

JUDICIAL COUNCIL MEETING
Minutes of the August 26, 2005, Meeting
San Francisco, California

Chief Justice Ronald M. George, Chair, called the meeting to order at 8:50 a.m. on Friday, August 26, 2005, at the Administrative Office of the Courts (AOC) in San Francisco, California.

Judicial Council members present: Chief Justice Ronald M. George; Justices Marvin R. Baxter, Candace D. Cooper, Richard D. Huffman, and Laurence Donald Kay; Judges J. Stephen Czulger, Eric L. DuTemple, Michael T. Garcia, Suzanne N. Kingsbury, Jack Komar, Douglas P. Miller, William J. Murray, Jr., Michael Nash, and Richard E. L. Strauss; Mr. Anthony P. Capozzi, Mr. Rex S. Heinke, Mr. David J. Pasternak, and Mr. William C. Vickrey; **advisory members:** Judges Frederick Paul Horn and James M. Mize; Commissioner Patricia H. Wong; Ms. Tamara Lynn Beard and Ms. Tressa S. Kentner.

Absent: Senator Joseph Dunn and Assembly Member Dave Jones; Judge Heather D. Morse; Ms. Ann Miller Ravel and Mr. Alan Slater.

Others present included: Justices Roger W. Boren, Carol A. Corrigan, Sandra Lynn Margulies, Eileen C. Moore, Steven Z. Perren, James D. Ward; Judges John H. Darlington, Terry B. Friedman, David A. Hoffer, Charles W. McCoy, Jr., Dennis E. Murray, Sharon J. Waters, and David S. Wesley; Commissioner Ronald E. Albers; Professors Kate Bloch and Peter Tiersma; Ms. Brigitte Center, Mr. Jeffrey Gale, Ms. Deena Fawcett, Mr. Thomas V. Girardi, Mr. Bruce Greenlee, Ms. Beth Jay, Ms. Tracy Keough, Ms. Barbara J. Parker, Ms. Pamela A. Ratner, Mr. Dennis Riordan, and Ms. Sharol Strickland; **staff:** Mr. Michael Bergeisen, Mr. Dennis Blanchard, Ms. Francine Byrne, Ms. Marcia Caballin, Ms. Sheila Calabro, Mr. Philip Carrizosa, Mr. James Carroll, Ms. Casie Casados, Ms. Roma Cheadle, Ms. Gisele Corrie, Mr. Dexter Craig, Ms. Kim Davis, Ms. Charlene Depner, Ms. Nina Erlich-Williams, Ms. Sara Fisher, Mr. Bob Fleshman, Mr. Malcolm Franklin, Ms. Shelly Glapion, Ms. Susan Goins, Mr. Ruben Gomez, Ms. Janet Grove, Ms. Charlene Hammitt, Ms. Christine M. Hansen, Ms. Lyn Hinegardner, Ms. Lynn Holton, Mr. Kenneth Kann, Ms. Youn Kim, Mr. Gary Kitajo, Ms. Leanne Kozak, Mr. Dag MacLeod, Ms. Iona Mara-Drita, Ms. Christine Miklas, Mr. Frederick Miller, Mr. Lee Morhar, Ms. Vicki Muzny, Ms. Diane Nunn, Mr. Ronald G. Overholt, Ms. Christine Patton, Ms. Romunda Price, Mr. Eric Pulido, Mr. Michael Roddy, Mr. Larry Schoenke, Ms. Robin Seeley, Mr. Jeffrey Shea, Ms. Nancy Spero, Ms. Pat Sweeten, Ms. Marcia M. Taylor, Ms. Nancy Taylor, Mr. Tony Wernert, Mr. Michael Wright, and Ms. Daisy Yee; **media representatives:** Mr. David Kravets, Associated Press; Ms. Julie Cheever, *Bay City News*; Ms. Nancy McCarthy, *California Bar Journal*; Ms. Laura McClure, *California Lawyer*; Mr. Mike McKee, *The Recorder*; Mr. Bob Egelko, *San Francisco Chronicle*; and Ms. Donna Domino, *San Francisco Daily Journal*.

Except as noted, each action item on the agenda was unanimously approved on the motion made and seconded. (Tab letters and item numbers refer to the binder of Reports and

Recommendations dated August 26, 2005, that was sent to members in advance of the meeting.)

Public Comment Related to Trial Court Budget Issues

The Chief Justice noted that there had been no requests from the public to comment on trial court budget issues.

