adopt Rules 330 (Good Faith Settlement and Dismissal) and 981.2 (Exemption); and Amend Rules 105 (Recycled Paper), 201 (Tumble Forms), 298 (Telephone Appearance), 359 (Preliminary Injunctions), 367 (Consolidation of Cases), 370 (Ex Parte Applications), 501 (Tumble Forms), 598 (Telephone Appearance), and 981 (Local Rules — Procedures)**

Judge Jamie Jacobs-May, chair of the Civil and Small Claims Advisory Committee, presented the item via telephone, assisted by Mr. Patrick O'Donnell, committee counsel.

Chief Justice George prefaced the presentation by saying that, in his travels throughout the state, members of the bar have told him of their frustration with varying local rules. He noted that as a result of these variances the administration of justice has been inconsistent— with draconian results at times. He expressed his commitment to uniform rules statewide.

Judge Jacobs-May noted that her comments would focus primarily on rule 302 (preemption of local rules) since the other topics in the committee recommendation have elicited little disagreement. She stated that rule 302 was adopted in 1997. Some courts interpreted the requirement for uniform rules to apply to form and format only. The committee proposed revising rule 302 to clarify that the council preempted the fields of motions, demurrers, discovery, pleadings, preliminary injunctions and bonds, ex parte applications, and the form and format of papers. The committee also suggested renumbering it as rule 981.1 to arrange it with other general rules.

Judge Jacobs-May reported that no substantial concerns have been expressed about proposed rule 981.1 outside of Los Angeles County. Los Angeles County courts expressed concern that preemption would result in gaps in the rules. To address this concern and to enable courts to suggest rules that might be adopted statewide, the committee recommended a delay in implementation. She noted that the Rules and Projects Committee (RUPRO) concurred with this approach. The version of rule 981.1

contained in the supplementary materials was supported by both the Civil and Small Claims Committee and RUPRO and recommended to the council. The rule would be adopted now and take effect July 1, 2000. Current rule 302 would remain in effect until then.

*Council action:*

Judge Harbin-Forte moved that the Judicial Council:

1. Amend and renumber rule 302 as new rule 981.1 (preemption of local rules), effective July 1, 2000.
2. Adopt new rule 330 (good faith settlement and dismissal), effective July 1, 1999.
3. Amend rules 105 (recycled paper), 201 (tumble forms), 298 (telephone appearance), 359 (preliminary injunctions), 367 (consolidation of cases), 379 (ex parte applications), 501 (tumble forms), 598 (telephone appearance), and 981 (local rules — procedures), effective July 1, 1999.

The motion passed.

**Item 8      Amend Rule 212 and Adopt Rule 512 on Case Management and Meet-and-Confer Conferences (Cal. Rules of Court); Revise *Case Management Conference Statement (Form CM-110)*; and Revoke *Case Management Conference Orders (Form CM-120)***

Judge Jacobs-May, chair of the Civil and Small Claims Advisory Committee, presented the report via telephone, assisted by Mr. O'Donnell, committee counsel. Judge Jacobs-May reported that the Civil and Small Claims Advisory Committee and the Rules and Projects Committee (RUPRO) were not able to reach agreement on this item and had different recommendations on one of the forms.

Both the committee and RUPRO recommend the adoption of rules 212 and 512 to require counsel for parties in which case management conferences are held to meet and confer no later than 30 days before the first case management conference to discuss issues relating to the management of the case. The rules also require parties or counsel to the parties to file a case management conference statement no later than 5 days before the first case management conference.

Judge Jacobs-May reported that the committee and RUPRO also agreed that Form CM-120, *Case Management Conference Orders*, be revoked, since this optional form is generally not used by the courts.



She stated that the Civil and Small Claims Advisory Committee recommended revising Form CM-110, which, although it was adopted in 1996, is outdated. Courts are required to accept Form CM-110 if a litigant chooses to use it, although courts may continue to provide their own case management statement forms. The advisory committee recommended amending the form to make it consistent with rules 212 and 512 and to add information that is included on the case management statements used in different courts. She noted the committee plans to consider case management generally in the next year, but until then proposes allowing litigants to use this approved council form.

