

JUDICIAL COUNCIL MEETING

Minutes of July 16, 2003, Meeting

The Judicial Council of California business meeting began at 2:47 p.m. on Wednesday, July 16, 2003, at the Administrative Office of the Courts (AOC) in San Francisco, on the call of Chief Justice Ronald M. George, chair.

Judicial Council members present: Chief Justice Ronald M. George; Associate Justices Marvin R. Baxter, Norman L. Epstein, Richard D. Huffman, and Laurence D. Kay; Judges Gail A. Andler, Aviva K. Bobb, Eric Du Temple, William C. Harrison, Brad R. Hill, Jack Komar, William A. MacLaughlin, Heather D. Morse, Ronald M. Sabraw, Barbara Ann Zúñiga, Mr. Rex Heeseman, Mr. David J. Pasternak, Mr. William C. Vickrey, and Mr. Thomas J. Warwick, Jr.; **advisory members:** Judges Frederick P. Horn and Gregory C. O'Brien, Jr., Ms. Tressa Sloan Kentner, Ms. Susan Null, and Mr. Alan Slater.

Absent: Assembly Member Ellen M. Corbett, Senator Martha M. Escutia, Ms. Ann Miller Ravel, and Commissioner Patricia H. Wong.

Others present included: Justices Carol A. Corrigan and James D. Ward; Judges Michael T. Garcia, Michael Nash, and Richard Strauss; and Mr. Rex Heinke; **staff:** Ms. Gail Armstrong, Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. Dennis Blanchard, Mr. Brad Campbell, Mr. James Carroll, Ms. Tina Carroll, Ms. Roma Cheadle, Mr. Kevin Chew, Ms. June Clark, Ms. Doreen Cooke, Mr. Blaine Corren, Ms. Charlene Depner, Ms. Barbara Edwards, Mr. David Foster, Ms. Sheila Gonzalez, Ms. Charlene Hammitt, Ms. Christine M. Hansen, Ms. Fran Haselsteiner, Ms. Marjorie Hodges, Ms. Lynn Holton, Ms. Bonnie Hough, Ms. Susan M. Hough, Mr. Harry Jacobs, Ms. Beth Jay, Ms. Martha Kilbourn, Mr. Ray LeBov, Mr. Jacob Linetsky, Mr. Wade Love, Ms. Carolyn McGovern, Ms. Diane Nunn, Mr. Patrick O'Donnell, Mr. Ronald G. Overholt, Ms. Christine Patton, Ms. Nancy Polis, Mr. Daniel Pone, Ms. Lori Rittweger, Mr. Michael M. Roddy, Ms. Lucy Smallsreed, Ms. Sonya Smith, Ms. Pat Sweeten, Ms. Theresa Sudo, Ms. Marcia Taylor, Ms. Linda Theuriet, Ms. Karen M. Thorson, Ms. Cara Vonk, Mr. Nelson Wong, and Ms. Pat Yerian; **media representatives:** Ms. Julia Cheever, Bay City News Service; Mr. Jeff Chi, *San Francisco Examiner*; Mr. Jeff Chorney, *The Recorder*; Ms. Donna Domino, *Daily Journal*; Mr. Ron Harris, Associated Press; Ms. Evelyn Rusli, *San Francisco Examiner*, Ben Temchine, *The Recorder*, Tony Keogh, O'Rorke Communications Inc..

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated July 16, 2003, that was sent to members in advance of the meeting.)

Welcome Remarks

Chief Justice Ronald George welcomed the newly appointed members of the Judicial Council: Judges Michael T. Garcia, Presiding Judge of the Superior Court of Sacramento

County; Michael Nash, Presiding Judge of the Juvenile Court, Superior Court of Los Angeles County; Richard E.L. Strauss, Presiding Judge of the Superior Court of San Diego County; Mr. Rex Heinke, Los Angeles attorney; and Mr. Alan Slater, Executive Officer of the Superior Court of Orange County, who has been reappointed for another term. Judge William J. Murray, Jr., of the Superior Court of San Joaquin County was not able to attend.

Approval of Minutes of April 15, 2003

The council approved the minutes of April 15, 2003, meeting.

