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>> Please stand by for real-time captions.

>> Please stay tuned. The meeting will begin shortly.

>> Good morning, this is the public business meeting of the Judicial Council of California, Friday, July 24, 2020. The meeting is now in session.

>> Mr. Harrigan? Judge Hinrichs? Judge Moorman?

>> Here.

>> Judge Bottke? Mr. Roddy? I also see him on the WebEx and will mark him present. Judge Nomoto Schumann? I see on the WebEx and will mark present. Ms. Andrea Wallin-Rohmann.

>> Present.

>> And Commissioner Wightman?

>> Present.

>> Judge Feng? I do see him on the WebEx so will mark present.

>> Justice Hill?

>> Present.

>> Thank you. I'm sorry, Ms. Hill? Senator Jackson? And Judge Hinrichs?

>> I'm here.

>> Thank you, Judge. Chief, we have a quorum. And if you could please identify yourself by name each time you speak when asking questions, address other individuals by name. Please mute your WebEx when you're not actively speaking. Please turn off your video feed until presenting or speaking. Thank you, Chief.

>> Thank you, Amber. I also see Ms. Hill on the list of participants. Except now I don't see -- I know you have indicated we have a quorum and we will proceed. Thank you. Before we move to our agenda I want to take this opportunity to address two additional items. One item is as it

relates to our delayed and our future action on temporary emergency rules. And the other item is on the retirement of one of our judicial colleagues and council members. First regarding the delayed and future action on temporary emergency rules. As we all know too well, every country and the state continues to grapple with sad and tragic effects from the global pandemic as well as different state and local consequences, directives and orders related to the global pandemic. Last March when the Governor issued his executive order providing me as Chair of the Judicial Council with unprecedented temporary authority to protect the public during the pandemic, I promised on our behalf to the Governor that we would assume this responsibility with the greatest care. And at the time of his executive order, as you all know, our Legislature was not in session. And the council exercised its new authority as a constitutional partner with the executive branch by adopting temporary emergency rules designed to protect the health and safety of the public while ensuring that access to justice remains available, safely. Let me emphasize however the word temporary, as regarding these rules. The pandemic and the resulting economic recession have frightening impacts for those who have fallen ill and their families and friends and for those who have lost employment and health care and are at risk of losing housing or facing bankruptcy. We adopted temporary measures, as you know, to reduce the population of court users to urgent and critical users to certain types of essential caseloads. We did so, in part, because the pandemic had caused courts to have reduced status and because we desperately need to reduce gatherings in courtrooms and courthouses so as not to spread the virus. We also adopted temporary measures to keep people in their residences during the shelter in place orders by delaying evictions and foreclosures while, again, the Legislature was not in session to be able to respond to those needs. However, we have always known that the remedies that we thought for all the affected parties are best left to the legislative and executive branches of government for open and transparent opportunities to be heard in those meetings and hearings and for permanent measures and permanent solutions. When we attempted to and some of these temporary rules at the beginning of June, the Governor, legislative leaders and Judicial Council members asked me to suspend the vote on rescinding rules 1 and 2 regarding unlawful detainer evictions and foreclosures to give the Governor and the Legislature more time to sort through various policy proposals. I note that this coming Monday is July 27 and the Legislature will be back in session. I want to give the two branches enough notice that the council will very soon resume voting to terminate these temporary rules 1 and 2 having to do with unlawful detainer, evictions and foreclosures. If Council votes to terminate rules 1 and 2 the rescission of the rules will be effective on August 14 the rescission of the rules will be effective on August 14, 2020, giving our sister branches more time, the time they need to deliberate, conduct hearings, and enact legislation. I urge our sister branches to turn their attention to this critical work to protect people from devastating effects of this pandemic and its recent resurgence. Secondly, this is the last regularly scheduled Judicial Council business meeting for our vice-chair, Justice Ming Chin. I say regularly scheduled meeting because these are uncertain times and you may need to be on the Judicial Council meeting before your retirement on August 31 yet. Ming has been my left-hand person on the council and my right-hand person on the bench, which is very convenient when he pulls out his mints and his M&Ms on the bench. But in this Hollywood Squares remote meeting environment, I know I'm dating anyone who remembers Hollywood Squares, Ming could be anywhere remotely and I know

he'd be fine with that. He would flourish and it would warm his heart because we all know that he has always believed that technology was and is the future for the judicial branch both in access and transparency and efficiency. From wanting to pay parking tickets on his cellphone -- you have parking tickets, Ming? -- to know how to do more on his smart watch, Ming has always been committed to showing us how technology can better meet the evolving needs of those we serve. My colleagues and I on the court honored Justice Chin on his day job, as a Supreme Court justice in June at his last oral argument session. Many words of praise but one word that stood out by us all was that Ming is our friend. He and his wife, Carol, would always look out for me at legal or branch events with a place to sit, food to eat, and something to drink. As I said, he fed everyone on the bench with his candies and his surprises that he would pass through all seven of us. Ming has been a fantastic colleague. Smart. Wise. Visionary. Passionate. Articulate. Kind. Always warm and humorous whether or not he agreed or disagreed with your position. But to him being collegial meant being a friend. Justice Chin leaves a scholarly legacy, volumes of opinions, 350 majority opinions and more than 100 separate opinions and legal writings all for the public good, guiding the State of California now and into the future. And, of course, he leaves a legacy of mentorship and inspiration to generations of students, lawyers, and judges. His externs are the happiest people I have ever met on the Supreme Court, and his beloved wife Carol and his family, they outshine all of those accomplishments, really, in his world. His world is committed to public service, public institutions, diversity, and inclusion. And after over three decades on the bench while still being committed to community and legal organizations, his family, and serving this council as a member and leader of our technology efforts, Ming is an iconic example of a jurist and public servant. When his colleague and I were friends, Marvin Baxter, California Supreme Court justice, retired, Ming should a list of qualities that he believed applied to Marvin and to all good jurists and I believe all of these apply to Ming as well. A list that we all can aspire to regularly. This list is common sense, integrity, poise, courtesy, humility, a sense of humor, patience in court, open-mindedness, impartiality, intellectual courage, creativity, strong concern for justice, knowledge of the law, adherence to professional ethics, avoidance of improprieties, punctuality in court, decisiveness in judicial rulings, and sound judgment. Ming, I will miss you desperately. I'm grateful for your service, your guidance, our friendship. We'll always be in touch. Thank you, Vice-Chair Chin. I invite anyone who wants to make comments at this time.

>> This is Judge Brodie. Chief, if I could?

>> Please.

>> I would just like to say when it comes to core technology there has been no more consistent champion than Justice Chin. We see a lot of initiatives come through, a lot of projects, and in our work we tend to start small. We tend to roll out pilots to make sure that the concept is going to work, and when it does Justice Chin is always the first to say, this is fantastic. How do we expand this to the entire branch? How do we help everyone move forward? And he has been a tireless advocate for our technology work. He thinks really expansively and creatively about our

work and brings perspective that I know I am very much going to miss and I want to thank him for his vision and for his commitment and his great work in that part of our job.

>> Thank you.

>> Chief? If I may speak please. This is Judge Nomoto Schumann. Thank you. I just want to say that the California Judges Association has always truly been grateful and appreciative of the many, many times you have given of yourself and your time to speak to us, to educate us, and to train our members. We hope our relationship with you will continue and please accept my gratitude and the best wishes for a wonderful, exciting new chapter in your life.

>> Thank you, Judge Nomoto Schumann.

>> If I could, this is Gretchen Nelson. I would just like to say that I have gotten to know Justice Chin since I've joined the Judicial Council and when he announced that he was retiring I think my comments were, Say it ain't so, Joe! I am very, very sorry you're leaving but I'm sure you're going to have a terrific time and I would hope, if we could, in this bizarre Hollywood Squares, maybe if everybody could unmute and we could give him a round of applause.

>> Great idea.

