

JUDICIAL COUNCIL MEETING

Minutes of August 24, 2000, Meeting

The Judicial Council of California meeting began at 8:45 a.m. on Thursday, August 24, 2000, at the Administrative Office of the Courts Judicial Council Conference Center in San Francisco, California, on the call of Justice Marvin R. Baxter, designated chair for the meeting.

Judicial Council members present: Chief Justice Ronald M. George (for part of the meeting); Justices Richard D. Aldrich, Marvin R. Baxter, Carol A. Corrigan, and Richard D. Huffman; Judges J. Richard Couzens, Leonard P. Edwards, Donna J. Hitchens, Steven E. Jahr, Melinda A. Johnson, Ana Maria Luna, Ronald B. Robie, and Ronald L. Taylor; Mr. John J. Collins, Ms. Pauline W. Gee, and Mr. Sheldon H. Sloan; and **advisory members:** Judge David John Danielsen, Commissioner David L. Haet, Mr. Ron Barrow, Mr. Stephen V. Love, Mr. Frederick Ohlrich, and Mr. Arthur Sims.

Absent: Judges James A. Bascue and Paul Boland; Senator Adam B. Schiff; Assembly Member Sheila James Kuehl; and Mr. Michael Case.

Others present included: Mr. William C. Vickrey; Justice Gary E. Strankman, Judges Gail Andrea Andler, Aviva K. Bobb, Judith Donna Ford, William C. Harrison, Ray L. Hart, Brad R. Hill, Wayne L. Peterson, and Ronald M. Sabraw; Commissioner Bobby Vincent, Mr. Aaron Alden, Mr. J. Barlettanz, Mr. Rex Heeseman, Ms. Beth Jay, Ms. Sharon Ruddell, Mr. Alan Slater, and Ms. Sheri Wert; **staff:** Ms. Heather Anderson, Ms. Jessica Fiske Bailey, Ms. Deirdre Benedict, Mr. Michael Bergeisen, Mr. Roy Blaine, Ms. Francine Byrne, Ms. Angel Contreras, Mr. James Carroll, Ms. Deborah Collier-Tucker, Ms. Francine Collier, Mr. Blaine Corren, Ms. Lesley Duncan, Ms. Diane Eisenberg, Mr. Robert Emerson, Ms. Rita Finchum, Ms. Denise Friday, Ms. Beth Gatchalian-Litwin, Ms. Charlene Hammitt, Ms. Christine (Tina) Hansen, Ms. Jacquelyn Harbert, Ms. Pat Kilkenny, Ms. Lynn Holton, Ms. Melissa Johnson, Mr. Dennis Jones, Ms. Camilla Kieliger, Mr. Peter Kiefer, Mr. Ray LeBov, Mr. Ben McClinton, Mr. Fred Miller, Ms. Vicki Muzny, Ms. Annemarie O'Shea, Mr. Victor Rowley, Mr. Frank Schultz, Ms. Dale Sipes, Ms. Sonya Smith, Ms. Marcia Taylor, Ms. Linda Theuriet, Ms. Karen Thorson, Ms. Diane Tong, Ms. Alice Vilardi, Ms. Karen Viscia, Mr. Jonathan Wolin, Ms. Pat Yerian; **media representative:** Ms. Donna Domino, *The L.A. Daily Journal*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and Recommendations dated August 24, 2000, which was sent to members in advance of the meeting.)

Council Committee Presentations

Executive and Planning Committee

Justice Richard D. Huffman, chair, reported that the Executive and Planning Committee met six times since the last council meeting.

On May 4, the committee voted to approve, on behalf of the Judicial Council, a motion to limit funding that a trial court can request for the Judicial Council–approved local needs priority program to 5 percent of the court’s baseline budget or \$100,000, whichever is greater. The committee asked staff to make it clear in a memorandum to courts outlining the policy that the statewide request submitted to the Department of Finance will not necessarily total 5 percent.

In June, each of the three internal committees of the council was asked to consider a proposal regarding the nonvoting membership of the Judicial Council. The Executive and Planning Committee discussed the proposal and voted to forward its recommendation to the other internal committees for discussion and to have the council vote on the consensus among the three committees via circulating order.

Justice Huffman reported that the Executive and Planning Committee met and reviewed items submitted for the July business meeting agenda. In light of the fact that a number of key discussion items are based on legislative and executive branch discussions that will not be resolved before the scheduled meeting date, the committee voted to change the structure of the meeting. Instead of a formal business meeting, it was decided that the council will meet on July 14 for an educational session to orient new members to existing practices and procedures.

In July and August, the committee met to review nominations submitted for vacancies on the Judicial Council. The committee forwarded recommendations to the Chief Justice, who made his appointments.

The committee also reviewed nominations submitted for a new Task Force on Probation Services and forwarded its recommendations to the Chief Justice for his selection and appointment. The task force is charged with assessing programs, services, organizational structures, and funding related to probation services provided by counties to the courts, and reporting its findings and recommendations to the Judicial Council, the Governor, and the Legislature.

The committee met twice in early August to review items submitted for the August business meeting agenda to ensure readiness for council action.

Policy Coordination and Liaison Committee

Justice Marvin R. Baxter, chair, reported that the Policy Coordination and Liaison Committee met five times by conference call since the last Judicial Council meeting. The committee adopted positions on 28 bills on issues relating to civil procedure, criminal law and procedure, domestic violence, family law, juvenile delinquency and dependency, jury service, and probate.

Justice Baxter reported that the Office of Governmental Affairs prepares a legislative summary, which highlights bills of interest to the judiciary. The summary will be published in the November issue of “*Court News*”

Rules and Projects Committee

Judge Steven E. Jahr, chair, reported that the Rules and Projects Committee had met twice by telephone since the last Judicial Council meeting.

Judge Jahr said that the committee reviewed and recommended approval of a proposal to revise statewide mandatory notice to appear forms and manual. The committee agreed that the proposal, recommended by the Traffic Advisory Committee, would be sent to the council by circulating order, to be effective immediately.

The committee also reviewed and suggested changes to amendments to rules 6.31 and 6.46, regarding the composition of the Trial Court Presiding Judges Advisory Committee. The rules, as amended, are on the council's consent agenda.

Judge Jahr said that the committee also reviewed rules and forms to implement Proposition 21 and Senate Bill 334; appellate and trial court rules on sealed records procedure; and the proposal regarding advisory membership of the Judicial Council, as was mentioned previously in Justice Huffman's committee report.

At its second meeting, the committee voted to recommend approval of a proposed policy on the Judicial Council's rule-making authority and to add rule-making reform to the objectives of the proposed Judicial Council Operational Plan. The committee also reviewed the proposed revised rules on the selection and duties of presiding judges and court executives, which are item 16 on the council's discussion agenda for today.

Judge Jahr referred council members to the handout indicating the committee's recommendation on each of the rules and forms proposals on the council's agenda.

Approval of the Minutes of the January 26, 2000, Judicial Council Meeting

Council action:

Justice Huffman moved that the Judicial Council approve the minutes of the April 28, 2000, meeting of the Judicial Council.

The motion passed.

CONSENT AGENDA (Items 1–9)

Item 1 **Modification of Council Policy Regarding the Use of Litigation and Excess Liability Funds**

In December 1999, the Judicial Council established a Litigation Fund and an Excess Liability Fund to be used to pay expenses incurred in claims and litigation relating to the trial courts. The funds can be used to pay for litigation costs incurred after January 1, 2000, in cases that arose from court operations or conduct by a judicial officer or trial court employee occurring after July 1, 1997. The July 1, 1997, date was based on the date when under the Trial Court Funding Act the state formally became responsible for costs of court operations.

A gap in coverage has emerged since the establishment of this policy. Under the existing policy, the funds are not available to pay for cases resulting from conduct before July 1, 1997. There are a few cases arising from pre-July 1997 conduct involving the trial courts or trial court judges in which the state has been named as a defendant. The council and the AOC have been required to defend against those suits as the relevant state client representative, although the council and the AOC's position has been that the county, not the state, has any liability that may arise from such conduct. As the funds were established to pay for litigation expenses arising from trial court operations, and these pre-July 1997 cases attempt to impose liability on the state based on trial court operations, it is appropriate to use the funds, rather than the Judicial Council's or appellate courts' budgets, to pay the litigation expenses for these limited number of cases.

Council action:

The Judicial Council amends its litigation management policies adopted at the council's December 1999 meeting to add the language shown in italics as follows:

“1. Cases and Claims Covered. The monies in the Funds can be used to pay for attorneys' fees, experts' fees, costs of litigation, settlement obligations, and judgments incurred on or after January 1, 2000, in all cases or claims (a) arising out of trial court operations as defined in Rule 810, or out of conduct covered by Recommended Policy 4 (below), occurring on or after July 1, 1997, *or, if occurring before July 1, 1997, if the State is named as a party*; and (b) pending on or after January 1, 2000.

* * *

4. Defense and Indemnification of Judicial Officers. As part of this program, judges and subordinate judicial officers will be defended and indemnified against lawsuits under the statutes that govern state employees.”

Item 2 Revisions to Court Interpreter Continuing Education and Certification Renewal Requirements

Currently the policies and practices governing court interpreters' continuing education and certification renewal are irregularly dispersed in several different documents. To ensure that court interpreters understand and satisfy their professional obligations, it is necessary for the Judicial Council to state the requirements for continuing education and certification renewal in one clear and concise document.