Approval of Minutes of June 24, 2005 and July 25, 2005

The council unanimously approved the minutes of its June 24, 2005, and July 25, 2005, business meetings.

Judicial Council Committee Presentations

Executive and Planning Committee

Justice Richard D. Huffman, chair of the Executive and Planning Committee (E&P), reported that the committee had met three times since the last council meeting. On August 10, 2005, in a telephone meeting, the committee reviewed and approved follow-up information and materials pertaining to the council's June 22–23, 2005, planning meeting for presentation at the council's August 25, 2005, issues meeting. The committee reviewed and approved the allocation of baseline fiscal year 2005–2006 Court Appointed Special Advocate (CASA) grant funds. The committee directed staff to consult with the California CASA Association (CalCASA) and members of CalCASA's Policy to Practice Committee to finalize the methodology for allocating the SAL increase, and to report back at a future committee meeting. The committee also reviewed materials and set the agenda for the council's August 26, 2005, business meeting.

On August 17, 2005, the committee met by telephone to review additional materials and further develop the agenda for the council's August 26 business meeting. It also reviewed an evaluation of the year-long participation of new judicial officers on advisory committees and approved the continuation of the program. It reviewed and approved the revised schedule for the council's visits to certain courts in 2005–2006: August 18–19, 2005, to the Ventura County trial court and the Court of Appeal, Second Appellate District, Division Six; October 26–27, 2005, to the Nevada, Placer, and Sierra County trial courts;¹ February 9–10, 2006, to the Shasta and Tehama County trial courts; and April 12–14, 2006, to the Sonoma, Mendocino, and Lake County trial courts.

On August 24, 2005, the committee met in person, reviewed the nominations for appointments to advisory committees, and developed recommendations for the Chief Justice.

¹ Subsequent to this meeting, the October 26–27 visit to the Nevada, Placer and Sierra County trial courts was postponed, with the new dates to be determined in the spring of 2006.

Policy Coordination and Liaison Committee

Justice Marvin R. Baxter, chair of the Policy Coordination and Liaison Committee (PCLC), reported that the committee had met two times since the last council meeting. On August 11, 2005, the committee took positions on a bill concerning the creation of judicial districts in Los Angeles county and three other bills in the areas of civil, small claims, and criminal law. On August 17, 2005, the committee approved comments, on behalf of the council, opposing the tentative recommendation by the California Law Revision Commission to codify the law on oral argument in civil procedure.

The last day of the first year of the 2005–2006 legislative session is September 9, 2005. After the session ends, the Office of Governmental Affairs will prepare the annual legislative summary, highlighting new laws of interest to the courts, to be published in November 2005.

In October 2005, PCLC will review proposals for legislation to be sponsored by the council in 2006 in preparation for making recommendations to the council at its December 2005 meeting.

Rules and Projects Committee

Justice Laurence Donald Kay (Ret.), chair of the Rules and Projects Committee (RUPRO), reported that the committee had met two times since the last council meeting. On July 25, 2005, after the conclusion of the council’s business meeting, the committee met in person to consider a recommendation by the Probate and Mental Health Advisory Committee regarding the applicability of case management rules to probate proceedings. The committee also referred three jury system improvement rules—recommended by the Task Force on Jury System Improvement—to the Civil and Small Claims Advisory Committee and the Criminal Law Advisory Committee for their consideration.

On August 12, 2005, the committee considered amendments to rules 229 and 855 of the California Rules of Court and the repeal of section 5 of the California Standards of Judicial Administration in connection with the adoption of new criminal jury instructions. As previously reported, the committee’s review of those criminal jury instructions at its May 24 and June 30, 2005, meetings resulted in several changes, which are summarized in Item 4 of the council’s August 26, 2005, business agenda. The committee recommends approval of the revised instructions and the related rule amendments and section repeal—Items 4 and 5 of today’s business meeting agenda.

CONSENT AGENDA

Item 1 Access to Visitation Grant Program: Approve Funding Allocations for Fiscal Years 2005–2006 and 2006–2007

The Family and Juvenile Law Advisory Committee recommends approval of funding allocations for the Access to Visitation Grant Program for fiscal years 2005–2006 and 2006–2007, pursuant to Family Code sections 3204(a) and 3204(b)(2).