Special Presentation

Chief Justice Ronald M. George and William C. Vickrey, Administrative Director of the Courts, paid tribute to Ms. Gail Armstrong, AOC travel coordinator, who is retiring after 15 years of dedication and commitment in providing exceptional travel and customer service in the California judiciary and the Administrative Office of the Courts.

Judicial Council Committee Presentations

Executive and Planning Committee

Associate Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee (E&P) had met twice since the April council meeting. E&P met in San Francisco on June 11, 2003, to review the nominations for Judicial Council positions. Justice Huffman reported that the nomination process was moved up in order for the new members to participate in the July planning session.

The committee approved an allocation of funds to the Trial Court Transactional Assistance Program. The allocation will enable the AOC to continue providing the legal services required by the trial courts.

The committee, having conferred with the Office of the General Counsel and the Litigation Management Committee regarding the proposed settlement of the National Association of Securities Dealers (NASD) and New York Stock Exchange (NYSE) litigation, rejected the settlement offer. The committee approved the filing of an amicus brief in a case with related issues. The committee also requested that requests to file amicus briefs continue to be brought to E&P.

Justice Huffman reported that E&P met by conference call on June 24, 2003, to set the agenda for this meeting and held discussions regarding the upcoming planning meeting. At that meeting, the committee also received an update on the Trial Court Five-Year Capital Outlay Plan.

Lastly, E&P approved the reallocation of funding for child support commissioner and family law facilitator programs to reduce the base allocation in 14 courts that had consistently not

spent their full allocation and to increase the base allocation in the court that had insufficient funds for those programs.

Policy Coordination and Liaison Committee

Associate Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee (PCLC) had met five times since the last Judicial Council meeting and taken positions on 11 bills relating to court fees, fines, penalties, civil and small claims, criminal law, family law, juvenile dependency, and trial court funding and operations. The committee, in conjunction with the chairs of the Rules and Projects Committee (RUPRO) and the Executive and Planning Committee, approved the following proposals for council-sponsored legislation:

1. Assembly Bill 1641. Clarifies the authority of the Chief Justice to issue emergency orders.
2. Assembly Bill 1710. Adds amendments to court operations cleanup bill to authorize a deposit and expenditure of jury instruction royalties for continued improvement of the jury system and adds a provision to allow Court Appointed Special Advocate (CASA) programs to seek directly from the Department of Justice criminal background checks on volunteers.
3. Assembly Bill 1095 (co-sponsored by the California State Association of Counties and Council of California County Law Librarians). Requires the Judicial Council to establish a task force on funding for county law libraries.
4. Senate Bill 940 (authored by Senator Escutia). Requires the Judicial Council to adopt guidelines for a comprehensive collection program by establishing a collaborative court-county working group on collections and requiring courts and counties to report on the effectiveness of the collection programs.

Justice Baxter reported that other council-sponsored bills are in progress in the Legislature and noted that the 2003 legislative status chart containing both Judicial Council-sponsored legislation and positions on other bills taken by the PCLC is available on the California Courts Web site. He indicated that the legislative session would end on September 12, 2003, while October 12, 2003, is the last day for the Governor to sign or veto bills. Once the session ends, the Office of Governmental Affairs will prepare the annual *Court News Legislative Summary*, which is published in November and highlights bills of interest to the courts and to the judiciary. In October the PCLC will review proposals for the 2004 Judicial Council-sponsored legislation. The committee's recommendation will be presented to the full council in December.

Rules and Projects Committee

Judge Gail A. Andler, chair, reported that the Rules and Projects Committee (RUPRO) met in San Francisco on June 5 and 30, 2003, to review the proposed new Judicial Council civil jury instructions and an accompanying proposal for new and revised rules and standards concerning the maintenance of jury instructions. Judge Andler reported that Justice James D. Ward, vice-chair of the Task Force on Jury Instructions, participated at both meetings. The

committee reviewed approximately 800 civil jury instructions and special verdict forms that led to changes in many instructions. RUPRO recommends approval of all civil jury instructions and special verdict forms and the proposal for new and amended rules and standards that would govern the use and maintenance of the jury instructions. Judge Andler suggested that any forthcoming comments from council members be referred first to the new maintenance committee then back to RUPRO and the council as a whole.

Judge Andler reported that RUPRO has provided, for public circulation, a proposed rule to amend rule 229 to establish a uniform statewide format for the submission of proposed jury instructions to trial courts. The proposal will be before the council at its October 2003 business meeting.