In addition, since court interpreters are given two years to satisfy continuing education and renewal requirements, it is important that they be made aware of new requirements as soon as possible.

Council action:

The Judicial Council, effective January 1, 2001 (the beginning of the next compliance period):

1. Adopts revisions to the *Compliance Requirements for Certified Court and Registered Interpreters of Nondesignated Languages* as follows:
 - a. *Section 2.5.2.* Continuing education credit for attending the Judicial Council's Ethics Workshop shall be granted to interpreters prior to passing the certification or registration exam.
 - b. *Section 2.6 et seq.* Certified and registered interpreters must complete 40 law-related professional interpreting assignments, which are defined as duties performed for specific cases. Registered interpreters of languages for which courts have limited need may be eligible for an exemption from the requirement by the Administrative Office of the Courts (AOC).
 - c. *Section 3.1.3.* Certified and registered interpreters are required to notify the AOC of their current mailing addresses.
 - d. *Section 3.2.8(E).* Continuing education credit is not awarded for activities performed more than once during the same compliance period.
 - e. *Section 3.5 et seq.* Certified and registered interpreters must complete 30 hours of continuing education, 40 law-related professional interpreting assignments, and submit compliance forms for every two-year compliance period. In addition, they must pay annual fees. Interpreters who do not satisfy these requirements will have their certification or registration revoked, and their names will be removed from the *Judicial Council Master List of Certified Court and Registered Interpreters*.
2. Delegates approval of future changes to the Administrative Director of the Courts.

Item 3 Equal Access Fund—Distribution of Funds for IOLTA-Formula Grants

The State Bar Legal Services Trust Fund Commission requests that the Judicial Council approve distribution of \$8.55 million in Equal Access Fund grants according to the statutory formula. The Budget Act authorizing the Equal Access Fund provides that the Judicial Council must approve the recommendations of the Legal Services Trust Fund Commission if the council determines that the awards comply with statutory and other relevant guidelines.

Council action:

The Judicial Council, under the authority of the Budget Act of 2000, approves the allocation of \$8.55 million to the State Bar Legal Services Trust Fund Commission for distribution to legal services providers according to the formula established by Business and Professions Code section 6216.

Item 4 Creation of a Task Force on Unrepresented Litigants

The growing number of unrepresented litigants is having a great impact on the California court system. Courts are striving to address this challenge through self-help centers and a variety of other programs. A statewide response in the form of a Task Force on Unrepresented Litigants would help the local courts establish efficient, high-quality standards, minimize duplication of effort, and assist the Judicial Council in achieving its goals of increasing access to the courts and improving the quality of justice and service to the public.

Council action:

The Judicial Council establishes a statewide Task Force on Unrepresented Litigants of between 15 and 21 members appointed by the Chief Justice with the following charge:

1. To coordinate the statewide response of both the bench and the bar to the needs of unrepresented parties and distribute best practices;
2. To finalize development of a statewide pro per action plan and to begin implementing that plan, where appropriate;
3. To develop resources for pro per services, particularly those activities in the statewide pro per action plan that require significant funding; and
4. To make recommendations to the Judicial Council, the State Bar, and other appropriate institutions about additional measures that should be considered to improve the way in which the legal system functions for unrepresented parties.

Item 5 Report on Use of Funding for Courts With Insufficient Resources

In fiscal years 1998–1999 and 1999–2000, the Judicial Council approved allocations of ongoing funding to begin to address the chronic underfunding and funding inequities in trial court operating budgets. Allocations were made based on the following criteria: (1) workload-to-staff ratio, (2) workload-to-funding ratio, (3) ratio of staff to authorized judicial position (AJP), and (4) cost per AJP.

The Trial Court Budget Commission presented a report, consisting of information from the courts receiving a portion of this funding, describing how the funding enhanced service to the public.

For information only; no action necessary.

Item 6 Report on Use of One-Time Funding for Unified Courts

In fiscal year 1999–2000, the Judicial Council allocated one-time funding to address unification transition costs (e.g., automation modifications, personnel studies, local training, etc.) and critical unfunded mandates for countywide trial court systems that had unified to the maximum extent allowable by law or that would vote to unify by January 3, 2000. The Trial Court Budget Commission recommended that the council establish a minimum amount per judge, which would be allocated to each court based on its number of authorized judicial positions (which includes judges, commissioners [excluding AB 1058], and referees), and to set aside this minimum amount per judge until January 3, 2000, for those court systems that were not unified by the October 22, 1999, meeting.

The Executive and Planning Committee, acting on behalf of the Judicial Council, allocated funds to 56 counties and set aside appropriate funds for the Los Angeles County and Kern County court systems.

For information only; no action necessary.

Item 7 Strategic Planning Guidelines for Trial Courts

Staff presented recommendations for multiyear and annual planning cycles for trial court strategic planning and future directions aimed at helping courts implement these cycles.

These proposed cycles are intended to: (1) provide the same structure for the trial courts as that developed for the council and (2) effectively coordinate the input from the trial courts with the council's planning process.

Council action:

The Judicial Council:

1. Approves the multi-year and annual cycles for trial court planning activities.
2. Authorizes the Administrative Director to implement the multiyear and annual planning cycles for trial court planning and to make technical adjustments, as required, to ensure that planning activities are conducted in a manner that serves the overall interests of the judicial branch.
3. Directs the Administrative Director to provide guidelines to the trial courts during the fall planning workshop regarding future planning activities and timelines as envisioned in the multiyear and annual planning cycles.

Item 8 Trial Court Presiding Judges Advisory Committee (amend rule 6.46 and corollary rule 6.31(c) of the California Rules of Court)

The Trial Court Presiding Judges Advisory Committee recommended amending the rule of court governing the advisory committee (rule 6.46) to recognize trial court unification and to encourage greater participation of trial court presiding judges in judicial branch governance.

Council action:

The Judicial Council, effective September 1, 2000, amends:

1. Rule 6.46 of the California Rules of Court pertaining to the Trial Court Presiding Judges Advisory Committee to:
 - a. Expand the duties of the committee and increase its membership to include all trial court presiding judges;
 - b. Create an Executive Committee consisting of 18 members and specify its election process and duties;
 - c. Establish subcommittees in the areas of legislation and rules, and define their respective roles;
 - d. Describe the process of appointing the chair;
 - e. Make provision for the chair to serve as a nonvoting, advisory member of the Judicial Council; and
 - f. Authorize assistant presiding judges to act as proxy on behalf of presiding judges.
2. Rule 6.31 of the California Rules of Court to conform subdivision (c) to the provision in rule 6.46(f) which specifies that the Chief Justice shall appoint the chair of the advisory committee from three names submitted by the Executive Committee and approved by the full committee.

Item 9 Guidelines for Distribution of Comprehensive Drug Court Implementation Act Funds

The Comprehensive Drug Court Implementation Act of 1999 provides funding to “drug court systems” including those for (1) juvenile offenders; (2) parents of children who are detained by, or are dependents of, the juvenile court; (3) parents of children in family law cases involving custody and visitation issues; (4) criminal offenders under Penal Code sections 1000.1–1000.5; and (5) other drug court systems approved by the Drug Court Partnership Executive Steering Committee. The State Budget for fiscal year 2000–2001 provides \$10 million for this previously unfunded act.

The act mandates that the Judicial Council and the Department of Alcohol and Drug Programs (DADP) collaborate on the design and implementation of the program. The act requires that guidelines be approved by the Judicial Council and the DADP in order to begin the process of implementing the act through the release of a Request for Applications (RFA). The Collaborative Justice Courts Advisory Committee recommended guidelines for Judicial Council approval.

Council action:

The Judicial Council approves the Guidelines for the Comprehensive Drug Court Implementation Act of 1999 in principle and delegates to the Executive and Planning Committee any additional approval necessary regarding the Request for Applications.

DISCUSSION AGENDA (Items 10–16)

Item 10A Proposed Allocation of Fiscal Year 2000–2001 Trial Court Funds Contained in the Budget Act of 2000

Judge Ray L. Hart, Chair of the Trial Court Budget Commission (TCBC), presented the report assisted by Ms. Tina Hansen, AOC Finance Division Director, and Mr. Jonathan Wolin, AOC Manager.

Judge Hart commented that the funding appropriated to the trial courts this year for new initiatives including technology represents a 12 percent increase over the baseline budget. Increases in the last two years were approximately 7.5 percent.

Judge Hart stated that if the council approves the TCBC’s general policy recommendations, future allocations will become more of a staff-driven exercise based on the manner in which budget requests were developed and approved. He said that the TCBC and the council will be making allocation decisions at the same time that they are approving courts’ budget requests.

Ms. Hansen stated that the TCBC recommended allocation of \$110 million in growth funds appropriated as part of the Budget Act of 2000. This funding would support new initiatives

in the non-technology areas. Ms. Hansen summarized the committee's general policy recommendations:

1. Beginning in fiscal year 2000–2001, whenever funding requests are based on specific amounts provided by the courts, the allocation would be based on these same amounts.
2. Authority would be delegated to AOC staff to make allocations in instances where the amount provided by the state is reduced on a court-specific basis or funds are reduced on a court-wide basis.

If approved, these new policies would enable these types of straightforward allocations to be determined without consideration by the TCBC or council.