Judge Harbin-Forte reported that RUPRO believes that Form CM-110 should be revoked. Case management practices differ from county to county and this form is not suitable for every court. She noted that, if the form is approved, courts will be required to accept it.

Judge Jacobs-May commented that the form has been approved since 1996 and has not caused any problems. The proposed revisions make the form consistent with new rules 212 and 512.

Judge Boland said it might be helpful to have a jointly prepared statement rather than individual statements submitted by all parties. Judge Jacobs-May noted that the committee discussed this and felt that the increased expense of orchestrating a joint statement offset its potential benefits.

Judge Steven E. Jahr expressed concern that an attorney could present CM-110 and disregard local rules. He felt that statewide forms were beneficial; however, in this case, the form is not comprehensive enough.

*Council action:*

Judge Jahr moved that the Judicial Council, effective July 1, 1999:

1. Amend rule 212 (meet-and-confer requirement) without the sentence in subdivision (c), "The statement may be made on Judicial Council Form CM-110."
2. Adopt rule 512 (meet-and-confer requirement) without the sentence in subdivision (c), "The statement may be made on Judicial Council Form CM-110."
3. Revoke *Case Management Conference Statement* (Form CM-110) and *Case Management Conference Orders* (Form CM-120).

Mr. Michael Case expressed support for Judge Jahr's motion. He noted that the proposed form does not require a meet-and-confer conference, and it allows counsel to state a unilateral argument. He felt this is not a position the council wants to promulgate.

Judge Jacobs-May reiterated that current CM-110 has been used since 1996 without negatively affecting the processes in the local courts that have better rules.

Justice Richard D. Aldrich noted that proposed Form CM-110 does require attorneys to certify that they have met and conferred. He commented that the use of the approved council form does not necessarily preempt local rules. Local rules can require attorneys to answer additional questions.

Mr. Michael Bergeisen, AOC General Counsel of the Administrative Office of the Courts, restated that the Civil and Small Claims Advisory Committee would review the issue of case management in the coming year. The committee will consider all related forms and rules at one time. He cautioned the council against adopting a form in isolation.

*Council action:*

Justice Huffman moved to bifurcate the issues in Judge Jahr's motion and call the question on rules 212 and 512.

The motion passed.

*Council action:*

Justice Huffman moved to revoke *Case Management Conference Statement* (Form CM-110) and *Case Management Conference Orders* (Form CM-120).

The motion passed on a roll call vote with nine in favor and six opposed.

## **Item 9      Fiscal Year 2000–2001 Trial Court Budget Priority Program Areas**

Judge Ray L. Hart, chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Mr. Jonathan Wolin, manager of the Trial Court Funding Unit. Judge Hart reported on the results of the Needs Assessment Survey (NAS) I that was sent to the trial courts in February 1999. Trial courts were asked to prioritize program areas and give cost estimates for each program, taking into account unique local needs.

Judge Hart stated that, based on the results of the survey, the TCBC recommended:

- Integrating technology into each program area rather than maintaining it as a separate program. This change will not affect the ability to track technology costs separately from other program costs.

- Excluding New Judicial Positions in the overall ranking as this is done in a separate process conducted annually by the Court Profiles Advisory Committee.
- Establishing 4 separate tracks: (1) New Judicial Positions; (2) Court Interpreters; (3) Imposed Costs, which consists of Negotiated Salary Increases; and (4) Court Operations, which includes all other programs. These 4 tracks would not be ranked with one another.
- Allowing the budget request for fiscal year 2000–2001 to be within a range of 8.5 to 9 percent above the current year’s authorized budget.
- Funding the following top priority areas in the Court Operations track in the first year and continuing to fund them until they are fully funded: Case Processing; Family and Children; Increased Public Access and Accountability; County/State Transition Responsibilities; and Jury Issues. The other 3 tracks would be funded each year in an amount to be determined.