Council action

The Judicial Council, effective September 1, 2005, approved the multiyear Access to Visitation grant funding allocation of \$780,000 (per year for fiscal years 2005–2006 and 2006–2007) to continuation programs representing 13 superior courts and involving 24 counties (a list of applicants and grant awards is attached as Attachment A). If additional federal funds become available during this funding period, a separate request for proposals and grant application process shall be used to allocate these funds to new programs or programs not currently funded by this grant.

Item 2 Equal Access Fund: Distribution of Funds for IOLTA–Formula Grants

AOC staff recommends that the council follow the State Bar Legal Services Trust Fund Commission determinations and recommendations to approve the distribution of \$8.55 million of Equal Access Fund IOLTA–Formula Grants according to the 2005–2006 Budget Act.

Council action

The Judicial Council followed the June 27, 2005, recommendation of the State Bar Legal Services Trust Fund Commission and approved (1) the distribution of \$8.55 million in IOLTA–Formula Grants for 2005–2006, according to the terms of the State Budget, and (2) the commission’s determination for each individual grant that the proposed budget complies with statutory and other guidelines.

DISCUSSION AGENDA

Item 3 Judicial Council Distinguished Service Awards for 2004–2005

Justice Marvin R. Baxter, Chair, Policy Coordination and Liaison Committee, presented this item.

The chairs of the Executive and Planning, Rules and Projects, and Policy Coordination and Liaison Committees recommend approval of the recipients of the 2004–2005 Distinguished Service Awards for significant and positive contributions to court administration in California.

Council action

The Judicial Council approved the recommendations to give Distinguished Service Awards to the following individuals:

- Presiding Judge Frederick Paul Horn, Superior Court of Orange County, and Justice Patricia Bamattre-Manoukian, Court of Appeal, Sixth Appellate District—Jurists of the Year.
- Ms. Jody Patel, Court Executive Officer, Superior Court of Sacramento County, and Ms. Karen Thorson, Director, Education Division, Administrative Office of the Courts—Judicial Administration Award.
- Mrs. Alba Witkin, co-founder, Witkin Charitable Trust—Bernard E. Witkin Amicus Curiae Award.

Item 4 Judicial Council Jury Instructions: Approve the Criminal Instructions Prepared by the Task Force on Criminal Jury Instructions

Justice Carol A. Corrigan, First Appellate District, Division Three, chair of the Task Force on Criminal Jury Instructions; Justice James D. Ward, Fourth Appellate District, Division Two, vice-chair of the Task Force on Criminal Jury Instructions; and Ms. Robin Seeley, Office of the General Counsel, presented this item.

The council’s Task Force on Criminal Jury Instructions recommends approval for publication of new Judicial Council criminal jury instructions.

Following the council’s action on August 26, 2005, nonsubstantive copyedits were made to the criminal jury instructions. Attached, as Exhibit 1, is a summary list of those changes. Also attached, as Exhibit 2, is a summary list of nonsubstantive copyedits that were made to the proposed criminal jury instructions after their posting on the California Courts Web site (August 10, 2005) and before the council’s approval of the instructions on August 26, 2005.

Council action

The Judicial Council, effective January 1, 2006, approved the criminal jury instructions prepared by the Task Force on Criminal Jury Instructions.

Item 5 Judicial Council Jury Instructions (amend Cal. Rules of Court, rules 229 and 855; repeal Cal. Stds. Jud. Admin., § 5)

Mr. Kenneth Kann, Office of the General Counsel, presented this item with the participation of Ms. Robin Seeley, Office of the General Counsel.

AOC staff recommends approval of the amendment of two rules and repeal of a standard to state that the Judicial Council endorses the use of the new Judicial Council criminal jury instructions. Rule 855 also would be amended to state the council’s intent that its jury instructions be freely accessible for public use and to authorize the AOC to take steps necessary to ensure that publication of the instructions by commercial publishers does not occur without AOC permission.

Council action

The Judicial Council, effective August 26, 2005:

1. Amended rules 229 and 855 of the California Rules of Court and repealed section 5 of the California Standards of Judicial Administration, to endorse the use of the new Judicial Council criminal jury instructions when they become effective on January 1, 2006; and
2. Amended rule 855 of the California Rules of Court to state the council's intent that its jury instructions be freely available for public use and reproduction and to authorize the AOC to take steps necessary to ensure that publication of the instructions by commercial publishers does not occur without AOC permission.

The council directed staff to report back to the council regarding the AOC's experience with commercial publishers under amended rule 855(c).