Ms. Hansen summarized the program-specific funding recommendations made by the TCBC in the areas of County/State Transition; Court-Appointed Counsel; Family and Children; Court Interpreters; Superior Court of Los Angeles County Mediation Pilot Program; Negotiated Salary Increases, Pay Equity Adjustments; Elder and Dependent Adult Abuse Protective Orders; and Jury Reform.

County/state transition

Ms. Hansen said that the trial courts received \$8.6 million out of \$13.1 million requested to cover: (1) routine cost increases associated with county-provided services; (2) increased costs associated with new county initiatives; (3) newly identified rule 810 allowable charges; and (4) costs associated with probation department provision of services.

Court-appointed counsel

Ms. Hansen stated that in the May budget revise \$5.72 million was approved to cover: (1) rate and caseload increases, (2) newly identified rule 810 allowable charges, and (3) provision of minimum funding for one court system. The TCBC recommended permanent allocation of this amount.

Family and children

The Budget Act funded \$10 million of the \$14 million requested for family and juvenile law subprograms. Because the requested funds were not tied to court-specific requests, AOC staff in the Center for Families, Children, & the Courts and the Finance Division proposed, and the TCBC approved, the following allocation policies:

1. Family:
 - a. Minimum funding levels for those courts currently without *any* family court services;
 - b. Funding two court systems with serious mediator issues;
 - c. Enhancing the trial court systems' abilities to provide mandatory child custody services.
2. Juvenile: funding dependency mediation and Court Appointed Special Advocate (CASA) programs.

The recommendation takes into account the council's policy on funding new positions for nine months.

Court interpreters

The total amount requested, \$4.8 million, was funded to cover rate increases and workload growth. TCBC recommended a proposed allocation methodology that will allocate funds more quickly to the courts and delegate authority to staff to make these allocations.

Superior Court of Los Angeles County Mediation Pilot Program

The Budget Act of 2000 contains \$506,000 to establish an early mediation pilot program for civil cases in Los Angeles County Superior Court; the TCBC recommended approving that allocation.

Negotiated salary increases (NSIs)

A total of \$57.62 million was funded to cover NSIs and pay equity adjustments (PEAs) including: (1) \$37.46 million to cover NSIs and PEAs implemented in fiscal year 2000–2001 and tied to the same 4 percent level that state employees will receive; (2) \$12.95 million for the remaining unfunded balance of NSIs and PEAs implemented in fiscal year 1999-2000; and (3) \$7.21 million for the annualization of fiscal year 1999–2000 costs.

The TCBC recommended authorizing staff to allocate all funding for NSIs and PEAs appropriated in the Budget Act of 2000 based on information contained in each court system's schedule of salaries and benefits (Schedule 7A). The recommendation is to allocate an amount to each court system based on 4 percent regardless of the amount actually negotiated, higher or lower.

Elder and dependent adult abuse protective orders

Half of the amount requested, \$1.175 million, was funded to cover the anticipated costs that the courts will incur in processing the increased number of protective orders arising out of the enactment of chapter 561 of the Statutes of 1999. TCBC recommended authorizing staff to develop a procedure for courts to report the number of filings and to determine an appropriate level of funding per filing.

Jury reform

A total of \$23.323 million was funded for costs associated with implementation of a one-day/one-trial system (\$4.1 million) and increasing juror per diem rates from \$5 per day to \$15 per day after the first day of service (\$19.223 million). Ms. Hansen stated that staff may suggest revising the \$19.223 million figure at a future council meeting based on new information received in a recent survey of the courts.

Ms. Hansen stated that subsequent to the July 31 TCBC meeting, staff discovered that, due to some significant downward adjustments of need by the Superior Court of Los Angeles County to implement one-day/one-trial, the total statewide need for the program could be fulfilled in fiscal year 2001–2002 (the second year of a four-year funding plan) with the application of additional one-time funds from the one percent reserve.

Justice Huffman noted that the recommendation regarding the allocation to fund the Superior Court of Los Angeles County Mediation Pilot Program is an expansion of last year's mediation

pilot program allocations. Since the Los Angeles County courts unified, they are eligible for such funding.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve a policy that, from fiscal year 2000–2001 and beyond, whenever funding requests are based on specific amounts provided by the courts, the allocation of the approved funds will be based on these same amounts. The Trial Court Budget Commission, its Allocation Subcommittee, or the Judicial Council would not need to consider or approve these allocations before the funding is distributed.
2. Delegate authority to staff to make appropriate allocations in the following circumstances:
 - a. Where the amount provided by the state is reduced on a court-specific basis, only the allocation to the specific courts involved would be reduced; and
 - b. Where the amount provided is reduced on a courtwide basis, the available funds will be allocated on a prorated basis to all of the court systems that requested such funding and whose requests were incorporated into the funded Budget Change Proposal.

The Trial Court Budget Commission, its Allocation Subcommittee, or the Judicial Council would not need to consider or approve these allocations before the funding is distributed.

3. Approve the allocation of \$8,902,840 for county/state transition costs, including a technical adjustment of \$294,840 to correct a miscalculation in one court's need in the probation department–provided services area.
4. Approve the permanent allocation of \$5.72 million for court-appointed counsel costs.
5. Approve the allocation of \$4,970,606 for family subprogram costs and \$2,866,652 for juvenile subprogram costs.
6. Approve allocating 100 percent of court interpreter funds during the current fiscal year based on the prior years' fiscal year expenditure data that becomes known in July.
7. Delegate authority to staff to determine:
 - a. The allocation of the growth funding by multiplying each court's contract costs by 4.1 percent, the estimated rate of growth of interpreter usage for fiscal year 2000; and
 - b. The funding for rate increases wherein staff will estimate full-day interpreter usage for each court and multiply this number by \$22 (the difference between \$243, the old rate, and \$265, the new rate).
8. Approve the allocation of \$506,000 to the Superior Court of Los Angeles County to establish an early mediation pilot program for civil cases.
9. Delegate to staff the authority to allocate all of the funding for negotiated salary increases (NSIs) and pay equity adjustments (PEAs) contained in the Budget Act of 2000 based on information provided by the court systems on Schedule 7A. The \$12.95 million, which is the annualized amount of fiscal year 1999–2000 NSIs, will be allocated based on the Schedule 7A. For fiscal year 2000–2001 NSIs and PEAs, courts will receive an amount equal to 4 percent of the total of their court staffs'

salary and salary-driven benefits (derived from Schedule 7A) and \$128 per person for medical benefits. Courts will receive the 4 percent amount regardless of the actual amounts negotiated, whether higher or lower than 4 percent.

10. Delegate authority to staff to develop a procedure for courts to report the number of elder and dependent adult abuse petitions for protective orders that are filed and to reimburse courts based on the number of petitions filed. Staff would be authorized to determine an appropriate level of funding per filing and the timing for reporting and allocations.
11. Approve the allocation of \$1,477,538 in one-time funds from the unallocated remainder of the one percent reserve for fiscal year 1999–2000, to courts as indicated at column C of Attachment 2, and \$4.1 million, as indicated in column D of Attachment 2, for implementation of one-day/one-trial programs. The courts will be required to verify how they plan to use these funds for their one-day/one-trial programs and to document need, if any, for additional funds in this area.
12. Approve that the policy of funding new positions at nine months of salary in the first year not apply to the one-day/one-trial allocation.

The motion passed.

Item 10B Fiscal Year 2000–2001 Technology Allocations

Judge Judith Donna Ford, chair of the Court Technology Advisory Committee (CTAC) and Judge Ray Hart, chair of the Trial Court Budget Commission (TCBC), presented the report, assisted by Ms. Pat Yerian, AOC Information Systems (IS) Division Director, and Mr. Victor Rowley, IS Assistant Director.

Judge Hart stated that this is the first year under state trial court funding that money has been appropriated to the Trial Court Trust Fund for technology. He said that the Court Technology Advisory Committee presented recommendations to the TCBC for the allocation of \$22 million in one-time case processing technology funding made available through the annual funding process and informed the TCBC regarding the allocation of \$34.4 million made available through the May revise process in accordance with terms already agreed to between the Chief Justice, Governor, and Legislature.

Case Processing Funding: \$22 million

Judge Ford stated that the Court Technology Advisory Committee and the Trial Court Budget Commission agreed on the recommendations presented regarding \$56.4 million in technology funding for the trial courts. The \$22 million was recommended to bring case management systems in as many courts as possible into compliance with the Judicial Branch Statistical Information System (JBSIS) standards. The small court assistance service bureau project would provide technological infrastructure and a case management system for small courts not supported by this \$22 million. The pilot phase of the project includes six such courts.

Judge Ford stated that CTAC directed staff to implement a statewide approach to allocations that will keep costs to a minimum, coordinate implementation across courts, and focus investment on viable case management systems only.

Judge Ford stated that \$22 million in case processing allocations would fund:

1. Upgrades and enhancements to the primary vendor-based systems, working through a lead court and established vendor user group to implement JBSIS standards; and
2. Implementation costs for as many courts as possible, including upgrades to a JBSIS-compliant version of the vendor software, new or additional hardware to support the system, and training and user support. Exact allocations would be based on specific information provided by the courts detailing the vendor systems they use, including the version and platform, the nature and scope of any conversion needed, and the number of workstations that require installation and/or upgrade to the current version.