Centro de Ayuda de las Cortes de California (No Action Required)

Ms. Bonnie Hough, senior attorney in the AOC's Center for Families, Children & the Courts, introduced the California Courts Spanish Online Self-Help Center: Centro de Ayuda de las Cortes de California. The site at www.sucorte.ca.gov mirrors the California Courts Online Self-Help Center launched in July 2001. Centro de Ayuda de las Cortes de California is a comprehensive Spanish-language resource designed to empower self-represented litigants to navigate the court system and acquire free information about the law and court procedures.

This project, to be launched on July 28, 2003, is the largest outreach the AOC has extended to the Spanish-speaking community to communicate that they are welcome in the California court system. Ms. Hough reported that the AOC is working with a Spanish language media firm to reach radio, television, and Spanish language press. Supreme Court Justice Carlos Moreno will be a spokesman for the outreach effort.

Lastly, Ms. Hough acknowledged the efforts of Mr. Nelson Wong and staff from the Information Services Division; Mr. Harry Jacobs, Mr. Kevin Chew, and other CFCC staff who participated in the legal review of the site; Office of the General Counsel staff; and Office of Communications staff, namely Mr. James Carroll, Ms. Lynn Holton, Ms. Ellen McCarthy, and Mr. Blaine Corren.

CONSENT AGENDA

For the benefit of the newly appointed council members, Chief Justice George stressed that issues placed on the consent agenda are not of lesser importance than issues on the discussion agenda. He explained that although discussion and action is not required on consent agenda items, council members are urged to always review those items.

Item 1 Report of the Blue Ribbon Panel of Experts on the Fair and Efficient Administration of Civil Cases (For Information Only; No Action Required)

The Report of the Blue Ribbon Panel of Experts on the Fair and Efficient Administration of Civil Cases recommends amendments to rules and standards to ensure that civil cases are considered individually on their merits and are managed in a more flexible and practical manner. The panel's proposals will be reviewed by the Civil and Small Claims Advisory Committee and then by the Rules and Projects Committee, which will consider whether to circulate them for comment on an expedited basis. The Judicial Council would then consider the panel's final recommendations at its October 2003 meeting.

Council action:

This item was for information purposes only. No action was necessary.

DISCUSSION AGENDA

Item 2 Report on Initial Meeting of Rural Court Judges Working Group on Administrative and Operational Efficiency (Discussion Only; No Action Required)

Mr. Michael M. Roddy, Regional Administrative Director of the Northern/Central Regional Office, provided background information on the establishment of the Rural Court Judges Working Group on Administrative and Operational Efficiency, which is composed of 15 judges representing 29 trial courts with 8 or fewer judges. The working group results from a commitment made at the 2003 California Judicial Administration Conference (CJAC) by the AOC and representatives of the rural courts to collaboratively address and discuss concerns about and propose alternatives to the consolidation of court administrative functions. Because concerns were expressed that proposals about shared or consolidated administration were developed without sufficient input and involvement from the smaller rural courts potentially most affected by such proposals, a decision was made to establish the Rural Court Judges Working Group on Administrative and Operational Efficiency. The working group was created to provide a forum for smaller courts to effectively communicate their issues and concerns, and to examine, evaluate, and provide input to the Judicial Council as administrative infrastructure initiatives are implemented.

The principal charge of the working group is to develop, for Judicial Council consideration, options and specific recommendations on the following issues:

- How can the transition to statewide administrative infrastructure be accomplished in the rural courts in a timely, efficient, and effective manner?
- What is the most efficient way to provide administrative resources for rural courts for transactional support and for less frequently needed higher-level professional administrative support? How can this be effectively integrated into the state-level

administrative structure? And what is the appropriate expectation for each rural court and for the regional office?

- What options are available to improve the sharing of judicial resources in rural courts (e.g., judges, retired or active; subordinate judicial officers; facilities)?