Item 6 Fiscal Year 2006–2007 Trial Court Budget Request

Ms. Christine M. Hansen, Director, Finance Division; Ms. Sheila Calabro, Regional Administrative Director, Southern Region; Mr. Michael Roddy, Regional Administrative Director, Northern/Central Region; and Mr. Mark Dusman, Finance Division, presented this item. (Mr. Dusman participated in the presentation on behalf of Ms. Patricia Yerian, who was unable to attend the meeting.)

AOC staff recommends approval of the fiscal year 2006–2007 trial court budget requests for submission to the Governor and Legislature in September 2005.

Council action

The Judicial Council:

1. Directed staff to develop a fall budget request that calculates the annual state appropriations limit (SAL) adjustment and to submit this information to the Department of Finance and subsequently to the Legislature;
2. Directed staff to prepare and submit a budget change proposal (BCP) that would provide funding to: (1) ensure that courts' security resources are up to the level of funding needed to implement the approved security standards; (2) address allowable costs for security services, as defined in SB 1396 (Stats. 2002, ch. 1010), that are currently provided by the sheriffs but not paid for by the courts; (3) add entrance screening stations where needed and logistically feasible; and (4) replace courts' entrance screening equipment on a routine basis;
3. Approved the establishment of a dollar cost per new entrance screening station, to be used in the BCP, and the inclusion of costs for other, non-facility-related security equipment requested by the courts; and
4. Approved the submission of a fall BCP to provide a level of baseline funding that will address information technology needs in the trial courts.

Item 7 Fiscal Year 2006–2007 Judiciary Budget Request (to include the Supreme Court, the California Judicial Center Library, the Courts of Appeal, and the Judicial Council/Administrative Office of the Courts)

Mr. Ronald G. Overholt, AOC Chief Deputy Director, and Mr. Stephen Nash, Finance Division, presented this item with the participation of Mr. Eric Pulido, Finance Division.

AOC staff recommends approval of the fiscal year 2006–2007 budget request of the Supreme Court, Courts of Appeal, the California Judicial Center Library, and the Administrative Office of the Courts.

Council action

The Judicial Council:

1. Approved the development of budget change proposals (BCPs) for fiscal year 2006–2007, to be submitted to the Department of Finance for the Supreme Court, the Courts of Appeal, the Judicial Council, and the California Judicial Center Library;
2. Approved the development and submission of a baseline adjustment based on the annual percentage change in the SAL for the Supreme Court, Courts of Appeal, Judicial Council, and Habeas Corpus Resource Center, to the extent that legislation to establish this adjustment is approved or trailer bill legislation is proposed concurrent with the submission of this proposal, and that the SAL adjustment is to be implemented during fiscal year 2006–2007; and
3. Delegated authority to the Administrative Director of the Courts to make technical changes to this budget as necessary.

Item 8 Implementation of Assembly Bill 139 Provisions and Establishment of a Statewide Enhanced Civil Assessments Program

Ms. Christine M. Hansen, Director, Finance Division, co-chair of the Enhanced Civil Assessments Working Group, and Judge Sharon J. Waters, Superior Court of Riverside County, chair of the Distribution Subcommittee of the Enhanced Civil Assessments Working Group, presented this item.

AOC staff and the Enhanced Civil Assessments Working Group recommend the establishment of a statewide enhanced civil assessments program. This includes provisions relating to criteria for an effective civil assessment program and a methodology for the distribution of the assessments collected.

Council action

The Judicial Council:

1. Encouraged courts to consider certain criteria when establishing or enhancing a civil assessment program;

2. Directed trial courts, pursuant to statute, to submit the collections of all civil assessment monies for deposit in the Trial Court Trust Fund (TCTF) after the costs of collections are deducted in accordance with Penal Code section 1463.007, contracts with private collections vendors, and agreements with the Franchise Tax Board or between counties and courts;
3. Directed trial courts to consider fiscal year 2005–2006 as an implementation and transition year;
4. Directed AOC staff to review all available information at the end of the fiscal year and present it to the Enhanced Civil Assessments Working Group for the development of future recommendations that will result in a fair and equitable formula for the sharing of civil assessment revenue between the courts and the AOC; and
5. Directed the Cost Recovery Subcommittee of the Collaborative Court-County Working Group on Enhanced Collections to work with staff to pursue, through procedural and/or legislative changes, the goal of resolving any potential conflict between Penal Code section 1463.007 and Assembly Bill 139.