Judge Ford noted that courts not covered by this funding are included in other initiatives, such as the small court service bureau project and the separate allocation from the Modernization Fund for JBSIS enhancements to custom and in-house systems.

Basic Technology Tools: \$34.4 million

Judge Ford reported that a lack of sufficient technology resources has prevented courts from taking advantage of modern technology to expedite the handling of cases. Many courts rely on older case management systems that are expensive to maintain, difficult to modify, and technologically outdated. She said that prior to the council's adoption of the Tactical Plan for Court Technology, courts were pursuing separate procurement and system development efforts. This practice resulted in a failure to achieve economies of scale in acquisition and operations, inadequate access to funding, and less than optimal utilization of existing staff expertise and resources, and in procedural inconsistency.

She stated that \$21 million of the \$34.4 million made available in the May revise was recommended to support caseload management and case management system convergence in the Southern California Trial Court Technology Group.

Judge Ford reported that the Southern California Trial Court Technology Group is committed to developing collaborative solutions to provide effective court management systems. Allocation of \$21 million in caseload management funding would support:

1. Convergence from 38 disparate case management systems to as few as 8 systems throughout the group; and
2. The implementation of common, groupwide public access user interfaces and inter-county access facilities.

Judge Ford commented that because courts have been dependent on county information technology departments for technology services and procurement, resources have been inadequate to ensure the regular and scheduled replacement of technology equipment. She said that CTAC and the TCBC recommended allocating \$7.4 million for basic technology tools to replace one-third of a court's personal computers based on fiscal year 1998–1999 authorized full-time equivalent positions.

Judge Ford presented CTACs and TCBCs recommendation to allocate \$6 million in strategic technology planning funding to develop:

1. Coherent multiyear group technology plans
2. A telecommunications architecture and strategy to lay the foundations for telecommunications connectivity within the judicial branch and standards for integration with justice system partners; and
3. Data integration strategies to develop a common means for secure, reliable electronic exchange of case information among all agencies and departments in the justice system, including the funding of electronic filing initiatives based on California versions of XML (extensible markup language) standards.

Council action:

Justice Huffman moved that the Judicial Council:

1. Allocate \$22 million in one-time case processing funds for fiscal year 2000–2001 to:
 - a. Upgrade and enhance the primary vendor-based case management systems to California-compliant versions, which minimally includes compliance with the Judicial Branch Statistical Information System (JBSIS) standards and connectivity to Department of Motor Vehicle and Department of Justice systems; and
 - b. Implement those case management systems in as many courts as possible.
2. Allocate \$34.4 million in technology funding for fiscal year 2000–2001 to:
 - a. Support caseload management and case management system convergence in the Southern California Trial Court Technology Group;
 - b. Replace personal computers as the first component of a judicial branch asset management program in the trial courts; and
 - c. Develop branchwide technology plans for trial court technology groups, telecommunications architecture, and data integration standards, such as those based on XML (extensible markup language) standards.

The motion passed.

Item 11 Report on Special Projects Funding for Fiscal Year 1999–2000 and Recommendations for Fiscal Year 2000–2001

Mr. Frank Schultz, AOC Finance Division Manager, presented the report assisted by Ms. Pat Yerian, AOC Information Services Division Director. Mr. Schultz summarized the sources of trial court funding as:

1. The Trial Court Trust Fund, which provides support for the general operations of trial courts.
2. The Judicial Administration Efficiency and Modernization Fund (JAEMF), which supports the modernization and efficient operation of the trial court system. It is supported by transfers from the state General Fund, is intended to serve as a change agent, and supports new initiatives. Mr. Schultz stated that \$35.21 million was allocated to the JAEMF in fiscal year 1999–2000; the fund ended the year with a balance of \$10.6 million. Of that, \$8 million was reappropriated in the Budget Act of 2000 for technology

projects in small courts. AOC staff recommended that \$2.6 million be used to repay loans some courts owe, primarily for technology projects. Mr. Schultz stated that \$45.32 million was available from the JAEMF for fiscal year 2000–2001.

3. The Trial Court Improvement Fund, which must have a reserve equal to one percent of the total appropriation for trial court operations; provide for automation based on two percent of the fine, fee, and forfeiture collections; and support improvement projects allocated by the council. Mr. Schultz stated that \$33.5 million was in the Trial Court Improvement Fund in fiscal year 1999–2000; the fund’s year-end balance was \$12.1 million. AOC staff recommended that \$8.9 million be used to pay off loans some courts owe, primarily for technology projects (\$11.5 million total), and that \$3.2 million be used to support the Litigation and Excess Liability Program.

Justice Huffman expressed concern about the development of a fiscal management policy for the future to prevent loans taken out by local courts being paid off by the Judicial Council. Mr. Vickrey stated that the intent of the payment of the loans was not to relieve courts of full responsibility for their fiscal management; rather, it was an acknowledgement that historically there has been inadequate funding of the trial courts. Courts requesting loan repayment assistance in the future will be asked to sign a memorandum of understanding assigning them responsibility for fully resolving debts.

Council action:

Justice Huffman moved that the Judicial Council:

1. Allocate \$41.122 million of Judicial Administration Efficiency and Modernization Funds as follows in fiscal year 2000–2001:
 - a. Technology
 - Service bureau case management system for small courts (\$10 million)
 - Case management certification (\$500,000)
 - Jury management systems (\$4 million)
 - Implementation of fiscal system requirements (\$1 million)
 - Information standards (Judicial Branch Statistical Information System) enhancement (\$3 million)
 - Information technology staffing (\$1.3 million)
 - Data integration standards (\$500,000)
 - Fiscal year 1999–2000 legislatively-authorized reappropriation (\$8 million)
 - b. Education (\$3.050 million)
 - c. Court security (permanent allocation) (\$3.2 million)
 - d. Technical assistance grants (\$2.35 million)
 - e. Mediation pilot program/expansion of alternative dispute resolution programs (\$2.468 million)
 - f. Complex Litigation Pilot Project (\$1.754 million)
2. Allocate partial funding from the Trial Court Improvement Fund as follows:
 - a. Complex litigation pilot project (\$1.1 million)
 - b. Judicial liability insurance (\$839,125)
 - c. Community-focused court planning technical grants (\$325,000)
3. Authorize the Administrative Director of the Courts to assist in the repayment of the

prior contractual obligations and loans from available Trial Court Improvement Funds and the remainder of the Judicial Administration Efficiency and Modernization Funds from fiscal year 1999–2000 provided that:

- a. Courts sign a memorandum of understanding (MOU) assigning them responsibility for fully resolving their debts.
- b. The Judicial Council is kept apprised of these MOUs.

The motion passed.

Item 12A Fiscal Year 2001–2002 Statewide Trial Court Budget Request

Judge Ray Hart, chair of the Trial Court Budget Commission, presented the report assisted by Ms. Tina Hansen, AOC Finance Division Director.

Judge Hart stated that the goal of the new budget development process is to make the judicial branch budget process similar to that of other state agencies in California and ultimately to increase funding for and access to justice in California. It is more workload driven than any past budget request.

Ms. Hansen reviewed the new budget development process used this year as follows:

1. At its March 2000 business meeting, the council established the following funding priorities:
 - Negotiated salary increases, including pay equity adjustments
 - County/state transition issues
 - Court interpreters
 - Juvenile dependency
 - Technology
 - Local need
 - Courtroom staffing
2. In May, the council approved TCBC's recommendations to establish a funding cap on local need requests of 5 percent of baseline budget, or \$100,000, whichever is greater.
3. Courts had approximately four weeks to prepare their budget change requests and submit them to the AOC's Finance Division in mid-June. Ms. Hansen reported that in the local need area alone, the AOC received 308 requests totaling \$68.7 million. In the county/state transition issues area, the AOC received over 200 requests totaling \$79.8 million.
4. In June and July, budget analysts and AOC Finance Division managers reviewed each budget request. The requests were sorted into one of four categories: (1) denial in full; (2) partial denial; (3) contingent approval with additional information; and (4) full approval.
5. Courts were then given one week to prepare written appeals of requests that were fully or partially denied in the local need and county/state transition areas.
6. Each analyst reviewed the appeals and made presentations to the management team advocating, if supportable, the positions of the courts.

7. Budget requests recommended for approval were considered by the TCBC at the end of July.

Ms. Hansen summarized the TCBC's recommendations regarding the fiscal year 2001–2002 budget requests received as follows:

- \$30.9 million to cover negotiated salary increases (NSIs) for court employees only (security NSIs will be covered under the security recommendation) equivalent to an anticipated 4 percent increase for California state employees. She commented that courts are required to pay these locally negotiated costs. If new funds are not appropriated for this purpose, courts must absorb these costs at the expense of other vital court operations. She noted that the AOC is working with the state's Department of Personnel Administration and the court employees' union to develop a long-term plan on how to deal with salary and benefit increases.
- \$6 million to allow courts to address pay equity adjustments (PEAs) related to unification and market-driven factors. Although requests in this area totaled \$34.9 million, many of the requests involve prior fiscal years and require additional documentation from the courts and analysis by the AOC.
- \$5.2 million to address increased court interpreter costs associated with a projected 5 percent workload increase and a proposed rate increase from \$265 to \$285 per day for certified/registered contract court interpreters. Ms. Hansen noted that this recommendation is consistent with requests previously approved by the Governor and Legislature for workload and per diem increases.
- \$4.2 million to address increased court-appointed counsel costs, primarily as a result of increased counsel rates and caseload growth that have occurred in the last several years. She noted that this recommendation is consistent with requests previously approved by the Governor and Legislature.
- \$5.8 million to address rule 810 allowable costs associated with facility improvement projects that were identified by the courts through their budget requests in the county/state transition area. Ms. Hansen said that these construction or renovation projects, which were county- or court-initiated, require a state funding contribution to provide, for example, standardized furniture or flooring replacements.
- \$27.3 million to address increased contractual costs associated with negotiated salary increases and higher levels of staffing and equipment for perimeter security. She reported that courts submitted their security requests through the two council-approved priority areas of local need and county/state transition. Ms. Hansen said that even though a \$33 million statewide request was submitted by the council and approved by the Governor and Legislature in fiscal year 1998–1999, the lack of a statewide request for security in fiscal years 1999–2000 and 2000–2001 has resulted in considerable accumulated need in this area.