Judge Hart stated that local courts identified a total need for \$682 million. The TCBC recommended distribution of \$621,161,950 million, over a five-year period, to the identified priority programs (\$682 million minus fiscal year 1998–1999 approved deficiencies and fiscal year 1999–2000 proposals in the Governor’s budget).

Judge Hart noted that the NAS II will ask courts to stay within the figures indicated in the NAS I, provide a written explanation for increases in these figures, and state what they did with funds provided in fiscal year 1998–1999.

Ms. Gonzalez asked if courts will be asked to update NAS I or just to complete NAS II. Judge Hart responded that courts will not be asked to update NAS I.

*Council action:*

Justice Huffman moved that the Judicial Council:

1. Approve the integration of technology requests into each program area, as appropriate, rather than maintain them as a separate program, to allow for the identification of total need in each program area.
2. Approve separating the New Judicial Positions program from the overall ranking because the process for request, review, and approval of these positions is performed by the Court Profiles Advisory Committee. After consultation with that committee, the request for new judicial positions would be included each year in the final budget request that is submitted to the Governor and the Legislature.
3. Approve the establishment of 4 separate tracks for the 12 program areas for budget planning purposes: (1) New Judicial Positions; (2) Court Interpreters; (3) Imposed Costs, which consists of Negotiated Salary Increases; and (4) Court Operations, which consists of all other programs (i.e., Case Processing, Family and Children, Increased Public Access and Accountability, County/State Transition Responsibilities, Security, Court-Appointed Counsel, Jury Issues, Training and Education, and Verbatim

- Reporting). The first 3 programs would not be prioritized with the others.
4. Adopt a funding option that:
    - a. Develops a five-year budget plan;
    - b. Contains 12 program areas;
    - c. Will result in a budget request for fiscal year 2000–2001 that would be within a range of 8.5 to 9 percent above the current year’s authorized budget;
    - d. Would begin to fund the top priority areas in the Court Operations track in the first year of the plan (Case Processing, Family and Children, Increased Public Access and Accountability, County/State Transition Responsibilities, and Jury Issues) and would continue to be a priority until fully funded. The other 3 tracks would be funded each year in an amount to be determined.
  5. Approve the proposed prioritization of the trial court budget categories subject to the following:
    - a. Direct that the final Trial Court Budget Commission budget recommendations submitted for council approval in August include:
      - i. Program descriptions of initiatives within each broad category including:
        - (1) A statement of the problem;
        - (2) The proposed solution;
        - (3) Implications of the solution (e.g., does it fully resolve the problem in all courts?);
        - (4) Out-year funding implications; and
        - (5) Clear documentation of workload changes that justify funding increases.
      - ii. An analysis of why, in the orderly development of a state-funded court system, as a matter of policy and operations, the proposed programs are deemed the most important funding priorities for fiscal year 2000–2001; and
      - iii. Any other information the TCBC deems appropriate.
    - b. Direct staff to prepare an analysis of the following:
      - i. Implications for issues not included in the priorities (e.g., security and dependency representation);
      - ii. Implications for enhanced technology (e.g., integrated case management systems and financial management systems);
      - iii. Update on the implementation of state trial court funding thus far and projected state revenue levels for fiscal year 2000–2001.

The motion passed.

#### **Item 10      Fiscal Year 1998–1999 Additional Allocations**

Judge Hart, chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Mr. Wolin, manager of the Trial Court Funding Unit. Judge Hart stated that the TCBC recommended approval of an interim carryover policy and allocation of funding to:

- Address errors in reporting fiscal year 1996–1997 expenditures;
- Increase the salaries of municipal court judges and commissioners and referees (excluding AB 1058 commissioners) in unified court systems by 3 percent commensurate with the salary increase received by judges; and
- Address documented additional underreported costs and increased workload in court-appointed counsel for juvenile dependency and Family Code section 3150 representation.