>>[Applause]

>> Thank you. Unless there is anyone else at this point, I confess difficulty with a little bit of delayed reaction and uncertain about all the buttons in front to meet with the new effort at WebEx. This is solely operator error so if I make a mistake and you wish to speak and I stepped on your statements in some way, please keep on speaking. I will understand that. So, I think this concludes some of our statements but we know one day soon we will be able to celebrate you, Ming, in person. But at this time then, not seeing any more hands raised, I don't know, Ming, if you want to say anything at this point? I think you have to unmute. Not quite sure. There you go. So, Ming, I see you speaking. I can't hear you. I'm sorry and I know that you were muted but I know we'll have time to visit after and maybe when we get this newer technology to us, a little bit more user-friendly. I think you and we will move on because I'm unable to hear you but I see you smiling broadly and waving. Thank you. I am reading Eric Taylor's text about thank you, Justice Chin. You are the best of us. Thank you, Eric.

>> This is Commissioner Wightman.

>> Please go ahead.

>> I had just written a note and I hope you will get it where I just used the letters of his name, because our paths crossed for a short period of time but he made an amazing impression. M for Maestro. I for intelligence. N for neat. G for gracious. C for courageous. H for humble. I for independent. And N, never say never to the possibilities of technology in the courts. Thank you, Justice Chin.

>> Very nice. Thank you. I see Ming wave. Thank you.

>> At this time I turn the agenda over to Justice Slough regarding our public comment.

>> Chief, this is Amber. We are having some technical difficulties with Judge Bottke's microphone. Can we come back to public comment?

>> Yes. Thank you. We will move to approval of the minutes. I know you have them. These are the minutes from our May 15, 2020 Judicial Council public business meeting. After you've had a chance to reacquaint yourself with the meeting I would entertain a motion to approve the minutes, please.

>> This is Judge Lyons. I make a motion to approve.

>> And Judge Rubin seconds. All in favor of approving the minutes, please say aye.

>> Aye.

>> Thank you. Any noes? Any abstentions? The minutes are approved. Thank you. Next on the agenda is my Chief Justice's report. This should be a virtual report since that seems to be what it all was. As you know it summarizes my engagements on behalf of the branch and outreach. As a result of the ongoing global pandemic, my calendar continues to have canceled events. These unfortunately included a long planned reception by the Institute for Democracy and Justice to honor Justice Chin and his work and contributions to the -- we can to the law and legal education in California. Justice Chin was involved in the planning of that panel. Not that Justice Chin would necessarily mind, but virtual events, as I said, have now become another regular category on my calendar and I suspect your calendar as well, ranging from virtual visits and virtual installation ceremonies to virtual town halls and virtual panel discussions. As co-vice-chair of the meeting and planning committee at the Conference of Chief Justices, of which I am a member, and the Conference of State Court Administrators, of which Martin is a member, I participated in the virtual planning session for the virtual implementation of their national meeting next week. Martin and I also participated in two national meetings of these two national organizations and their pandemic rapid response team. It's a workgroup on communications and funding that seeks to help state courts move forward during this pandemic, how we can resume our operations and what we can do to build a stronger judiciary in the long term. And this comes very beneficially from all chiefs and what's happening on the ground in their states with their trial courts and courts of appeal and their administrative staff. This is led by the Texas Chief Justice Nathan Hecht who was the president of the Conference of Chief Justices. Related to this pandemic work I also participated in the national virtual forum called A Conversation With Chief Justices, organized by the National Center for State Courts general counsel committee. And the participants included the Michigan chief, Justice Bridget Mary McCormack, and the Rhode Island Chief Justice Paul Suttell. This was moderated by the Texas Chief Justice, Nathan Hecht, and ExxonMobil General Counsel Randall Epp and her. The attendees were all interested in what was happening in the courts and what our challenges were

and what innovations we could bring to the table. Specifically they asked us about my statement about the tragic death of George Floyd and social justice, racial justice, and equality issues in the judiciary are. I had the pleasure of administering the oath and delivering brief remarks at the Filipino Bar Association of California virtual installation ceremony and also provided a welcoming introduction to a virtual forum on a national association of Filipino American lawyers and judges at the midyear leadership summit. For the Justice and Diversity Center of the Bar Association of San Francisco sponsored by UC Berkeley and Santa Clara University, one justice and I provided introductory remarks further advocating for justice, public interest and social justice perspectives in a remote speaker series for law students. That program discusses really, their future, the importance of legal services and public interest work in the legal profession and its impact on the communities we serve. The panelists for this session, called Advocating for Justice: Perspectives from the Judiciary on Access to Justice, were Santa Clara County Superior Court Judge Irvani-Sani and First District Court of Appeals Justice John Streeter. Interesting about the presentations of both is that one came from a public sector background as a lawyer, one came from a private sector background as a lawyer, but both spoke to their community engagement and devotion in legal social justice issues. Under normal circumstances the Supreme Court's June oral argument calendar would've been held in Los Angeles but under the court standing administrative orders response to the pandemic, all of our oral arguments are conducted from the San Francisco courtroom now with counsel appearing through teleconferencing, videoconferencing with social distancing, and density controls for media and personnel in the courtroom. Some of my colleagues on the Supreme Court and representatives from the State Bar of California also participated in online forums with about 2400 law students registered for the fall California bar exam, which allowed them to provide their own personal input regarding the administration of the bar exam and its effect during a time of pandemic. Martin and I participated in a virtual visit with participants in the judicial fellowship program virtual end-of-the-year ceremony. This honors the judicial fellows class of 2019-20. Many of them were in your courts and offices. Participants were involved with placements in two Judicial Council offices and the superior courts of Butte, Placer, Sacramento, Alameda, San Mateo, Los Angeles and San Bernardino Counties, and the program enables them to experience what it's like to work in the judicial branch and the value and importance of public service. And finally I was pleased to participate in a remote interview with the ADA to recognize the accomplishments of yet another Californian, honored with the bar association's Margaret Brent award, Ruthe Ashley, well, well deserved. This concludes my report to council and I turn this over to Martin for the Administrator Director's report.

>> Thank you. Good morning members. I refer you to my regular written report that's in your materials. As usual the report recaps aspects of the ongoing work by the council staff since the last business meeting in relation to the branch's response to COVID-19. Because that's been such a dominant feature of the action activities since March or so, we are carving it out putting those activities in --. A couple of items I want to bring your attention to and report for the benefit of the public is the status of where we are in terms of judicial emergency orders. It's just a summary that obviously more detail under all of this but in terms of the support for the local courts as they adjust their operations since the state of emergency was declared. The report

notes there's been a total of 230 judicial emergency order requests that have been processed and of those, 68 requests were submitted to and approved by the Chief Justice since we passed that on May 15. As of today for reference we have 27 trial courts that are currently operating under some level of local judicial emergency orders and continue to provide those updates at the end of the report as we proceed through this pandemic. I want to comment a little bit about the resumption of jury trials. It's getting a lot of attention, a lot of energy as courts continue to adapt to the environment that we find ourselves in and part of that adaptation has been in relation to finding creative ways to manage social distancing, facilitate jury assembly, all while complying with health orders and best practices in order to keep people safe. Our Facilities team naturally has been quite active in helping several courts secure temporary space leases to find alternatives for jury assembly sites. Today we are working with nine courts so far. Colusa, Los Angeles, Mariposa, Merced, Placer, San Joaquin, San Mateo, Sonoma, and they are actually convening jurors, potential jurors in high school auditoriums, theaters, state fairground facilities, local veterans halls, and vacated office buildings that were formerly occupied by a bank. I use those as illustrations to show some of the adjustments and modifications and practices that are occurring out there. The Facilities Services team, the maintenance team, is available to assist courts 24/7 as usual, and they are doing everything they can in response to requests to help protect our judges and our staff and members of the public as they enter and exit court buildings. I have to stop and say that they are led ably by our Facilities Services director. I want to take this time to thank Mike and his team for everything they've been doing during this time. Some of that extends back to other times [Indiscernible - low volume] In terms of responsiveness. I hope this doesn't become a bit of a habit but I want to talk a little bit. He's not going to like this because he's a humble and soft-spoken person but he plans to retire officially from state service and public service at the end of October and not knowing, since there is no usual opportunities to celebrate and acknowledge people, I want to take some personal privilege to do that here. Mike has been talking about retirement for quite some time. We have successfully talked him out of it a number of times. But you get to a point where you have to concede and acquiesce. I don't think this is pandemic related because, again, he had been talking about this for quite some time. He has had a very long career, both public and private, which crosses over four decades and has been public sector and private before he joined us. He was with the executive branch and a governor appointee, in that role, at the San Francisco Civic Center. And he was part of the restoration of the Supreme Court. Folks may not know this history [Indiscernible - low volume] And actually his first project with the Judicial Council was in 2011 and he worked on the courthouse in Chico and the Butte Superior Court. We were lucky to appoint him in 2016 and had him since then. Since then he's helped us develop a new master plan and every prioritization for the courthouse construction. He's been managing all the projects that have been occurring since then and he's also developed the new Trial Court Facilities Standards for construction, and those draft standards are actually out now for public comment and they will come back to your attention sometime in November and come before the council to vote on it and potentially take action. He also led the sustainability program, trying to green the courthouses and preserve energy. And while he was here he did not have enough to do already, we decided that we would consolidate our facilities and the construction program together taking there is some logic that as you move from building the