- \$9.9 million to address increased charges in a variety of county-provided service areas arising from contractual obligations with the counties. This request is also consistent with previously approved requests.
- \$8.1 million to address legislative mandates, and federal and state regulations in a variety of areas covered under family and juvenile law. Ms. Hansen said that these requests are consistent with requests submitted to, and approved by, the Governor and Legislature in fiscal year 2000–2001 (\$10 million).
- \$9.9 million to fund a variety of administrative activities in the courts. These requests constitute a significant number of new positions and other resources necessary to provide the administrative infrastructure to support court operations.
- \$16.9 million to provide the additional resources and staff needed to support various courtroom activities. Ms. Hansen stated that a minimum staffing ratio for courtroom and supervisory staff was applied this year pending the outcome of a comprehensive analysis currently being conducted by the AOC’s Research and Planning Unit.
- \$5.5 million to increase the number of court reporters statewide through the application of a minimum service level of one court reporter per courtroom and to replace contract court reporters with permanent court reporters.
- \$5 million to address the need for additional legal research that has developed primarily as a result of unification.
- \$4.3 million to address the need for additional resources to assist the rising number of pro per litigants who are accessing the courts.
- \$667,444 to provide the resources necessary for six court systems to enhance their strategic planning and community outreach efforts.
- \$5.5 million to complete the implementation of one-day/one-trial in the trial courts.

Judge Hart stated that the TCBC ranked the requests based on relative priority to the trial courts. Judge Hart noted that although the request for technology funding was submitted separately, it is included in the recommended ranking.

Judge Jahr asked whether budget requests in the future would integrate technology and non-technology requests. Judge Hart stated that the TCBC and Court Technology Advisory Committee are working to integrate their budget request processes.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve the recommended fiscal year 2001–2002 statewide trial court budget request for \$145.2 million as follows:
 - a. Negotiated salary increases of \$30,919,190, equivalent to an anticipated 4 percent increase for California state employees for fiscal year 2001–2002;
 - b. Pay equity adjustments of \$5,987,704 resulting from salary adjustments necessary due to unification and market-driven factors;
 - c. Court interpreter rate increases totaling \$5.2 million;
 - d. Court-appointed counsel cost increases of \$4,216,494 resulting from increased workload and counsel rates;
 - e. Infrastructure improvement costs totaling \$5,830,611 to address Rule 810 allowable costs associated with court facility improvement projects;
 - f. Security cost increases of \$27,259,419 to fund NSIs, more staff, and one-time perimeter security equipment;
 - g. Increased charges for county-provided services totaling \$9,931,443 primarily in the areas of communications, indirect cost plans, and janitorial, personnel, and risk-management services;
 - h. Additional resources for family and children’s services totaling \$8.1 million;
 - i. Additional resources for administrative operations totaling \$9,904,991 in areas such as internal audits, support staffing, records management, and communications and postage;
 - j. Court staffing increases totaling \$16.9 million to support case processing, word processing, reduction of overtime, courtroom support, and new programs.
 - k. Increasing court reporter funding by \$5,466,943 to enable courts to replace per diem staff with permanent court reporters and hire additional court reporters necessary because of increased workload.
 - l. Increases in legal research staff totaling \$5,043,880 necessary to support the additional numbers of superior court judges in the state as a result of unification who are currently doing research rather than trying cases;
 - m. Self-help center funding of \$4,343,781 to develop programs to assist people without legal representation (pro pers);
 - n. Increased funding for strategic planning and community outreach of \$667,444 to develop public education programs and materials and to evaluate current strategic planning and outreach efforts;
 - o. Jury services funding of \$5,448,405 to complete the implementation of funding of one-day/one-trial in 27 courts requesting assistance.
2. Approve the following prioritization of the statewide trial court budget request:
 - a. *Group 1:* Negotiated salary increases, technology, pay equity adjustments
 - b. *Group 2:* Court staffing, security, family and children, court interpreters, court-appointed counsel, county/state increased charges; and
 - c. *Group 3:* Jury (one-day/one-trial); court reporters; administrative operations; legal research; infrastructure improvements; self-help centers; strategic planning/community outreach,

3. Delegate to the AOC Finance Division Director the authority to make technical adjustments to the recommended fiscal year 2001–2002 statewide trial court budget.
4. Authorize the Administrative Director of the Courts to present recommendations to the Executive and Planning Committee for review regarding additional deficiency requests for statutorily mandated items that were not presented to the Legislature for consideration last year.

The motion passed.

Item 12B Fiscal Year 2001–2002 Technology Funding Requests

Judge Judith Donna Ford, chair of the Court Technology Advisory Committee and Judge Ray Hart, chair of the Trial Court Budget Commission, presented the report, assisted by Ms. Pat Yerian, AOC Information Systems Division Director, and Mr. Victor Rowley, Assistant Division Director.

Judge Hart stated that the Court Technology Advisory Committee presented its recommendations for technology funding requests to the TCBC at the end of July. These recommendations, totaling \$65.54 million, were approved by the TCBC for submission to the council.

He noted that when combined with the nontechnology recommendations of \$145.2 million, the total trial court request for growth funding is \$210.74 million, representing approximately a 12 percent increase over the fiscal year 2000–2001 base. Viewed in this light, the technology recommendation appeared consistent with previous requests to the state and the amounts appropriated for the current fiscal year. Judge Hart commented that until this fiscal year, the council’s technology requests were not funded.

Judge Ford stated that the Court Technology Advisory Committee (CTAC) and the Trial Court Budget Commission recommend approving \$65.54 in one-time and ongoing funding to implement the council’s Tactical Plan for Court Technology. Judge Ford stated that approving the request would make progress toward bringing courts up to minimum standards set forth in the tactical plan.

Judge Ford stated that the tactical plan requires the CTAC annually to recommend funding priorities for technology for each of the Judicial Council’s five technology objectives: planning; infrastructure; case management systems; information standards; and communications.

She noted that the requests this year emphasize infrastructure, staffing, and case management system needs. The recommendations attempt to bring all courts to a minimum functional level of technology while attending to the needs of the more technologically advanced courts. In addition, the unique needs of the Southern California Trial Court Technology Group, with its significant, complex caseload and postunification needs, are accommodated in the recommendations.

Judge Ford commented that the proposal deals with only General Fund requests. Significant allocations from the Modernization Fund continue to provide the much-needed capital for technology projects. CTAC recommendations for the Modernization Fund have been forwarded to the Administrative Director for his review and presentation to the Judicial Council.

Ms. Yerian reviewed the policy objectives of the council's Tactical Plan for Court Technology. She said the plan ensures a cohesive approach to technology, improved public service, more collaboration, and increased funding opportunities. She stated the tactical plan's guiding principles include greater functionality, economy, consistency, innovation, proven solutions, and existing investments.

Ms. Yerian said that in February 2000 four regional trial court technology groups were formed. Twenty-one courts are part of the Northern group; 11 courts are part of the Bay Area group; 20 courts are part of the central/coastal/eastern sierra/desert group; and 6 courts are part of the Southern group.

Ms. Yerian noted that CTAC's priorities for technology funding in fiscal year 2001–2002 include:

- Funding basic infrastructure including local- and wide-area networks;
- Collaborating on procurement or development of common case management systems;
- Negotiating consistent contracts for case management systems;
- Providing technology staff in all courts
- Enhancing public access; and
- Developing data exchange protocols.

Ms. Yerian stated that there are three levels of technology plans: local court plans, regional group plans, and a branchwide plan. She noted that there are several sources of funding for technology initiatives: the Modernization Fund for new branchwide projects; growth funding for ongoing projects in support of court operations; and baseline funding to support existing systems.