*Council action:*

Judge Ana Maria Luna moved that the Judicial Council:

1. Allocate \$731,983 to the base budgets of 3 countywide trial court systems in which underreporting errors in fiscal year 1996–1997 artificially reduced the courts’ base operating budgets: San Diego (\$641,892), Trinity (\$75,864), and Tuolumne (\$14,227).
2. Allocate \$1,779,351 to fund a 3 percent cost-of-living adjustment (COLA) for municipal court judges and subordinate judicial officers as follows:
  - \$820,430 representing the full-year amounts for municipal court judges in the 6 non-unified countywide trial court systems and partial-year amounts for municipal court judges in those countywide trial court systems that unified between July 1, 1998, and March 23, 1999 (Column E on Attachment A).
  - \$958,921 representing full-year amounts for commissioners (excluding AB 1058 commissioners) and referees (Column H on Attachment A).
3. Allocate \$3,667,295 for court-appointed counsel costs to fund additional underreported costs and workload growth (Attachment B), as follows:
  - \$2,596,223 for documented additional underreported costs in 23 court systems;
  - \$260,280 for 6 court systems for revised fiscal year 1997–1998 workload growth, which includes reducing the funding of 1 court system by \$319,464 (for non-rule-810 allowable representations) from the previous allocation of \$3.2 million;
  - \$810,792 to 8 court systems for additional, previously unidentified workload growth in fiscal year 1998–1999.
4. Approve the interim carryover policy for carryover from fiscal year 1997–1998 to fiscal year 1998–1999 (Attachment C).

The motion passed.

**Item 11      One-Day/One-Trial: Implementation of Government Code Section 68550; Adopt Rule 861 (Cal. Rules of Court)**

Judge Dallas Holmes, chair of the Task Force on Jury System Improvements, presented the report, assisted by Ms. Kim Taylor, committee staff. Judge Holmes stated that the intent of the proposed rule is to reduce waste of juror time and increase juror

participation. He noted that in drafting the rule the task force set broad parameters in order to be as inclusive as possible, reduce the number of exceptions, and comply with state law. The task force did not want to draft a rule that would make the 24 courts already utilizing one-day/one-trial systems out of compliance.

Judge Holmes said the task force defined “one-day” as the hours of one normal court working day and “on call” as all same-day notice procedures used to inform prospective jurors of the time they are to report for jury service. He said that telephone standby is defined as all previous-day notice procedures.

Judge Harbin-Forte reported that the Rules and Projects Committee (RUPRO) reviewed the task force’s proposal and recommended the adoption of the task force’s draft rule with one change. RUPRO suggests that a subdivision (e) be added to the rule, as follows:

(e) **[Limited on-call exemption]** If the jury commissioner determines and demonstrates to the Judicial Council by September 1, 1999, that limiting on-call service to one day by January 1, 2000, would seriously impair the trial court system’s ability to impanel juries within the time limits for trial in criminal cases, the court system may require jurors to serve:

- (1) Up to three days on call until December 31, 2000;
- (2) Up to two days on call until December 31, 2001; and
- (3) No more than one day on call on or after January 1, 2002.

*Council action:*

Judge Harbin-Forte moved that the Judicial Council, effective July 1, 1999, adopt rule 861 to limit jury service to either one day or one trial, as proposed by the task force, with the additional subdivision (e) as proposed by the Rules and Projects Committee.

The motion passed.

Justice Huffman expressed concern about the implementation of rule 861, subdivision (d), which allows the Judicial Council to grant an exemption from the requirements of the rule if the trial court demonstrates good cause. He proposed that the council adopt a policy that permits staff to develop a method for reviewing requests and delegating to the Administrative Director the ability to approve them or to submit them to the Executive and Planning Committee for action on behalf of the council.

Mr. Vickrey clarified that the recommendation is that the full council would review and vote on any application for an exemption from rule 861. The council would delegate to the Administrative Director only review of documentation for, and approval of, any

limited exemptions under subdivision (e) of the rule. Requests for limited exemptions under subdivision (e) that are denied by the Administrative Director would be forwarded to the Executive and Planning Committee for review and action on behalf of the council. The Executive and Planning Committee would forward issues requiring policy decisions to the full council.