buildings into maintenance, we wanted that to be more seamless. He also helped us with what I describe was to build the program into a program instead of what was a project-by-project basis style of maintaining. A lot of programmatic and sustain [Indiscernible - low volume] Which is incredibly important that has the size of a portfolio, more than 450 facilities, but really billions of dollars in construction projects that are going at any time. He was critical in helping me and judges and others set up for some hard decisions to stop the program as an effort to show some responsibility when we were showing insolvency, and then of course we were successful and rewarded for a tough decision and were able to move forward with the construction program and then move the source of revenue forward from the General Fund rather than on the feeling track of the [Indiscernible - low volume]. This is a little bit not like me and it's kind of corny but when I think about Mike and his team, lately considered the unofficial motto of the U.S. Postal Service but it really encapsulates his service and I'm going to take some liberties in adapting it but it goes, Neither fire nor flood, earthquake or pandemic can stay this courier from the swift completion of his appointed rounds. And without a doubt I think it really does capture Mike and the team and the spirit brought to all of that. And it's also a model that is proving true, I think, for our entire branch when you think about our judges and the staff, we are continuing to work with what can only be described as a remarkable focus and commitment and energy and continue to serve the public during these troubling times. Mike, you are a humble guy but I want to thank you again for your commitment. [Indiscernible - background noise] we won't try to talk you out of retirement too aggressively but it is your turn. And if I may take one more moment of privilege. We have another retirement. I may not be able to keep doing this. We have another person departing and it is Susan McMullen. She's been the lead staff [Indiscernible - low volume] But in particular it's a vital role for anyone assigned to her. She's been our legal services attorney assigned to the Rules Committee since 2005 [Indiscernible - background noise] and guiding the activity through all these annual cycles for the last 15 years. She's been the central key, institutional fabric that all of us are thread through. She is scheduled to retire at the end of August. I want to make sure we take this time to thank her for her professional contributions in this area. There is somebody who works intimately and very closely on all of this and that is Justice Hull, and my understanding is he may want to add some comments if he is able to on Susan's behalf.

>> Thank you for the opportunity. I hope I am being heard. I learned just yesterday with more than a little dismay that Susan is retiring at the end of August and I wanted to personally thank her for her service to the Rules Committee over the years and to the judicial branch in general. I believe she has served 19 years on the Judicial Council staff. She assumed the work of lead staff to the Rules Committee when Debbie Brown moved to her current position, frankly, I've forgotten how many years now. In any event the transition from Debbie to Susan was flawless as far as the Rules Committee was concerned and Susan has served the Rules Committee flawlessly since that time. I found her to be intelligent and conscientious and very pleasant to work with and I just wanted to say that we will certainly miss her. All of us wish Susan a long and happy and healthy retirement. Thank you.

>> Thank you, Judge Hull. The last update I wanted to provide is information related to the budget. Really just two pieces. One is the broader one, which is we have now crossed the zone between completing an appropriation cycle and moving through January, the May Revise and not getting [Indiscernible - low volume]. The council agenda is quite heavy today with respect to allocations associated with that, so there will be a lot of attention on that agenda. As part of the reductions that are part of this agenda I want to make sure I am very clear in explaining this to the members and to the public. The short version of this, the longer version will be these allocation decisions. But to remind folks that at the end of this budget cycle the judicial branch is staring at a [Indiscernible - low volume] And that is branchwide and statewide. It will clarify some confusion about whether or not there will be trigger cuts for further adjustments downward for the branch budget because there was an arrangement for triggers in the budget. The best way that I want to describe it and make people understand, is that it is for now a \$200 million reduction. The system is setting up to execute and implement a \$200 million reduction but there is a hope and a trigger for restoration. Not a second trigger but a second event that I would phrase as a trigger restoration in the form of \$150 million. And the trigger is the federal government by passage, potentially, of a second pandemic relief budget act would then provide \$14 billion to the State of California. If that event happens, then there is the prospect of \$150 million of that \$200 million moving forward. Again, it is a \$200 million overall reduction to plan for and execute upon but there is this prospect of \$150 million restoration if the \$14 billion is not the amount of money that comes in the State of California. Again, I hope that helps clarify. We want to make sure that everybody is quite clear on how the budget has been wired. Of course there is the prospect of maybe some further adjustments because of the times with the Legislature [Indiscernible - low volume]. Next week there could be further actions either budget language-wise or budget act depending on what happens [Indiscernible - low volume] Closer directly to the council operations, I want to make sure the members and the public are aware that we also have had our reduction. You're part of that \$200 million. We have made our decisions to go ahead and implement some reductions associated with that. We have instituted the one day furlough for every month the balance of this fiscal year. We put those dates out because we want to make sure that our customers and our people know the days of which we will not be open for business except for emergency purposes, of course. But we have formally put this out and have done the one day furlough. We also are going to try to run a very high vacancy rate, which will stream services. Similarly we will have a soft hiring freeze. The reason I call it soft is because we are trying to balance our vacancies and our hiring freezes based on what the support needs maybe for the trial court to the Courts of Appeals and for the Supreme Court. We know from past experience on the prior recession that, ironically, even though this is happening, demand actually increased on us because the trial courts and the Courts of Appeals will make their similar reductions and then that will actually generate work that gets offloaded in aggregate in our area. Plus, as they grapple with their own set of reductions we know that they have needs for advice and support. The easy examples are in legal services, human resources, and facilities and labor and the like. Our goal is to make decisions here to meet our targets without creating or at least mitigating any impacts we may have to the people that we serve. And then we are doing the things I think everybody is doing, freezing travel, slowing down equipment, dealing with fleets, anywhere that we can to cut operational overhead in

preparation, candidly, for next fiscal year when we have more reductions. So, that's the state of where we are. In the event that that changes, members, I will advise you. But we are going to try to see if we can't do it this year with a single day furlough to preserve as many jobs, which translates to preserving service levels, as best we can and if that changes, we will certainly advise you accordingly. With that, Chief, I conclude my rather lengthy report this morning.

>> Thank you for that informative report, Martin. We are sorry to hear about the necessary and practical reductions to the Judicial Council and staff. We also extend our congratulations to Mike and to Susan McMullen. At this time you know in our normal regular agenda we hear from the Judicial Council internal committee chairs on their reports but for today's meeting they have submitted written reports that can be found on our website. Also before I get to the consent agenda, I understand Justice Slough is ready to proceed with public comment. Justice Slough?

>> Thank you very much, Chief. Sorry about that earlier. I was having difficulty on muting myself but I think I'm all good now. As is abundantly clear, it's necessary in these unprecedented times of this pandemic that we adjust how and when and where we do our Judicial Council meeting. Obviously they have been done remotely and are being done remotely now, and probably will be for the foreseeable future. As expected the shift doesn't provide for our normal, in person public comment, which is an important piece of our meeting schedule. We do recognize as a public organization the importance of public comment in our process and how it helps us in our decision-making process. We do receive written comments and can continue to receive written comments on items on our agenda or any other matter of administration. We encourage people to continue to comment in this format and assure all who are listening that if you send in a public comment, it is shared with all Judicial Council members prior to the meeting. Again, the comments are accepted on matters that affect judicial administration or on any of our specific notice agenda items. We do not receive and post written comments that are specifically directed to a particular litigation or case. Written comments can be emailed and that email address is judicialcouncil@jud.ca.gov or they can be mailed in to our address or delivered in person at our official location, Judicial Council of California, 455 Golden Gate Avenue, San Francisco, 94102. If you mail it in, attention Cliff Alumno. We welcome public comments. All members will receive them and consider them when posted. Chief, may I take a moment to say my goodbye to Justice Chin? I will be brief.

>> Please do. Thank you.