The initial meeting of the working group was held on May 17, 2003. Also in attendance were Judicial Council liaisons Judge Brad R. Hill and Judge Eric Du Temple. The meeting had a positive and productive start with a strong commitment to work with the council and the AOC notwithstanding the concerns of the rural court, which include the following:

1. Whether there is a need for and what the assumptions are behind the direction to implement a statewide judicial branch infrastructure;
2. That efforts to consolidate administrative services, to establish administrative districts, or to implement systems that remove from the trial courts direct responsibility for some or all administrative services are targeted at and will have the greatest impact on the smallest courts;
3. That statewide or regional administrative infrastructure will be imposed without meaningful discussion with the courts most affected and that a policy, such as establishing administrative districts may conflict with the council's objective of maintaining a system of decentralized management;
4. That increased state or regional services would restrict the control of local trial judges, who committee members view as closer and more visibly responsible to a local electorate;
5. That rural courts are often unfairly viewed as inefficient in providing administrative services when compared to larger courts; and
6. The potential breadth and scope of a statewide or regional administrative infrastructure.

Regardless of these concerns, the working group acknowledges that there are areas and tasks that lend themselves to statewide or regional approaches. The working group intends to provide to the council its full perspective on the implementation of judicial branch administrative infrastructure initiatives and also to make recommendations that will assist in the effective coordination of local efforts with statewide or regional initiatives.

Mr. Roddy reported that the working group has formed three subcommittees to develop recommendations in the areas of information technology, legal services, judicial assignments, and other areas of administrative services, such as purchasing, contracting, and human resources services that will support administrative initiatives underway. These recommendations will appear in the working group's first report to the council for consideration later this year.

A question was raised regarding how to address the problem faced by small rural court judges who cannot afford to take time off to participate in Judicial Council-related functions. Mr. Roddy responded that the working group is exploring ways to cover the needs of the courts

within the existing framework of reciprocal assignments and to back it up with the use of assigned judges.

Council action:

This item was for discussion purposes only. No action was necessary.

Item 3 Judicial Council Jury Instructions: Approve Publication of Civil Instructions Prepared by the Task Force on Jury Instructions (adopt Cal. Rules of Court, rules 855, 6.58, and 6.59; amend rule 6.13; amend Cal. Stds. Jud. Admin., § 5) (Action Required)

Justice Carol A. Corrigan, First Appellate District, Division Three, chair of the Task Force on Jury Instructions, announced the completion of the civil jury instructions. She congratulated Justice Ward, the subcommittee members, and AOC staff for their tremendous work on such an enormous task. Justice Corrigan commended Justice Ward for his leadership and acknowledged the significant contribution of the judges of the Superior Court of Los Angeles County for their eight decades of California jurisprudence in developing and maintaining the Book of Approved Jury Instructions (BAJI). The task force learned from their vision in producing model instructions for all California's courts.

Justice Corrigan summarized the proposed rule changes that were circulated for comment. She reported that the task force anticipates that the criminal instructions will be forthcoming within the next 18 to 24 months.

Ms. Lyn Hinegardner, attorney of the Office of the General Counsel, detailed the extensive process undertaken to ensure that the jury instructions are readily understood by the average juror and legally accurate.

Justice Ward presented the 2003 Burton Award plaque that he accepted on behalf of the Judicial Council of California for the effort to rewrite the civil and criminal jury instructions. Justice Ward received the award in a ceremony at the Law Library of Congress. Justice Ward concluded by expressing thanks to the Chief Justice and the Judicial Council for their foresight in putting the jury instruction project into motion and for the opportunity to participate in the improvement of the jury process.

Council action:

The Judicial Council, effective September 1, 2003:

1. Approved for publication the civil jury instructions prepared by the task force;
2. Adopted rules 855 and 6.58 of the California Rules of Court, amended rule 6.13, and amended section 5 of the California Standards of Judicial Administration, to recommend the use of the civil instructions and establish an advisory committee on civil instructions; and
3. Effective September 1, 2005, adopted rule 6.59 establishing an advisory committee on criminal jury instructions.

Chief Justice George expressed his appreciation to the staff and to the task force for their accomplishment and stated that he looks forward to the coming instructions in the area of criminal law. He also thanked RUPRO for their fine work in reviewing more than 800 jury instructions.

Circulating and Appointment Orders Approved

Circulating Order—CO-03-02: *Establishment of an Approval Process for Lines of Credit During a Budget Impasse*

Circulating Order—CO-03-03: *“Resolution to Support Federal Tax-Intercept Legislation”*

Appointment Orders

For information only; no action necessary.

There being no further business, the meeting was adjourned at 4:11 p.m.

Respectfully submitted,

William C. Vickrey
Secretary