*Council action:*

Justice Huffman moved that the Judicial Council adopt the following policy to clarify the procedures for review of applications and submissions for exemptions under the one-day/one-trial rule:

1. All applications for exemptions under subdivision (d) of rule 861 must be submitted to the council.
2. The council delegates to the Administrative Director of the Courts and Secretary of the Judicial Council the responsibility to review all submissions under subdivision (e) of rule 861. If the Administrative Director concludes that the submission qualifies for a limited exemption under subdivision (e), the exemption will be granted. If not, the matter will be submitted to the Executive and Planning Committee for a decision on behalf of the council. If the decision requires a determination on any policy issues, the Executive and Planning Committee will submit those issues to the council.

The motion passed.

**Item 12      Adopt New Rule on Examination in a Small Claims Appeal (Cal. Rules of Court, rule 157)**

Ms. Cara Vonk, Civil and Small Claims Advisory Committee counsel, presented the report. She said that the committee recommended the adoption of new rule 157 to permit parties and attorneys representing parties in a small claims appeal to conduct direct and cross-examination. To ensure informality, the committee proposed that the court control the manner, mode, and duration of the examination.

Judge Harbin-Forte reported that the Rules and Projects Committee (RUPRO) suggested adoption of a rule that gives the judge more discretion than the proposal submitted by the Civil and Small Claims Advisory Committee.

*Council action:*

Judge Harbin-Forte moved that the Judicial Council adopt new rule 157 as follows: Parties or attorneys representing parties to the appeal may conduct direct and cross-examination, subject to the court's discretion to control the manner, mode, and duration of examination in keeping with informality and the circumstances.

Judge J. Richard Couzens expressed his concern about the use of the word “may” in the motion. He said that the language enabled a court to restrict a party from direct and cross-examination and not just the mode and manner of the examination. He urged the council to consider the following wording: “Parties and attorneys representing parties to the appeal shall be permitted a limited opportunity to question witnesses. The court, to ensure informality, shall control the subject matter, manner, mode, and duration of the questioning.” Judge Couzens noted that people expect their attorneys to meaningfully participate in court proceedings.

Mr. Case said that he understands the confusion with the present wording. It is unclear whether the discretion applies to the judge or the attorney. He stated that RUPRO intended the word “may” in this instance to mean “shall be permitted to.”

Justice Huffman said that there was no constitutional right to call or question witnesses in small claims court. He stated that he would not support a motion giving attorneys the right to question witnesses.

Judge Dover commented that judges can interact with attorneys to make sure all issues are raised without allowing direct cross-examination. He said judicial education was important to ensure the proper handling of small claims cases.

Judge Jahr said that Judge Couzens’s proposal would seem to inhibit a judge from ensuring a level playing field in the courtroom by controlling questioning.

Justice Huffman asked the genesis of the proposal. He was not aware there was a problem in this area. Ms. Vonk responded that the Commission on Judicial Performance (CJP) wrote a letter to the Department of Consumer Affairs questioning a statement in the department’s *Consumer Law Sourcebook*. The AOC was copied on the letter, which mentioned that the CJP received many complaints from attorneys confused about the right of attorneys to question witnesses and the discretion of judges to allow it. Ms. Vonk said that in drafting the rule the Civil and Small Claims Advisory Committee was clarifying the issue.

Justice William M. Wunderlich suggested wording that clarified that courts have the discretion to allow questioning.



*Council action:*

Justice Huffman made a substitute motion that the Judicial Council approve new rule 157 as follows: “The court may allow parties or attorneys representing parties to the appeal to conduct direct and cross-examination, subject to the court’s discretion to control the manner, mode, and duration of examination in keeping with informality and the circumstances.

The motion passed.

**Item 13                      Statutory Authorization of Commissioner Positions**

Ms. Kate Harrison, Assistant Director of the Trial Court Services Division, and Mr. John Larson, Court Profiles Advisory Committee staff, presented the report. They said that the state Constitution requires that commissioner positions be authorized by statute. A paper written for the council in February 1999 raised a concern regarding commissioner positions that exist without apparent statutory authority. The council directed staff to analyze these positions and recommend statutory authorization for them.