Ms. Yerian reported that 425 requests for technology funding were received. These were reviewed in 11 days by 18 AOC Information Services Division managers and staff.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve a fiscal year 2001–2002 technology budget change proposal totaling \$65.54 million to:
 - a. Provide strategic planning and budget development staff to support each regional Trial Court Technology Group (TCTG);
 - b. Install or upgrade local area networks, focusing particularly on those courts reliant on counties for technology infrastructure;
 - c. Expand the equipment replacement program for personal computers, printers, and servers commenced in fiscal year 2000–2001;

- d. Provide technology staff for the 21 courts that currently lack information technology support;
 - e. Continue implementation of California-compliant versions of case management systems;
 - f. Support continued case management system convergence in the Southern California TCTG; and
 - g. Begin implementation of data integration standards in support of the development of integrated justice systems.
2. The \$65.54 million will be requested as follows:
- a. \$8.5 million to provide courts with one-time funding for local area networks, Internet connectivity, and e-mail systems;
 - b. \$8.4 million to provide ongoing funding for an asset management and equipment replacement program started in the current fiscal year;
 - c. \$4.4 million for general information technology staff and staff to support specific case management systems and technology initiatives;
 - d. \$20 million to fund procurement of a California-compliant case management system that would be JBSIS-compliant and link to Department of Motor Vehicle and Department of Justice systems, provided the system met one of the six criteria below:
 - i. It is a modification of a vendor product for which funding was not available in the current fiscal year;
 - ii. It is a custom developed system that merits investment because it will be used for at least three years;
 - iii. It is failing or no longer supported by a vendor;
 - iv. It needs to be upgraded to the current version to receive vendor support;
 - v. It is not installed across case types or locations within a court, particularly in pre-unified courts; or
 - vi. It implements the convergence strategy begun by the Southern California TCTG in the current fiscal year;
 - e. \$20 million for case-management system convergence in the Southern California TCTG;
 - f. \$3 million to prototype and begin implementing data integration standards, such as those based on XML technology, that are being defined in the current fiscal year.
 - g. \$0.74 million to provide strategic planning and budget development staff to support each regional trial court technology group.
 - h. \$0.5 million to expand public access to court information through the innovative use of technology, such as kiosks and electronic filing projects using XML technology.

The motion passed.

Item 13A Budget Change Proposals for the Supreme Court and Court of Appeal Budgets for Fiscal Year 2001–2002

Mr. Dennis Jones, Chief Deputy Director, presented the report. He said that the proposed budget for the Supreme Court contains Budget Change Proposals (BCPs) totaling \$1,249,000 and 7 positions, funded from the state General Fund.

Mr. Jones stated that petitions for review from criminal appeals and original proceedings for the Supreme Court increased from 2,389 filings in fiscal year 1994–1995 to 3,570 filings in fiscal year 1999–2000. Original habeas petitions increased from 1,269 to 2,654 during the same period. Funded attorney staff increased by only 2.5 positions during this period, far below the growth in workload. This has resulted in a growing backlog of criminal and automatic appeals as well as habeas petitions. Funding for additional attorney positions is requested in order for the court to remain current with the greater workload.

Mr. Jones stated that increased workload has also meant higher operating expenses for supplies, shipping, overtime and temporary help, printing, and library services.

Council action:

Justice Richard D. Aldrich moved that the Judicial Council approve:

1. Budget Change Proposals for fiscal year 2001–2002 totaling \$1,249,000 and 7 additional positions for the Supreme Court; and
2. Authorizing, in consultation with the Executive and Planning Committee, a deficit request this year for positions to address automatic appeal workload as early as January 2001.

The motion passed.

Mr. Jones stated that the proposed budget for the Courts of Appeal contains Budget Change Proposals (BCPs) totaling \$1,034,000 and 7.5 positions funded from the state General Fund. Also included are a BCP for judicial officer salary increases and a proposal for funding salary adjustments in the appellate courts, and the AOC. The BCPs include requests for funding for mediation and settlement conference training; court systems administrators, attorneys, and secretaries to handle increased workload; and custodial services.

Council action:

Justice Huffman moved that the Judicial Council, for fiscal year 2001–2002:

1. Approve Budget Change Proposals for the Courts of Appeal totaling \$1,034,000 and including 7.5 additional positions;
2. Approve a Budget Change Proposal to fund an 8.5 percent increase for all judicial officers, effective January 1, 2002, amounting to \$12,875,000 (\$54,000 to the Supreme Court, \$673,000 to the Courts of Appeal, and \$12,148,000 for the trial courts); and
3. Approve in concept funding of both salary adjustments for the Administrative Office of the Courts and appellate court personnel services budgets.

The motion passed.

Item 13B Fiscal Year 2001–2002 Judicial Council/Administrative Office of the Courts Budget

Mr. Dennis Jones, Chief Deputy Director, presented the report. He stated that trial courts look to the Administrative Office of the Courts for assistance in many areas where counties provided services prior to state trial court funding and where state executive branch departments receive services from other executive branch agencies. He said that financial, contracting, purchasing, labor relations, and attorney services were examples of types of assistance the AOC is now being asked to provide trial courts.

Additionally, Mr. Jones noted, the Judicial Council/AOC is responsible for the oversight and leadership of the judicial branch. The council and AOC are taking greater responsibility for financial accountability (including a statewide financial system with standards and audits), grants management, court facilities, and case management standards and automation.

Mr. Jones said that the proposed fiscal year 2001–2002 budget for the AOC contains 20 Budget Change Proposals (BCPs) totaling \$11,140,657 and 59 positions for state operations proposals from the General Fund; 3 BCPs totaling \$2,010,000 for local assistance proposals from the General Fund; and 1 BCP for \$605,000 from grants and reimbursements funding. Mr. Jones stated that most of the budget augmentations are designed to provide services to the trial courts. He noted that four of the AOC’s highest priority proposals—Trial Court Accountability, Trial Court Financial System Support, Improved Facilities Support for Trial Courts, and Branchwide Technology Initiatives—account for \$7.2 million and 32 positions, which is more than half of the total state operations request.

Mr. Arthur Sims acknowledged that courts would benefit greatly from the AOC support for services previously provided by the counties. He noted that it would be cheaper for the AOC to provide these services than for each county to contract for them separately.

Judge Wayne L. Peterson stated that this request shows the impact of trial court funding and unification on the AOC and local courts. There is a dramatic change in the way services are delivered, the cost of services, and the relationship of the judicial branch with service providers. The AOC is a necessary partner and is providing assistance to courts when counties have shied away.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve Budget Change Proposals for the Judicial Council/Administrative Office of the Courts for fiscal year 2001–2002 totaling \$13,755,657 and 59 positions; and
2. Delegate authority to the Administrative Director of the Courts to make technical changes to this budget as necessary.

The motion passed.

Item 14 Judicial Council Operational Plan: Fiscal Year 2000–2001 through 2002–2003

Ms. Dale Sipes, Deputy Administrative Director, and Ms. Jacquelyn Harbert, AOC Senior Research Analyst, presented the report. Ms. Harbert stated that the council's Operational Plan is a three-year plan that links the council's goals in its strategic plan, *Leading Justice Into the Future*, to state-level objectives that are operational in nature. The Operational Plan is structured to articulate high-priority objectives (ends), rather than activities (means), and desired outcomes that the objectives are intended to yield. The desired outcomes articulate measurable results.

Ms. Harbert noted that the proposed plan contains 29 operational objectives focused on key themes identified by the council at its March 2000 planning workshop. The Operational Plan is not designed to be an exhaustive inventory of all activities performed at the state level but rather is aimed at articulating the results the council wishes to achieve through its efforts and those of its advisory committees and task forces.

Ms. Sipes described how the operational plan was developed. She stated that each AOC division met to develop their top 5 to 15 contributions to a plan. Staff was asked to think broadly about court administration statewide and to consider trial courts' goals and objectives (as stated in trial court strategic plans) in identifying areas of statewide policy.

Division input was sorted, refined, recompiled, and distributed to the AOC Management Team (about 30 people), who developed the 29 proposed operational objectives for the next three years. The draft plan was sent to council advisory committee chairs, internal committees, and staff for feedback.

Mr. Sims asked how the Operational Plan relates to local strategic plans and tactical plans. Ms. Sipes stated that individual plans provide a feedback loop into the larger statewide plan.

The tactical plans are subject specific plans intended to be consistent with the statewide strategic and operational plans.

Judge Ronald B. Robie asked whether the council will receive a report on how the budget is accomplishing the council's objectives. Mr. William C. Vickrey stated that the staff is working to present accurate expenditure reports and to inform the council about what is being implemented with allocated resources.

Council action:

Justice Huffman moved that the Judicial Council:

1. Approve the fiscal year 2000–2001 through fiscal year 2002–2003 Judicial Council operational plan;
2. Direct the Administrative Director to communicate the Judicial Council operational plan to appropriate internal and external entities; and
3. Direct the Administrative Director to provide periodic updates on the plan to the council at its annual planning workshop or through other appropriate channels.

The motion passed.

Item 15 Report of the Appellate Process Task Force

Justice Gary E. Strankman, Chair of the Appellate Process Task Force, presented the report. He reported that the task force was appointed in 1997 to study the intermediate appellate courts and make recommendations on the functions, structure, and workflow to enhance efficiency of the appellate process. The task force was created out of a widely felt need to consider how California's appellate courts, and particularly the Courts of Appeal, can efficiently handle rapidly rising caseloads in a timely manner without adding significant new resources to the courts.

Justice Strankman reported that the task force divided itself into three subcommittees: Court Operations; Ideas and Projects—Case Management; and Jurisdiction.

Justice Strankman noted that the task force issued an interim progress report that reviewed the progress the task force had made in fulfilling its charge and indicated tentative recommendations that the task force was considering. The report was distributed widely to interested groups and parties and received a fair amount of legal media coverage; as a result a number of comments were received. He said that the final report includes revisions made in response to the comments received as well as new material produced by the task force.