>> Justice Chin, thank you for your mentorship, your friendship, and ultimately and most importantly to me, just your sense of kindness and human being. You ran down a long list of descriptors of this man, which were true of him, true of you, Chief, and are aspirational for me as a member of this branch. I will note, Chief, that I heard you say, Patience in court, and I focused on that because patience in progress on technology was demonstrated in different ways by Justice Chin. He pushed as hard he pushed us. He wanted improvement. Once in person improvement. Continues to want improvement and it was because of his patiently being impatient that I do believe and agree with Judge Brodie's comments that we have made

tremendous progress. Justice Chin, we never got our round of golf in but I still believe we can, but you will owe me two strokes aside and I wish you and your wife the very best in your retirement. Thank you, Chief.

>> Thank you, Justice Slough. You made me smile when you talked about Ming and golf. Before we address the nine items on our consent agenda, I want to once again acknowledge the outstanding work of our advisory body volunteers and our curriculum committee members. Your ongoing work truly enables the Judicial Council to be responsive to the needs of the public and to adopt policies to support access to justice and the efficient administration of justice, and create one of the most dynamic judicial education programs in the country. All of this work is done by volunteers who have challenging day jobs, families, and other obligations. But we do rely on the knowledge, experience, and commitment of our 612 advisory body members, our 174 curriculum committee members, also volunteers, and Judicial Council staff to move the branch forward and serve the public. Therefore, to maintain the continuity of effort and existing leadership skills to address critical judicial branch policy issues and educational needs during the COVID-19 pandemic, I decided to extend all advisory body members and curriculum committee members' terms for one year so they may all come up with the collective wisdom, continue to assist us in moving forward in this new environment with limited resources and unprecedented challenges. I think it's the prudent thing to do at this time and I want to thank you all for continuing to help and stay and steer the course. In consultation with the Judicial Council internal chairs and Martin, it will be making additional appointment decisions in the near future. But there is one that is brought upon us by rule of law. Right now we do not have a say in it and that is the transition of the president of the California Judges Association. So, I want to virtually thank and acknowledge the impactful contributions of Judge Nomoto Schumann as she transitions off the council. Thank you for your service, your passion, your candidness, your innovative ideas, your contribution to the cause of justice. I thank you for the abbreviated tea ceremony in the chambers of the Third District Court of Appeal. I thank you for broadening my horizons. I am inspired by your care and concern for the well-being of the public, lawyers, and judges, and reaching out to deans of law schools for our future leaders, our students, our law students, and their well-being. You've been innovative and inspirational and have been a joy to work with and I will miss you. I don't know if you want to say anything or not at this point, but you are free to.

>> Just very briefly because I know we are on a very tight schedule, I just want to thank everyone for making me feel so welcomed and, Chief, you particularly have always made me feel comfortable coming to you and speaking to you and, regardless of how overwhelmed and busy you were with this pandemic situation, I will always, always be grateful for that. And I just want to end this by saying, folks, continue strong and warm relationships with Judicial Council and the Chief, and I want to say one thing, leaving this with all of you. In this time of very unsettling, troublesome times, there is a saying in Japanese, it is -- and what it means is that moment will never return. Live it and enjoy it to its fullest. And I think that is a very important thing that we all need to remember in this really, really challenging time. And, again, thank you, everyone, for your kindness. Thank you.

>> Thank you, Tam. We hope to be in touch. Returning to our consent agenda, I failed to actually move it. Having reviewed the consent agenda I will entertain a motion to approve. [Indiscernible - overlapping speakers] Thank you, Judge Conklin, and I heard a second? Thank you, Judge Hopp, for the second. All in favor, please say aye.

>> Aye.

>> Any noes? Any abstentions? The consent agenda is approved. As you all know, any item on the consent agenda may be moved and advanced discussion agenda by a member of council. Next we have our discussion agenda. We have five items. We begin with the Court Facilities Judicial Branch Five-Year Infrastructure Plan for Fiscal Year 2021-22. It's an action item and I've asked the presenters to introduce themselves. Thank you.

>> Thank you very much, Chief, and fellow members of the council, and we will get to Mike Courtney in a moment, and before I start with my comments, I did want to say, and I did not have an opportunity to mention Ming and I know that, Ming, in just a few moments it is absolutely impossible to capture what you mean to all of us. Sometime, hopefully in the near future, all of us in person can raise a glass to toast you. This has been an extraordinary journey but it absolutely wonderful friend and we thank you and you mean the world to us. At this point I would like to outline the five-year plan for the construction of much-needed courthouses. The plan we are presenting to you is much different than the plan originally [Indiscernible - muffled] as you know Governor Newsom has outlined in January of this year a \$2 billion plan over five years to help our branch build safe and secure as courthouses that will benefit the public for decades to come. In this unprecedented pandemic that all of us are currently grappling with, and the resulting economic fallout has put all of this on hold. The five-year blueprint that we have been developing as required by the Department of Finance and the Governor's office and others [Indiscernible - muffled] to move forward and overstate office economic condition. [Indiscernible - low volume] Soon be part of -- I understand that many courts around the state, some of these are deteriorating rapidly. This list before us today is just a starting point for our ongoing -- we also appreciate executive and executive branch's trust over this past decade in terms of giving us the opportunity to evaluate the critical and immediate needs of the various courts around our state. Before I turn this over to Mike Courtney for further discussion of the report, first, I want to thank the Facilities team he leads for their extraordinary efforts. They have done an absolutely wonderful job putting all of this together. And I want to thank the members of the Court Facilities Advisory Committee for the literally hundreds of hours that each of the members have spent developing this overall five-year plan. And finally, before I turn it over to Mike, I want to echo Martin's comments. Mike Courtney has been absolutely extraordinary in terms of what he has done for all of us and what he's done for our branch in terms of moving us forward, in terms of construction, and certainly in terms of the maintenance of over 21 million square feet that he has to manage. He is supremely talented and he has left an enduring legacy that will be tough for anyone to match. Mike, we thank you for all that you have done. Mike, at this time, if you could present your report and then we will both be open for any questions.

>> Justice Hill, thank you for the kind words. I can only go down from there. Also I want to thank Martin for the very kind words. Martin knows this but to the council, we have a great Facilities staff and some months we literally do work every day and some of the nights of the month when emergencies come up across the state. It's a great team and they deserve a lot of the credit that I've heard today as well, so thank you. The five-year plan is a requirement of the state budget for purposes of forecasting long-term infrastructure to this day. It's a capital construction funding and sequencing proposal and we are required to update it annually. All state agencies submit their five-year plan, and that includes the Governor and the Legislature, to get a statewide look at all of the capital improvement requirements across the state. And it does require council approval annually. It is the rationale for the plan, it's pretty straightforward. We took the approved statewide list that the council approved I believe it was last December and we are going in sequential order. The number of proposals and project phases is not based on any funding proposals specifically but more based on what capability do we have to implement as many projects as possible within any five-year period. The proposal includes 32 projects plus a fairly large study for the L.A. court system and we will talk about that in more detail in a minute. If fully implemented the plan would construct 397 new courtrooms, replacing 380 existing courtrooms and adding 17 for future growth. The overview of the plan of year 1 includes this Los Angeles master plan study and 11 capital-outlay projects and I would note one of those capital outlay projects, the Nevada project, as a study phase and it initially to confirm whether we are looking at a renovation of the existing courthouse complex or a new facility. Years 2 through 5 include the consideration of the 11 projects as they move through their different funding phases plus five new projects each subsequent year. I note that the plan accomplishes all of the immediate need for projects. We were fortunate to get one of those projects buildout of three additional courtrooms for the Stanislaus project in the past budget. And it also includes 15 of the 29 critical need group projects. So year 1 of the plan is 11 projects, \$1.7 billion. The Nevada project includes a specific study phase. The dollar value of the year 1 funding request is about \$213 million. As I said all the projects are from the immediate need group. It's 11 different trial courts and those 11 facilities make up 104 courtrooms. The long-range planning study for Los Angeles really has to focus in on how the Mosk and Foltz projects would get executed. They are both very large buildings. One is a renovation project and was a replacement. The timing of those projects is probably directly related to the timing of the other piece of that. And I say that, you can imagine trying to renovate the Foltz building. It's 1 million square feet and 17 floors and we would have to empty part of the building to start renovating it and put those courtrooms someplace else and it's possible that with some replacement or sequencing phase, that could go in the Mosk building or vice versa. And also trying to analyze the impacts of other proposed Los Angeles courthouse projects. One option would be that some of the courtrooms downtown would move out to the suburbs, as an example. Those details need to be worked out in a much more -- dealing with logistics and the specific details with the court. Over time we simply did not have the ability to do that when we were doing the prioritization. Also note the future costs of all the proposed Los Angeles projects is about \$6.8 billion. The action before you is to approve the plan and direct staff to submit the plan to the state Department of Finance. Our due date is July 31. And with that, Justice Hill and I will be happy to answer any questions.