Mr. Larson reported that two commissioner positions lacking state statutory authority were created by county board of supervisors’ resolutions. These positions were previously county-funded positions that became state-funded positions after enactment of Assembly Bill 233.

Mr. Larson said that another three to nine positions were created pursuant to Government Code section 72450. This code section allows for the appointment of *a* traffic trial commissioner by the judges of a municipal court if the board of supervisors finds sufficient funding exists. He noted that because of a difference in interpretation of this section, several counties appointed more than one traffic trial commissioner. The section was interpreted to mean the appointment of one traffic trial commissioner per county, one commissioner per municipal court district, or any number of commissioners to the extent that sufficient funding is identified. The different interpretations of the provision mean that some of these positions may not be authorized.

Mr. Larson stated that additional commissioner positions were appointed pursuant to Government Code section 73089. This section allows a county municipal court judge to appoint additional staff (i.e., deputy clerks, officers, assistants, officers, and other employees) with the approval of the board of supervisors. Seven commissioner positions that fall into this category were created. The question that arises under this code section is whether “officers and other employees” includes “commissioner” positions.

Staff identified the following options for the council to remedy this situation:

- Include specific authorizing language in omnibus staffing legislation for the two board of supervisors–created commissioner positions that lack state statutory authority.
- Draft a general grandfather provision for all of the commissioners in existence that do not have statutory authority as of the beginning of the year.
- Not authorize these positions at all.

Mr. Larson noted that some courts may feel that for the council to authorize the commissioner positions created without statutory authority would be rewarding courts that went beyond the legal limits. However, the positions are longstanding, they are integral to effective court operations in the affected counties, and they result from ambiguity in the code sections.

Ms. Harrison stated that a study on subordinate judicial officers undertaken at the council’s direction will consider requiring courts to request commissioner positions through the council to prevent the additional appointment of unauthorized commissioners in the future.

Judge Melinda A. Johnson asked whether boards of supervisors can authorize prospective commissioner positions that the council and state would then have to finance. Ms. Harrison replied that AB 233 makes it clear that any commissioner positions created after 1997 cannot be funded with state funding. However, the council may have other reasons for requiring that it sanction the creation of commissioner positions. Currently, boards of supervisors can authorize commissioner positions if they fund them.

Commissioner David L. Haet asked when the two positions were created by boards of supervisors. Ms. Harrison responded that the positions were created 10 to 15 years before. Judge Ronald Taylor reported that one of the positions is in Riverside County and was created in 1970.

*Council action:*

Ms. Gonzalez moved that the Judicial Council direct staff to draft and submit language to the Policy Coordination and Liaison Committee to include in omnibus staffing legislation a provision to authorize those trial court commissioner positions that were in existence as of January 1, 1999, that do not already have specific statutory authorization.

The motion passed.

## Item 14 Drug Court Partnership Act of 1998 Grant Awards

Judge Stephen V. Manley, member of the Oversight Committee for the California Drug Court Project and co-chair of the Executive Steering Committee for the Drug Court Partnership Act, and Ms. Elaine Bush, Acting Director of the State Department of Alcohol and Drug Programs and co-chair of the Executive Steering Committee, presented the report assisted by Ms. Fran Jurcso, committee staff. Judge Manley indicated that the oversight committee previously submitted policies and procedures for the Drug Court Partnership Act that the council approved. In March 1999, Request for Application materials were forwarded to counties. All 34 applications that were received passed technical review. These 34 grant requests totaled \$7,136,181.

Ms. Bush reported that limitations in available funding this year allow grants to only 18 counties. Small and medium-size counties will receive \$1.5 million; large counties will receive \$2.3 million. If Governor Davis's proposal for full funding is approved, grants can be approved for the additional applicants.