Justice Strankman stated that there are several issues still under active consideration including examination of the work and resources of the appellate divisions of the superior courts.

Justice Strankman said that the task force by consensus or majority vote recommended the following:

1. The conversion of the four stand-alone Court of Appeal divisions in Ventura, San Diego, Riverside, and Santa Ana into separate appellate districts.
2. Amending rule 6.52 of the California Rules of Court to require the Administrative Presiding Justices Advisory Committee to submit an annual report to the Chief Justice and Supreme Court addressing the workload and backlog of each district and division to ease analysis of equalizing caseloads.
3. Adopting a new rule of court requiring the filing of a statewide docketing statement in civil appeals that can be used, among other things, to help identify jurisdiction on appeal.
4. Adopting a new rule of court to encourage the use of memorandum of opinions when an appeal or an issue within an appeal raises no substantial points of law or fact.
5. Amending Code of Civil Procedure section 906 to provide that the following issues in a civil action must be raised in a motion for new trial in order to be cognizable on appeal: juror misconduct, accident or surprise that ordinary prudence would not have prevented, newly discovered evidence that could not have been discovered with reasonable diligence, and excessive or inadequate damages.

The Chief Justice asked whether increasing the number of appellate districts would lead to a proliferation of issues forwarded to the Supreme Court for resolution of conflicts between districts. Justice Strankman acknowledged that more districts may increase conflicting opinions, which is more complicated for litigants. However, the task force concluded that conflicting opinions were rare and often a useful tool to ensure issues are fully explored.

Chief Justice George asked whether there was a tension between the recommendation to convert appellate divisions into districts and a recommendation being studied further regarding one single statewide Court of Appeal. Justice Strankman said that there was a conflict between the two proposals, but that the task force recognized that a statewide appellate court was currently not politically feasible.

Justice Aldrich asked whether the recommendation to convert divisions to districts was discussed with justices in every district to learn their views on the proposal. Justice Strankman replied that the task force includes a justice from each division and that the subject was also discussed informally in several settings.

Judge Jahr asked whether other states were surveyed regarding their appellate practices. Justice Strankman responded that other states practices were examined where appropriate (for example, use of referees, discretionary review). However, he noted that appellate practices are hard to compare nationwide since there are many jurisdictional differences.

Council action:

Justice Huffman moved that the recommendations of the Appellate Process Task Force be referred to the Executive and Planning Committee for assignment to the appropriate internal committee for review and subsequent timely presentation to the council for action.

The motion passed.

Item 16 Selection of Duties of Presiding Judges and Court Executives (adopt rules 6.602, 6.603, 6.605, 6.608, and 6.610, and repeal rules 204, 205, 205.1, 206, 207, 214, 532.5, 532.6, 532.7, 533, and 835 of the California Rules of Court)

Mr. Michael Bergeisen, AOC General Counsel, Ms. Heather Anderson, AOC attorney, and Ms. Diane Eisenberg, AOC attorney, presented the report. Mr. Bergeisen noted that state trial court funding, trial court unification, and the expected change in the status of court employees have resulted in broader responsibilities for the trial courts. Many presiding judges have expressed the need for greater authority in matters of court management and more time to implement changes that address the new needs of the courts. AOC staff drafted recommended revisions to rules on the selection and duties of presiding judges and court executives with input from a working group of presiding judges and court executives and based in part on recommendations made by The Task Force on the Quality of Justice.

Mr. Bergeisen stated that the recommendations increase the authority of presiding judges and uniformity in practices among courts while still preserving a high degree of local autonomy and flexibility. The proposed changes are designed to clarify the areas in which the presiding judge is responsible for the management of the court and to ensure that he or she has the authority to meet those responsibilities. Mr. Bergeisen reported that there is disagreement with the Trial Court Presiding Judges Advisory Committee on two aspects of the proposal, but consensus was reached on all other issues.

Ms. Anderson reported that the recommendation includes a package of rules on the selection of the presiding judge, authority and duties of the presiding judge, establishment of an executive committee of the court, duties of all judges, and the responsibilities and duties of the court executive officer. Most of these rules incorporate provisions from several existing rules that address these topics, but some of the provisions in the proposal are new.

For proposed rule 6.602, which includes the selection criteria for the presiding judge, the recommendation is that the nomination and selection of a presiding judge should take into consideration the judge's:

- Management and administrative ability;
- Interest in serving in the position;
- Experience and familiarity with a variety of trial court assignments;

- Ability to motivate and educate other judicial officers and court personnel;
- Ability to evaluate the strengths of the court's bench officers and make assignments based on those strengths as well as the best interests of the public and the court; and
- Other appropriate factors.

Ms. Anderson reported that this is one of the two proposals on which the staff and the Trial Court Presiding Judges Advisory Committee disagree, with the advisory committee recommending that the general language in current rule 204 regarding administrative qualifications and interest be maintained.

Ms. Anderson also stated that under proposed rule 6.602, the term of the presiding judge in courts with two judges would be not less than one year, and in courts with three or more judges not less than two years. Ms. Anderson explained that the longer term in courts with three or more judges would give the presiding judge more time to acquire the experience and skills needed to manage the court and implement change.

Ms. Anderson then discussed the second proposed rule, rule 6.603, which outlines the authority and duties of presiding judges. Ms. Anderson explained that the bulk of the proposed new rule is simply a consolidated list of existing duties reorganized by subject area. In her presentation, Ms. Anderson focused on new provisions in the rule rather than existing provisions, with the exception of the provisions on judicial vacation, which she said would be discussed separately.

Ms. Anderson stated that the first part of the proposed rule (6.603(a)) identifies the overall responsibilities of the presiding judge, including promoting access to justice, providing a fair and expeditious forum for resolving disputes, maximizing efficiency and the use of the system's resources, and enhancing services to the public. The second part of the proposed rule (6.603(b)) identifies the authority of the presiding judge. Ms. Anderson noted that specific areas of authority were derived from existing duties, but that a general provision was added indicating that the presiding judge has the authority to perform all acts necessary to accomplish the duties of the office. Ms. Anderson also pointed out that the rule contains a new provision clarifying that the presiding judge's authority under the California Rules of Court may not be limited by local rule or policy.

Ms. Anderson stated that the proposed rule also includes a new provision (6.603(c)(6)) outlining the presiding judge's budget and fiscal responsibilities. Rule 6.603(d) clarifies the presiding judge's authority to delegate his or her duties, while providing that the presiding judge ultimately remains responsible for those duties.

Ms. Anderson stated that rule 6.605 is a new rule regarding the establishment and role of executive committees. The rule provides for an executive committee to advise the presiding judge or to establish policies and procedures for the internal management of the court, thus leaving the day-to-day management of the court to the presiding judge.

Ms. Anderson stated that proposed rule 6.608, on the duties of all judges, incorporates all of the duties listed in current rules but also adds a new provision clarifying the duty of all

judges to follow the directives of the presiding judge in matters of court management and administration.

Ms. Anderson stated that the final rule in the recommended package of rules specifies the duties of the court executive officer. Ms. Anderson stated that most of the duties listed in this rule, rule 6.610, are the same as those specified in current rules.

Ms. Anderson noted that vacation policy was another area of considerable discussion. She introduced AOC attorney Diane Eisenberg, who discussed the recommendation regarding vacation policy. Ms. Eisenberg stated that many elements of the proposed vacation policy are based on recommendations of the Subcommittee on the Quality of Judicial Service of the Task Force on the Quality of Justice. One recommendation is that the presiding judge shall allow the following number of vacation days for each judge annually:

- 24 days for judges with less than 7 years of service;
- 27 days for judges with at least 7 but less than 14 years of service; and
- 30 days for judges with 14 or more years of service.

Ms. Eisenberg noted that this amount of vacation is an increase over the number of days (21) suggested as a proper amount of vacation in current rules. The Task Force on the Quality of Justice cited a modest increase in vacation as the swiftest and surest way to enhance the “quality of life” aspect of judicial service. Additionally, the presiding judge shall allow each judge to take two days of personal leave per year—to be taken anytime that is approved by the presiding judge.

Ms. Eisenberg noted that the current rules do not address the issue of accrual of vacation days. Ms. Eisenberg stated that, under the proposed rule, the presiding judge may allow a judge to take additional vacation days equal to the number of vacation days that the judge did not use in the previous year, up to a maximum of 30 such days. A court may, by local rule, establish a lower maximum number of such days. Ms. Eisenberg noted that these provisions apply only to vacation days accrued after January 1, 2001. Ms. Eisenberg also stated that the new rule provides that the presiding judge shall establish a system to monitor judges’ absences from court and maintain records of those absences in order to ensure compliance with the court’s vacation plan.

Ms. Eisenberg noted that there is disagreement regarding this policy. The Trial Court Presiding Judges Advisory Committee wants the vacation policy to be adopted as a standard of judicial administration, which is suggested, rather than a rule of court, which is mandatory. The recommended policy, staff believes, would lead to greater uniformity and accountability, yet provide for local discretion and flexibility. For example, in addition to permitting local courts to restrict the accrual of vacation days, the new rule would permit the presiding judge to authorize additional time off for an individual judge if justified by extraordinary circumstances. Ms. Eisenberg also noted that, if courts believed that the increase in vacation time would seriously impair judicial services, the council could consider two proposals included in the report to the council but not in the recommended proposal. One option would allow a court to delay implementation of the provision of the rule establishing the greater number of annual vacation days. The other option would

authorize the presiding judge to reduce the vacation time of all the judges of a particular court if circumstances warranted.