>> Any questions at all?

>> I think the absence of questions, Mike and Justice Hill, is a tribute to the thoroughness and the thoughtfulness of this plan. I know all of council and much of the state has been greatly interested in our facilities program. Losing you, Mike, is a great loss. Bittersweet because, congratulations to you and thank you for all you've done for our public buildings in California. As well, I know I am impressed with the thoughtfulness of this recommendation and the future of our building process in California. So, I would entertain a motion to approve and a second? Always with council knowing that with the motion on the table does not chill in any way further discussion.

>> Chief, I move for approvals. Judge Taylor.

>> This is Judge Brodie. I'll second.

>> Thank you. All in favor of approving this recommendation, please say aye.

>> Aye.

>> Any noes? Any abstentions? The recommendation is approved. Thank you very much.

>> Thank you, Chief.

>> The next matter is an action item. It is BCP, our budget change proposal for our three levels of court including judicial branch facility, Habeas Corpus Resource Center, and Judicial Council and its good morning, Judge Rubin.

>> Good morning. Can everyone see me? I hope so. First of all let me just say a few words about Justice Chin. I wanted to add my sadness about his leaving. I also am a fan of his. His generosity of spirit and his intelligence has always been a guiding light for me and I will be sorry to see him go. I don't know anything about golf so if you tries to play I'm sure he will win. Moving on. We've just heard in the presentation about as we are transitioning from budget year 20-21 from the appropriation side to the allocation side as we move on, which speak to the agenda we have today. What we have today with the budget change proposals for 21-22 is a Judicial Branch Budget Committee working on the budget for the upcoming years. As that appropriation cycle discussion starts, the branch is positioned. And you will see the purposes under the California rule of court for the budget committee. Next slide. For those who are new or those who are watching for the first time, BCPs are budget proposals and designed to seek increased funding in specific areas. They are submitted to the Department of Finance, which analyzes them and front of the Governor proposing his budget January 10 in this case, January 10 of 2021.

>> Judge Rubin?

>> These slides are not showing up.

>> It's okay, Judge Rubin. We're working on that. We are getting the presenter shifted over.

>> Well, they are genius. In any event, looking at the next slide. The next slide would have shown you what our timeline is. We had a fairly compressed timeline. We start the process in branchwide and anybody can submit a budget change concept. We start that in the fall once we are done with the previous budget year and then starting in March through April, the Judicial Branch Budget Committee would analyze the concepts and decide which will go on to become budget change proposals themselves and those are presented to the council for approval like we are doing today. The purpose of these budget change proposals, as I've discussed, is not only to get increases in our appropriation but they also reflect the branch values, and our values are really to get greater access to justice and courthouses and what have you, so that vulnerable populations are served. As we are seeing through the coronavirus, many populations are having difficulty getting access to justice and our budget change proposals try to reflect our values in giving greater access to the branch. Now, what you will see in the report from me and the committee is that we did not prioritize the budget change proposals we are submitting to you today. There's only six of them and we're not prioritizing them as we are trying to give greater flexibility to the Chief Justice and the Administrative Director and a budget services team as they negotiate with the Department of Finance. What about that. It's not just one or two days they do this. They are negotiating and talking to the Department of Finance and our legislative partners all through the year but this gives them greater flexibility. The package is six that you will see in the report or you do see in the report really to reflect where we are today, I think. The recommendation is to approve the six that you have there for submittal to the Department of Finance. I did want to say one thing. We had to make additional ones dealing with technology but because the Chief and the Administrative Director and our sister branches including money for technology infrastructure, investment in the current budget, we withdrew those. I will take any questions anyone has. Anybody?

>> All right then. We leave it for motion then. One thing. I wanted to thank our advisory committee members and the staff. We cannot do our work without the staff, Chief.

>> I think Judge Hopp may have a question. I'm not certain.

>> Thank you. I don't have a question. I just wanted to say, thank you, David, for your leadership of the committee during a really difficult time. Looking to the budget change proposals this year was never easy but it was particularly difficult this year in trying to strike a balance with how much -- while recognizing it's a difficult budget so thank you very much and I move to adopt the recommendations.

>> And I just want to say, Judge Hopp, those are gracious words. I think we started with 25 and whittled it down to six. It was really hard. They were all really good and all really would advance the branch if we could have funding for them. But with the situation with COVID and the collapse in the revenue for the state budget, it was not responsible to do that.

>> Thank you, Judge Hopp. I am prepared -- this is an action item so I'm ready to entertain an action.

>> Judge Brodie. I will second the motion.

>> Thank you, Judge Brodie. All in favor with adopting the recommendation found in item number 20-052 say aye.

>> Aye.

>> Any noes? Any abstentions? The recommendation is approved. Thank you. Next on the agenda we have two budget items related to the 2020-21 Budget Act. Before we get to them I would like to note that it's been a hallmark of our budget advocacy in recent years that we have been able to align our funding request with the needs of the public for access and services, something Judge Rubin just described in terms of the budget change proposals, which is then supported by comprehensive branch planning effort. Our strategic and operational plans for branch technology provide a structure and individual work stream to develop effective technology solutions for use by the branch to provide enhanced services to the public. Therefore with respect to the \$25 million budget appropriation that is available for expenditure by the Judicial Council for modernization efforts in the trial courts, I've asked Judge Brodie, who chairs our JCTC committee and Judicial Council to work with the Technology Committee and come back to Judicial Council at a future meeting with the proposal for allocating those \$35 million in funds. Next we will have the first of those two budget items I mentioned and that is item 20-053, trial budget allocations from the Trial Court Trust Fund and trial court allocations for fiscal year 2020-21 and I see Judge Jonathan Conklin, the chair, on my video screen. Welcome. He is the chair of The Trial Court Budget Advisory Committee and also Mr. Zlatko Theodorovic, judicial branch budget services. Thank you.

>> Good morning, Chief. Thank you very much. Thank you all. It thank you to the members of TCBAC for their hard work in supporting moving for these recommendations as the trend I noted there were two reports today, 20-053 and 20-051 in order. I propose we start with 20-053. The report has been published and all members have it. Contained in the report is a total of six recommendations addressing well over \$4 billion in allocations. As noted each of these six allocations were considered by TCBAC overseers the public meetings. Of the six, two in particular involve the most robust discussions. I suggest therefore that we start with the remaining four, which is items 3, 4, 5 and 6. In order the recommendations of item -- and I would propose we take 3, 4, 5 and 6 as a package, and then we move back to 1 and 2 if acceptable. Items 3, 4, 5 and 6 are a package, if the recommendations are set forth in requested by TCBAC are as followed. Item 3 approved the base discretionary and nondiscretionary program allocations from the Trial Court Trust Fund in the amount of \$2.207 billion. Item 4, approve a General Fund allocation in the amount of \$68.8 million for employee benefits. Item 5, approve the allocation in the amount of \$50 million for ICNA for support of the operational trial courts as set forth in Attachment A, line 9. And item 6, approve the total workload allocation of \$1.951 billion on methodology approved by the Judicial Council as set forth in

Attachment B and column B. And I truly thank Zlatko Theodorovic for joining us. As we know, he is a true genius behind many of this along with John and Martin and the supporting staff but, again, moving those four forward, we would be happy to take questions of that package and if no questions, invite a motion for those four recommendations.

>> Thank you, Judge Conklin. Looking at items 3 through 6 as part of the package for consideration, if there are any questions, if not, then I would entertain a motion as to those four items only, at this point.

>> This is Gretchen Nelson and I would move approval of 3, 4, 5 and 6 as a single package.

>> Thank you.

>> This is Judge Bottke. I will second that.

>> Thank you, Judge Bottke. All in favor of approving items 3 through 6, please say aye.