On the recommendation of the Trial Court Budget Working Group, the Judicial Council took the following two actions on a one-time basis:

6. Allocated the \$5.45 million reduction (utilizing the proposed methodology based on the Resource Allocation Study [RAS] funding model) as follows:
 - Courts under-funded by more than 10 percent receive no reduction;
 - Courts under-funded by less than 10 percent or over-funded by less than 10 percent receive a .27 percent reduction; and
 - Courts over-funded by more than 10 percent receive a .54 percent reduction; and
7. Allocated the \$11 million reduction prorated to all courts based on the fiscal year 2005–2006 base operating budget;

The council also:

8. Directed AOC staff to verify which courts, if any, require advance funding to address cash flow needs created by the delay in receipt of these monies, and that these courts can request from the AOC an advance in its monthly allocations utilizing the current cash flow advance procedures;
9. Directed that all specified section 68085.5(a) and (f) fees (except Probate Code section 1835 fees) (Gov. Code, § 68085(c)(2)) be deposited in the TCTF;
10. Directed that all specified section 68085.5(a) and (f) fees (excluding civil assessments) retained by the courts in fiscal year 2003–2004 be returned to the trial courts in the form of a permanent baseline adjustment;
11. Directed that all specified section 68085.5(a) and (f) fees (excluding civil assessments) exceeding the amount of the baseline adjustment be used to:
 - Reimburse the courts for the costs of forensic evaluations based on the FY 2003–2004 levels,

- Provide seed money to those courts seeking to establish collection programs after July 1, 2005, and
 - Supplement funding for statewide administrative infrastructure initiatives, such as technology;
12. Directed that the distribution of these fees be re-evaluated no later than the end of fiscal year 2005–2006, for fiscal year 2006–2007 and future years;
 13. Directed that the courts continue to handle the distribution of section 68085.5(b) fees as they have been doing for the six months ending December 31, 2005;
 14. Directed that, prior to January 1, 2006, as a result of Assembly Bill 145—the uniform civil fee legislation (Stats. 2005, ch. 75)—and other considerations, the handling of section 68085.5(b) fees be re-evaluated to determine the distribution of these fees starting January 1, 2006;
 15. Directed that all revisions to local agreements related to civil filing fees, and fees for services and civil assessments, be approved by the Administrative Director of the Courts prior to execution; and
 16. Directed AOC staff to pursue a resolution of the ongoing issue of the courts’ authority to expend funds for certain expenditures, including facility-related items that are not clearly county obligations, which may include legislative and/or rule changes.

Item 9 California Juvenile Dependency Court Improvement Program Reassessment

Ms. Iona Mara-Drita, Center for Families, Children & the Courts, presented this item with the participation of Ms. Diane Nunn, Director, Center for Families, Children & the Courts, and Ms. Charlene Depner, Center for Families, Children & the Courts.

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council receive the AOC staff report, *California Juvenile Dependency Court Improvement Program Reassessment*, a comprehensive examination of juvenile dependency law and court operations in California, and an analysis of progress made by the dependency courts since the assessment report of 1997. The report includes recommendations for improving the experiences of and outcomes for children and families in the dependency system, increasing permanency, and reducing the number of children in the system.

Council action

The Judicial Council received the report *California Juvenile Dependency Court Improvement Program Reassessment*, a comprehensive examination of juvenile dependency law and court operations in California, and an analysis of progress made by the dependency courts since the assessment report of 1997. The report makes specific recommendations for steps to be taken by the judicial branch to improve the experiences of and outcomes for children and families in the dependency system, increase permanency, and reduce the number of children in the system.

**Item 10 Dependency Representation, Administration, Funding, and Training
(DRAFT) Pilot Program Update**

Ms. Leah Wilson, Center for Families, Children & the Courts, presented this item with the participation of Ms. Diane Nunn, Director, Center for Families, Children & the Courts, and Mr. Lee Morhar, Center for Families, Children & the Courts.

AOC staff recommends that the council receive the first-year program update on the Dependency Representation, Administration, Funding, and Training (DRAFT) pilot program and direct staff to provide a second-year update to the council in 2006.

Council action

The Judicial Council accepted this first year program update and directed staff to provide the council with another update in August 2006.

Circulating Orders

There were no circulating orders since the last Judicial Council meeting.

Appointment Orders

Copies of appointment orders are for information only; no action was necessary.

There being no further public business, the meeting was adjourned at 2:30 p.m.

Respectfully submitted,

William C. Vickrey
Administrative Director of the Courts and
Secretary of the Judicial Council