### *Council action:*

Ms. Gonzalez moved that the Judicial Council:

1. Approve grant awards for fiscal year 1998–1999 as follows:

#### *Large counties:*

- a. Contra Costa (\$400,000)
- b. Los Angeles (\$400,000)
- c. Riverside (\$400,000)
- d. San Diego (\$399,902)
- e. San Bernardino (\$300,098)
- f. Santa Clara (\$400,000)

#### *Medium-size and minimum-base counties:*

- g. Butte (\$125,000)
  - h. Glenn (\$125,000)
  - i. Humboldt (\$125,000)
  - j. Kern (\$125,000)
  - k. Mendocino (\$125,000)
  - l. Napa (\$125,000)
  - m. Placer (\$125,000)
  - n. San Joaquin (\$125,000)
  - o. San Mateo (\$125,000)
  - p. Sonoma (\$123,874)
  - q. Stanislaus (\$125,000)
  - r. Yolo (\$125,000)
2. Approve additional awards in fiscal year 1999–2000 from the original solicitation

process for existing ranked but unfunded programs:

*Large counties:*

- a. Alameda (\$400,000)
- b. Fresno (\$400,000)
- c. Orange (\$332,247)
- d. Sacramento (\$400,000)
- e. San Bernardino (\$99,902)
- f. San Francisco (\$351,432)

*Medium-size and minimum-base counties:*

- g. Madera (\$125,000)
  - h. Merced (\$125,000)
  - i. Nevada (\$125,000)
  - j. Plumas (\$125,000)
  - k. San Luis Obispo (\$125,000)
  - l. Santa Barbara (\$125,000)
  - m. Santa Cruz (\$125,000)
  - n. Shasta (\$125,000)
  - o. Sutter (\$124,886)
  - p. Tuolumne (\$125,000)
  - q. Ventura (\$103,840)
3. Direct that the Oversight Committee for the California Drug Court Project subsequently provide recommendations for distribution of any remaining funds not awarded in the current Request for Application process, should an additional \$3.8 million be allocated by the Legislature in fiscal year 1999–2000, as anticipated.

The motion passed.

**Item 1I      Identifying Mandatory and Optional Forms and Clarifying Use of Legal Forms; Add Division III (Forms List) to the Appendix to the California Rules of Court; Amend Rules 982, 982.1, and 982.9; and Repeal Rules 982.5 and 982.7**

Mr. Ben McClinton, staff attorney, presented the report. He noted that the item was moved from the consent to the discussion agenda at the request of a council member. He said the Rules and Projects Committee proposed the rules and revisions to help clarify whether a Judicial Council form is mandatory or optional. Part of the proposal added language to rule 982 to codify an apparent practice that some courts are making optional forms mandatory by local court rule. Local probate court rules in many courts make optional forms mandatory; however, staff has determined that this practice does not occur in other areas of the law.

Staff proposed that the council approve the recommendations in Item 1I as in the binder of Reports and Recommendations and in the amendment distributed as a handout. The

amendment deletes as unnecessary the provisions in rule 982 that a local court may make an optional form mandatory (such provisions are not in the current rule). Staff also proposed that the Probate and Mental Health Task Force consider circulating for comment a proposal to make the probate forms mandatory to reflect actual practice in many counties.

*Council action:*

Mr. Case moved that the council, effective July 1, 1999:

1. Add Division III—a list of all forms indicating which are mandatory and which are optional—to the Appendix of the California Rules of Court.
2. Amend rule 982 to identify clearly whether forms are mandatory and optional, require publication of a list identifying mandatory forms, clarify what changes local courts may make to the forms, and make other clarifications on use of legal forms. New rule 982 will not include a provision that authorizes a local court to require that an optional form be mandatory.
3. Amend rule 982.1 to delete the list of pleading forms that will now be listed in Division III of the Appendix to the rules.
4. Amend rule 982.9 to remove references to an experiment with typewritten family law forms in subdivisions repealed in 1991 and to make other technical amendments.
5. Repeal rules 982.5 and 982.7 on lists of wage garnishment forms and small claims forms, both of which will now be listed in Division III of the Appendix to the rules).
6. Direct the Probate and Mental Health Task Force to consider circulating for comment a proposal to make the probate forms mandatory.

The motion passed

**Circulating Order — CO-99-02:SCA 4 Certification of Tuolumne County**

For information only; no action necessary.

The meeting was adjourned at 5:20 p.m.

Respectfully submitted,

---

William C. Vickrey  
Secretary