>> Aye.

>> Any no votes? Any abstention votes? Three through six are approved.

>> Thank you, Chief.

>> Thank you, Judge Conklin. If there are no objections then we will move to the two remaining items. The first being what has been described, and I thank Martin so much for describing these items, the essentially \$168 million reduction to the trial courts and that was considered by TCBAC. I should also thank Fran, the problem with thanking people is you always leave them out and she was also instrumental in all of this work. So, to briefly summarize and help everybody remember when we talk about allocations, this council has previously approved a methodology which at the time approved were in not only different days but perhaps a different era and that was of pluses and gains and we came up with a method to address those positive allocations that involved addressing courts that were within what is described as an average funding range. Applying an equity factor to those allocations for the purpose of helping those courts that were below that range, and also the courts that, though, underfunded, were above that average funding range and given the equity formula, we were able to try to bring all those folks closer to a balance or closer to a range. The second potentiality was the flat funding here and we dealt with ways to account for that but, frankly, we deferred to a later time where we are now. None of us could have contemplated where we are now in any way and I don't think there's anything more to say about that except to say this is unimaginable. But it's now beyond imagination. It's reality. And that is dealing with the cuts that are imposed by COVID and the crisis it has created. So TCBAC went to work and what we did was we did our best to keep the recommendations for cuts consistent with the recommendations for gains. That is recognizing, unfortunately, everybody has to share in the cut and also recognizing that those courts, again, that are all underfunded but were above the average funding range, take a little bit more of a hit on that cut to the benefit of those courts that

are below that range. So, again, we can all try, as uncomfortable as it is to say, instead of share the game, share the pain. And TCBAC, to their credit, had to make vibrant discussions about this. They pivoted almost instantaneously thanks to the genius of the CEOs on the committee. And what we came up with and what is before you is an equity-based recommendation for the \$167 million. Essentially, it takes that band I talked about, the average funding band and places it at 4% to above and to below the precise average line. And those courts falling within that range would take a pro rata cut. The courts that are above the range would take that pro rata cut plus one additional percent with an asterisk. There are certain set of courts that are above that range that are some of our smallest courts, our cluster 1 courts, and they have an economy of scale to them that makes it impractical for them to also take the additional 1% cut. Though that small set of courts above the range will take the same 1% cut as those within the range, if they fall into that very small category of cluster 1, they would not be required to take the additional 1%. And then, finally, recognizing those courts that are below the underfunded band, and there, perhaps the additional need, they would take the benefit of that 1% being provided by the courts above. It's a somewhat complicated formula. I think it may have been Judge Taylor, early, somebody address the fact that this is also an economy of scale. So those courts that are below the range, the further they are from the range, they take, based on a complicated formula that if there is a question, Zlatko can explain it better than I could -- they will take their portion of that cut. Various alternatives were considered and they are set out in the report. We have made an effort in this report to discuss the pros and cons of each. I assure everyone that the TCBAC members discussed and discussed the pros and cons of each and came to a unanimous decision that the recommendation for the \$167 million cut was the most appropriate. So, considering that item alone, and, Zlatko, unless there's anything else you would like to add, we will take questions.

>> Nothing to add, Judge, thank you.

>> Taking that item alone, Judge Conklin, is it your desire to move on number 2 alone, separate from number 1?

>> Chief, if that is acceptable, I think if we can move that and get that resolved and then we can concentrate on number 1 for the time necessary. That would be my preference. Yes.

>> Thank you. With your preference and the nature that it's currently ready and explained and there do not appear to be any questions, item number 2 as described and recommended, can obtain a motion?

>> I would move approval. This is Justice Hill.

>> I'm sorry, who?

>> Thank you, Justice Hill.

>> Commissioner Wightman, second.

>> Thank you, Commissioner Wightman. All in favor of approving item number 2 as indicated please say aye.

>> Aye.

>> Thank you, Chief. Now the final of these items is as Martin previously described. The \$50 million additional funding allocation of what was designated for COVID workload backlog. And while we typically take time to thank folks for this and I know we are running behind but I do want to acknowledge very briefly the very difficult work that went into this by Martin and staff. The foresight that they had and that the Legislature and the Governor had, to see this coming and to provide these funds for that purpose and that was a godsend, candidly, given the cuts that you just talked about. And these are apples and oranges, folks. The \$50 million COVID workload backlog is to address precisely that. If any of you are wondering, it is and cannot be allocated through the cuts. That's why they were handled separately. Additionally, TCBAC worked through this through many meetings and even though those meetings occurred in June, given COVID, as I stated earlier, it was an eternity ago. The things that have changed since we made the decision and the recommendation to you about this \$50 million allocation, to use the word, night and day, but it's night and day to where we are now as to even where we were then. There were, candidly, thoughts and considerations that went into the discussion now, concerns of the members, and some of those we voiced, we vented, but here we are today. Nobody has been spared from COVID. When you look at some of these numbers and the impacts on the courts, as we've seen, there's no way here to describe the impact statewide versus the impacts on the courts individually. The size of the court, the location of the court, the spread of this disease, it's everybody. Either it's hit them or they have to be able to be ready for it to hit them and to pivot immediately. So, we addressed both, past, present and future which nowadays is an hour ago, right now, and an hour from now. As far as the way these cuts hit, we candidly, I think we should've done, I should've, we should've done a little bit better job of maybe addressing at the same time how important it is to remember transparency and accountability and I think we are accounting for that and can account for that. I do want to for a moment and, Chief, I apologize, I don't want to take any time except to -- I've been addressing this committee for years now. I'm privileged to do so and even in these times I truly enjoy it. I know people don't understand that but my wife says the same thing -- but I do. I've never seen the stress that I see today from the Chief down. I have no idea how you folks are doing what you're doing but, please keep in mind that accounts for our CEOs as well, particularly. The court executive officers who every day come into these courts and contemplate how they are even going to cover a calendar that day. So, while I appreciate the work of the presiding judges on this committee and your invaluable, the wisdom, the work in the experience of the CEOs, I just wanted to take a moment to truly thank you for that. But to also remind you that now we have to get these funds and be able to take these funds as immediately as we can, as transparently as we can, and as effectively as we can and that's the recommendation set forth today. The recommendation now deals with the \$50 million itself and we decided to take a slightly different tack on this. And rather than address equity, after discussion, TCBAC decided it was given the unique situation that we should expend these funds on a pro rata basis which

I'm oversimplifying and Zlatko can clarify but it simply takes a trial court share of the overall budget and allocates the \$50 million. A court, by example, may have 2% of the overall General Fund budget for trial courts that they would get 2% of the \$50 million. I'm oversimplifying but that's the math. So, it was decided and essentially a unanimous decision. There were two courts who on principle felt that given the smaller size of the courts, perhaps, equity should also be addressed, but I think everybody was united that this was a pro rata distribution. And the discussion at the time was a distribution should be immediate. We have heard from Leah Rose Goodwin and she was extremely effective in helping us understand that there were impacts that were immediate. That there was information to account for these impacts, most notably backlog of criminal trials, backlog of UD and other COVID workload backlog that existed and we moved forward on that. And that's the recommendation that comes to you today. The \$50 million be allocated out today for the purpose of addressing COVID backlog workload. That being said, I would be ignoring reality to say that there's not some edges to that and there may be some need for discussing ways that we can massage that and perhaps make that a slightly more effective distribution to acknowledge other concerns. And with that I would entertain questions concerning that recommendation of the \$50 million.

>> Thank you, Judge Conklin and thank you for that thorough and frank presentation. I believe, Justice Hill --

>> I do. Thank you, Chief. First I would like to commend Judge Conklin and really the entire committee as well as the finance staff for all of their excellent work. It's a thoughtful and a very, very thorough report. I also want to thank the Legislature and the Governor for working on ways to help us keep the doors of the courts open during this unprecedented crisis. We sincerely appreciate it. Judge Conklin, I wanted to briefly touch on the distribution timing issue and get your thoughts. On page 5, number four, you address one alternative that was discussed, it was noted, ultimately not adopted, and that was the staggered distribution. I was thinking that perhaps a staggered distribution has some merit given the need to demonstrate to the Legislature and the Governor that we are being good stewards of the public funds. If we were to distribute the first \$25 million immediately and then develop a criteria, perhaps your committee and JCTC working together, that could assist any court to make a showing of need as well as documenting how funds were and will be utilized to meet that need. I think that might be a good approach. Now, I understand, and I know the people that were sitting around your table, PJs and CEOs, who are under water. And as a former trial court PJ who has gone through three budget crises although not a pandemic, I understand that what I'm suggesting is yet another task for an overworked and understaffed court operating in crisis mode. I get it. But I also get that this need for additional funds may extend beyond this \$50 million and we may need to be prepared to make a documented case for additional funds to the Legislature and those funds, quite frankly, in my opinion, will never, unless we fully document our ongoing needs. So, Judge Conklin, I apologize for the long question but I would be interested in your thoughts.