Justice Baxter asked if the rules would apply to appellate courts. Ms. Eisenberg stated that there is no reason a similar vacation policy could not be considered for appellate courts, but that this policy only applied to the trial courts. Mr. Vickrey added that it is contemplated that vacation policies would be developed for other courts, but that the trial courts were addressed first.

Judge Peterson stated that there is disagreement about the rule revisions relating to the nomination and selection process for presiding judges. He stated that judges are not trained in court facilities, personnel management, budgeting, and other judicial administration issues. It is unnecessary to include a list of qualifications for a presiding judge in the rule. Judges will elect a leader who they think will be the best. Necessary qualities of a presiding judge is difficult to assess and describe. He suggested that instead of listing necessary qualifications, the rule state that the bench should take into account the duties and responsibilities of a presiding judge when making its nomination and selection.

Judge Peterson also commented on the proposed vacation policy. He stated that vacation is not prescribed for other elected officials. He noted that many presiding judges believe that no more than 30 days of vacation should be carried over from the previous year but think that the policy should allow courts that do not allow carryover to continue that policy if it best suits local circumstances.

He stated that presiding judges believe that vacation policies should be in a standard not a rule. He commented that the number of days judges take for vacation historically has not been excessive or abused. It puts presiding judges in an uncomfortable position to require them to report a judge to the Commission on Judicial Performance if he or she takes an extra vacation day. Additionally, he said that allowing the presiding judge to grant exceptions to the policy gives credence to the argument for a standard rather than a rule.

Judge Jahr stated that having the vacation policy in a rule of court supports presiding judges in performing their responsibilities and preventing problems and conflicts.

Justice Huffman commented that judges are constitutional officers appointed or elected to deliver services to the public. When a judge is not at court, either no services are provided or a judge is assigned to cover cases at additional expense to the public.

Mr. John Collins stated that as chair of a task force created to look at the quality of justice in Los Angeles, he submitted feedback on the proposed changes. The bar believes that the term of a presiding judge of a court with more than 100 judges should be no less than three years. Additionally, "judicial competence" should be added as a basis for reassigning cases between departments.

Chief Justice George suggested wording changes to the rules involving assigned judges. He proposed revisions to enable complaints regarding assigned judges be directed to the Chief

Justice through the Administrative Director of the Courts and to clarify that the presiding judge assists the Administrative Director of the Courts in making recommendations to the Chief Justice regarding complaints.

Council action:

Justice Huffman moved that Judicial Council, effective January 1, 2001:

1. Repeal rules 204, 205, 205.1, 206, 207, 214, 532.5, 532.6, 532.7, 533, and 835, regarding the duties of the presiding judge, duties of all judges, and duties of the court executive officer or court administrator;
2. Adopt rule 6.602, on selection of the presiding judge, enumerating the types of experience and skills that are recommended for consideration, and increasing the term of the presiding judge to at least two years in courts with three or more judges;
3. Adopt rule 6.603 on the authority and duties of the presiding judge as amended regarding complaints against assigned judges so that complaints are directed to the Chief Justice by forwarding them to the attention of the Administrative Director of the Courts and the presiding judge assists the Administrative Director in investigating and making recommendations on complaints against assigned judges to the Chief Justice.

The rule:

- a. Establishes the presiding judge's responsibilities and authority to carry out those responsibilities;
 - b. Requires the presiding judge to allow judges to take a specified amount of vacation time, which increases with years of service;
 - c. Limits the amount of vacation time that the presiding judge may allow judges to carry over from one year to the next to 30 days, or fewer if local rules so provide; and
 - d. Enumerates the duties of the presiding judge;
4. Adopt rule 6.605 to authorize the establishment of an executive committee to advise the presiding judge or to establish policies and procedures for the court;
 5. Adopt rule 6.608 on the duties of all judges, including the duty to follow the directives of the presiding judge in matters of court management and administration; and
 6. Adopt rule 6.610, to enumerate the responsibilities and duties of the court executive officer.

Council action:

Judge Leonard Edwards moved that the motion be bifurcated so that the council could vote on the rule regarding the nomination and selection of the presiding judge separately from the other rules.

The motion passed.

Council action:

The vote was called on a motion that the Judicial Council, effective January 1, 2001:

1. Repeal rules 204, 205, 205.1, 206, 207, 214, 532.5, 532.6, 532.7, 533, and 835, regarding the duties of the presiding judge, duties of all judges, and duties of the court executive officer or court administrator;
2. Adopt rule 6.603 on the authority and duties of the presiding judge as amended regarding complaints against assigned judges so that complaints are directed to the Chief Justice by forwarding them to the attention of the Administrative Director of the Courts and the presiding judge assists the Administrative Director in investigating and making recommendations on complaints against assigned judges to the Chief Justice.
The rule:
 - a. Establishes the presiding judge's responsibilities and authority to carry out those responsibilities;
 - b. Requires the presiding judge to allow judges to take a specified amount of vacation time, which increases with years of service;
 - c. Limits the amount of vacation time that the presiding judge may allow judges to carry over from one year to the next to 30 days, or fewer if local rules so provide; and
 - d. Enumerates the duties of the presiding judge;
3. Adopt rule 6.605 to authorize the establishment of an executive committee to advise the presiding judge or to establish policies and procedures for the court;
4. Adopt rule 6.608 on the duties of all judges, including the duty to follow the directives of the presiding judge in matters of court management and administration; and
5. Adopt rule 6.610, to enumerate the responsibilities and duties of the court executive officer.

The motion passed.

Council action:

The vote was called on the motion that the Judicial Council, effective January 1, 2001, adopt rule 6.602, on selection of the presiding judge, enumerating the types of experience and skills that are recommended for consideration, and increasing the term of the presiding judge to at least two years in courts with three or more judges

The motion passed.

Item 17 Policy on the Judicial Council's Rule-Making Authority

Mr. Michael Bergeisen, AOC General Counsel, presented the report. He stated that questions arise as to whether a proposed rule violates the constitutional requirement that rules not be inconsistent with statute. Some recent cases, which take a narrower view of the scope of the council's rule-making authority than earlier cases did, have made it difficult in

many instances to predict whether a rule will pass constitutional muster. He said that advisory committees are uncertain about whether a proposal should be submitted to the council if there are some doubts about its constitutionality.

Mr. Bergeisen summarized the proposed policy on the issue. The first part of the policy provides guidance to committees and staff on presenting rule proposals to the council if there could be questions about the constitutionality of the proposal. The policy directs committees and staff to consider both the likelihood that a rule might be found inconsistent with statute and the benefits of the rule, and authorizes committees to recommend adoption of a rule even if there is some risk of unconstitutionality. The policy requires that the report to the council on a rule: (1) identify the risk and balance it against the benefits of the rule, and (2) present the authorities and arguments on the issue of the validity of the rule.

Mr. Bergeisen said that the second part of the proposed policy states guiding principles for committees and staff to follow when developing rule proposals.

Judge Edwards asked where the new policy would be recorded. Mr. Bergeisen responded that the Rules and Projects Committee has a policy and procedures manual. This new policy would be included in that, in the minutes of the August council business meeting, and in a brochure being developed about the council's rule-making process.

Chief Justice George suggested rewording recommendation number one so that staff is directed to balance the benefits against the risk of unconstitutionality, in reports to the council.

Council action:

Judge Edwards moved that the council, effective September 1, 2000, adopt the following policy on the council's rule-making authority:

1. Before presenting a proposed rule change to the council, the advisory committee and staff should consider whether the proposed rule is arguably inconsistent with statute. In making recommendations to the council, advisory committees and staff should consider both the likelihood that a rule might be found inconsistent with statute and the benefits of the rule. If a reasonable argument can be made that the rule is not inconsistent with statute, the change may be recommended despite the risk that the rule might be challenged and held to be invalid. The report to the council should identify the benefits and balance it against the risk of unconstitutionality of the rule. The report should also present the authorities and arguments that support the validity of the rule.
2. On topics that have been addressed by statute, the analysis of whether a rule adopted by the council is "inconsistent with statute" should take into account the following principles:
 - a. Even if the rule is "not perfectly congruent" with the statute, the rule is valid as long as it does not conflict with and can be reconciled with the statute.
 - b. The fact that a rule goes beyond what is contained in a statute does not make it inconsistent with the statute. Unless the circumstances show otherwise, it should be presumed that the Legislature simply chose not to establish specific procedures

- in that area and that the council is free to do so.
- c. The mere failure to enact legislation dose not create an inconsistency between a rule and a statute that was adopted.

The motion passed.

Circulating Order Approved

Circulating Order CO-00-03: Statewide Mandatory Notice to Appear Forms

For information only; no action necessary.

Circulating Order CO-00-06: SCA 4 Certification of Voting Results of Kern County

For information only; no action necessary.

Circulating Order CO-00-07: Advisory Membership of the Judicial Council

For information only; no action necessary.

Appointment Orders

For information only; no action necessary.

The meeting was adjourned at 1:25 p.m.

Respectfully submitted,

William C. Vickrey
Secretary