>> I appreciate that. We did discuss that, as you see it's laid out on page 5 for what we described as a staggered distribution of the courts' allocation. The pros noted, which have

already discussed, are that it might allow additional time as a pro to obtain additional information, Justice Hill. I appreciate your suggestion that if that were deemed necessary by the council that that come back through TCBAC so that we can quickly pivot to develop that criteria. I think we could do that in a matter, I don't want to say days, but very quickly. Some of the downsides of that that were discussed was that partial funding doesn't address the ongoing need. And I know some of these are inconsistent points because we talk about money that we have and to spend and we already have spent it and we need to spend it and it just gets into this almost circular reasoning of COVID and every time -- it's like the Whack-a-Mole. Every time we think we've taken care of something, another jumps up. That was our thought and think we need the money interest only instantly because we're moving so quickly. I talked to a judge to buy paper doesn't appear to be immediately impacted but is very concerned they will become a hotspot tomorrow and wants to make sure they have the money so when they are a hotspot tomorrow they can immediately react to that to reduce workload. The other comment was that partially withholding this underscores the ability to take immediate steps into plan. But on the other hand, that's what were supposed to do. If there were to be a decision about partial allocation, I would suggest, and I believe as you have, the first 50%, that is \$25 million goes out pro rata. I would also suggest at the end of the day if that is what the council thinks is most appropriate that we continue with this chromatic methodologies so the courts have a target, so the courts can see the pro rata that remains but that target is dictated by criteria and so the criteria would be set by TCBAC, perhaps with assistance from JCBC or back to the council on immediate action. So, again, the courts have a target and the courts have ability to say, okay, we had the first half of our pro rata. We see with the second half is and if we can meet the criteria, we can. And if not, if toward the end of a certain time period they are lucky enough not to meet the criteria which means the COVID backlog has been addressed, it returns to the remainder of the courts. I don't know if that addresses your concern or not.

>> It does. Thank you, Judge Conklin.

>> I see too several hands of people who wish to speak so I will take it in this order. Judge Rubin and Ms. Gretchen Nelson and then Judge Hinrichs.

>> Thank you, Chief. Can you hear me?

>> Yes.

>> Outstanding. So, I wanted to make a couple comments and then move out from there. First I wanted to thank Judge Conklin and all the members of the TCBAC team and committee for all the hard work they have done. As Judge Conklin alluded to, I can't imagine staggering. We are in a once in a century pandemic and having to deal with these changes to operations, I think it's incredible what they have done. As Martin has shared with us in his report, the 20-21 budget provides us with a one-time, \$50 million increase to address, barring some of this language from the Budget Act itself, the backlog of cases stemming from reduced court services due to the COVID-19 pandemic during which courts have been forced to cut back on their operations in an effort to protect litigants, attorneys, witnesses, members of the public, employees and

judicial officers. And this money is specifically to address resulting backlog that has happened. And prevented the courts from resuming normal language. My one observation is and I think Judge Conklin alluded to it is that in some respects this pandemic is becoming a moving target. We were originally told it would come in waves and it would be gone over the summer and then we have a few months to gather and regroup. And that did not happen. Instead we are getting different looks at this pandemic. We went up. We plateau. We dropped slightly. And then we escalate again. I think whatever we do with this money, it needs to be an approach that is flexible enough to anticipate upcoming changes in our operations if new orders are rolled out or are rolled out differently and how this will impact the backlogs. A motion to maybe give an alternative that might help focus or frame up a conversation that goes on from here. And I think it I'm trying to bridge the concerns I'm hearing from Judge Conklin and also the response to Justice Hill.

>> I think the judge is right. We need to emphasize transparency to accountability, especially if you want to go back to the Legislature and the Governor's office. And I want to adopt the mantra of the multiyear approach. We need to look not just at today but maintain our credibility going forward so we can go back. So, I wanted to take recommendation 1 and split it maybe into four subparts. Here would be my motion. Of the \$50 million that's been appropriated to the judicial branch or trial court COVID-19 related backlogs, the council allocate in a rule immediately and a method proposed by the Trial Court Budget Committee. I think we can all say that as a legislature -- we know there is some impacted every level, every court and I think the first allocation of half the money but assist those challenges they face. Second, the Trial Court Budget Advisory Committee develop ongoing and more precise definition and more precise practices for documenting and reporting what COVID-19 related backlogs are. By giving us a definition of what a backlog is and report those recommendations to the council prior to distribution of any of the second \$25 million. Third, that we have TCBAC gather from trial courts data regarding how the trial courts spent the first \$25 million and make that part of the report, reporting that data back to the council, again, prior to allocating the second \$25 million. That gives us a baseline of what we've done, and we can show the Governor's office and the legislative branch where we spent the money and we are tracking a. And then had TCBAC develop in consultation the Judicial Branch Budget Committee, recommendations for allocating the remaining \$25 million and then TCBAC can report those recommendations back to the council. Now, I want to note you've not noticed I put a date or timeline on this and I want to harken back to something the Chief said something early in the meeting which was with our new adjustment to virtual capability and other methods, we can actually move fairly nimbly and quickly. Who knows, maybe Justice Chin will have to come back for another meeting. That would be my motion, those four parts.

>> Could I, and understand that, again, the recommendation from the members of TCBAC was the immediate need for this but I also recognize, the same immediate need exists for showing the need, so to speak and I appreciate your clarification about timing. Judge, you talk about timing. I would hope maybe we could move rather briskly on that and I understand the next council meeting is months off. Without trying to put any specific deadlines on it, just, again,

thinking as TCBAC does, if we could move quickly on this, if we could get it to you quickly, TCBAC might come back with a request for a circulating order or some type of quick action. The other thing I would like, and I hope to clarify is, if, in fact, we make a recommendation as to what the courts' pro rata distribution of the remaining \$25 million is. For lack of a better description, take the remaining half. So you have an Attachment B. You have with each court provide allocation is. They get the first hat trick they are short of the second hat if they meet this criteria so there's no infighting, so to speak. They also understand that if I don't meet the criteria for what do I go back to. But they have a time period to meet that criteria. I would hate to create the restriction that if on the first day those funds are available, you don't meet the criteria, you give them up. I interpret from your motion that that time period, whatever it is, would allow the courts of the time they need. Because regardless of what the concerns are, we all know that these folks are going to need some time to put this data together, given, as I mentioned, their attempt to keep the doors open. I just want to make sure that it's clear the courts have the time necessary to bring this data forward maybe for months to go once the time period opens.

>> Thank you for the question. My intention is this. After the first question, is it by virtual meeting or circulating order? I think that's a question the Chief would be answering. Thank you for that. And certainly we would be, the budget committee, is going to be very nimble and quick. So we could adapt ourselves to any approach with respect to that. To the second question, I do not put in the motion, and a purposely not putting a motion like how to do the second half because I think, again, TCBAC should have flexibility with how it approaches this issue when the data starts coming in. In other words, it should be data driven decisions and when we see the data come back how the courts are impacted, TCBAC may want to take a different view or they may want to do provider or do something else. I think that's an issue that they can now discuss again. They're not hemmed in. And third, as to the timing, I think that's a question that TCBAC in consultation with the budget committee, we come up with timing on how this works. Would it be a six month window or whatever it is in terms of disbursing the money. There are lots of options. I think what I was trying to do was create a framework flexible enough to accommodate all the concerns and yet not and TCBAC or it's moving forward. In other words I don't want to assume our conclusion. I want us to get the data in. It's a bottom-up approach. It's not the TCBAC is the bottom but it comes from TCBAC, percolates after JBBC and ultimately to the council. TCBAC, I appreciate that so we stay with TCBAC so they can also remain nimble.

>> Right. We can work together, exactly. Maybe can I ask for clarification? I understand, David, your alternative proposal is \$25 million now pro rata immediate to the trial courts and then also in the meantime the other \$25 million set aside. That TCBAC will develop a precise definition of COVID-19 backlog, report that definition to the JC and also TCBAC will gather data on how the \$25 million that had been distributed pro rata was spent on COVID-19 backlog. The fourth element I understand is that TCBAC, along with Judicial Branch Budget Committee that you chair, will develop criteria for the remaining \$25 million but it's based on need, not on demonstrated need for the trial courts because, as was said in the midst of these

conversations, different counties are being differently and harder or not, it's hard to say, it's hard to predict.

>> I think that's right. The idea of data-driven decision is we see with the need is, as Judge Conklin pointed out there may be counties that dealt with the first distribution and won't need it.

>> I'm sorry to interrupt but I will ask if others would like to comment before we are able to move on from here.

>> Thank you. This is Gretchen Nelson. I would like to just echo the comments that Judge Rubin made and also Justice Hill. This issue of the backlog is probably an issue in some courts worse than in other courts. At least that's my perception based upon practicing in a number of the county courts throughout California, and also hearing feedback from members of the civil bar as well as members from family law, probate bar, and it's a growing problem among the lawyers that, I think, is going to reach at some point some level of frustration. And I would hope that we could prevent that. And the way to prevent it, it seems to me, is to make sure that this money is not allocated at one time, but allocated in the two tranches as suggested by Judge Rubin and that there is reporting from the courts as to the use of those funds so that bar members in all levels and in all case types whether it be criminal, whether it be civil, family law, probate, litigants and small claims, unlawful detainers, that they all have information from which they can recognize that the courts are working to correct or obviate the backlog as best they can. And I say that because we have a situation where some courts have been able to get back to civil jury trials. Other courts have not even started them and don't anticipate starting them until 20-21. Some courts have had bench trials proceeding apace as they need to be. Other courts have not even been able to start bench trials in civil cases or in any other type of case. And, so, we need to understand exactly what courts are experiencing the problem, recognizing Judge Conklin, as you said, that every day that you open the paper, it's a new normal. And it's an abnormal. So there has to be flexibility to be able to return as needed and recognize that some counties may actually be impacted more down the road. Others, less so. Or it may be we stumble along as we are now. But, across all of this, it's critical to know exactly what's happening and how the money is being spent so that there is a recognition of not only where the need is, and we can speak to the bar members and say, okay, this is what we've done and this is why we've done it, and, in addition, if we need to go back to the Legislature, the Legislature is going to want to say, how did you use it? And was it effective? So, I would very much urge that we consider and adopt the proposal that Judge Rubin has made. I will second that motion. I'm not going to try to restate it. But I would very much urge that this group approve what Judge Rubin is proposing.

>> Thank you. Let me just clarify in the course of conversation and I can still move forward but I'd like to state for the record Judge Rubin you move your four-part alternative, is that correct?

>> Yes.

>> Thank you. Ms. Nelson seconds. I want to make sure we have it on the record. Judge Conklin, I believe you wanted to say something and then we will hear from Judge Hinrichs, Justice Slough, and then Ms. Nancy Eberhardt.

>> Understand the motion. I think it does give, while it's not the recommendation we set forth, that is the role of this council to consider those recommendations and make what they consider appropriate changes. I want to clarify it's my understanding that it still gives TCBAAC the room to maneuver so that perhaps some trial courts early on can establish a legitimate need that would not exclude or empty the pot, so to speak, for those other trial courts that might come a week or a month or two months later then bump into the same need but I think we can, given the language of the way the motion is, as I understand it, I think that allows for that. Thank you.

>> Thank you, Judge Conklin. Judge Hinrichs?

>> Thank you, Chief. I also want to thank the Governor and Legislature for the additional funding to address the COVID pandemic and backlog. I do think all courts have some amount of backlog that relates to the fact that just to make our courthouses safe for our staff, court users and the public, things have to slow down. We weren't built to be, have people six feet apart and all the other factors that need to take place. And certainly we do not want our courts to become superspreader areas, at all. And to have people come into our court as court users, they have to trust that our courts are safe. So all courts at some level will have some slowness of process and backlog they will need to address and I do trust that our CEOs will be able to document whatever is required because also I agree that we need to be as transparent and open with the funds that we are responsible for. I do support Judge Rubin's motion and I do also agree with Judge Nelson that our trial courts could probably do a better job of making sure that our justice partners understand what we are doing and whatever time frames look like to reopen all areas of justice for all the users, not just the criminal courts and telling everybody we will get to them later. I do think it's important that we justify how we spend any monies that we get related to the backlog so that if more is needed, that we can make that a need to the legislature. Those are just my comments and I would like to thank you for allowing me to make those comments.

>> Thank you, Judge Hinrichs. Judge Slough? I understand you believe that your remarks have been covered by another commenter. If I'm wrong, please let us know. Otherwise I will call on Ms. Nancy Eberhardt.

>> Good morning, Chief Justice. I just wanted to acknowledge again and thank the Legislature and the Governor and the Judicial Council staff for their hard work in being able to get an appropriation for the \$50 million COVID backlog. I wanted to note that the backlog impact is happening now in all of our courts to some degree. A delay in allocating those funds could cause a need to reevaluate the impact of our services to the public because I know that budget planning has already been underway, in fact in January when the first proposed budget came out and it is difficult to move on a dime. So I only ask that if this is the action of the council that there be expediency in the allocation, the definition, and how we are going to deal with the other 50% of reimbursement for backlog.

>> Thank you, Ms. Everhart. As you know, just because motions have been made if there's any further comments, happy to have you speak and to hear your I would add to Ms. Eberhardt comment that already have in mind ways we can accomplish this moving quickly. Also as a side note I apologize for the air traffic controller approach. I have judges and adjoining courtrooms and adjoining chambers that are doing Zoom courtrooms right now and so I have to do this so they don't hear it. That's just an example of where we are. Aside from that, any of the questions, I'm happy to entertain.

>> Thank you, Judge Conklin. In light of that I do not hear or see any request to speak further on the issue. There is an alternative motion that has four parts. We've heard it several times. There is a second. All in favor of the alternative motion and its recommendation, please say aye.

>> Aye.

>> Any opposition? Any abstentions? The alternative four-part recommendations are approved. Thank you. This takes us to our next item with Judge Conklin and that is 20-051, State Trial Court Improvement and Modernization Fund 20-21. Let me just say this will be the last item that we will hear for our Judicial Council business meeting here in July. The trial courts' Futures Commission directive regarding remote video appearances for noncriminal will be heard in September. This will be the last item we hear today. It's an action item. Thank you.

>> Thank you, Chief. This is set forth in the report as item 20-051 in your materials. This recommendation deals with the IMF and I always hesitate to throw that out because it sounds like the impossible mission horse, which it is, but it's the improvement and modernization funds are quite succinctly the recommendation has set for this to approve a total of \$54 million -- for the allocation fund of IMF. As a caveat or clarification to all entities receiving this that they should be cautious. I believe this was addressed earlier but the funding is a moving target at best and therefore the recommendation comes with that caveat that those folks should be cautious about obligating these funds as they may be subject to major reductions. With that, that sets forth the recommendation. Zlatko, if you have anything to add, I would invite that.

>> Nothing to add, Judge. Thank you.

>> Entertain a motion for approval of the recommendation in this item?

>> Moved to approve.

>> Second.

>> Seconded by Judge Taylor. All in favor of this recommendation please say aye .

>> Aye.

>> Any no votes? Any abstentions? This recommendation is approved. I do want to thank Judge Sheila Hanson for the chair of Judicial Council Information Technology and advisory committee Judge Samantha Jessner is a member of that committee as well as Mr. Jake Chatters executive officer member of the same committee and Ms. Heather Pettit. This is the last item that we are not hearing today. I know that they were prepared to go forward. I appreciate that they research time. We are over time and I think that they are willing to present this important matter in September. This concludes our July 2020 Judicial Council business meeting. We have seen a lot of friends leave. We wish you well and that we hope you will stay in touch. Thank you for attending and participating, watching and listening. Thank you for your public comments. And stay well. Our regularly scheduled business meeting will be September 24 and September 25. This meeting is now adjourned. Thank you.

>> [Event concluded]