



Judicial Council of California

Meeting Agenda

Judicial Council

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March 11, 2022

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are available through
the hyperlinks in
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Friday, March 11, 2022

9:40 AM

San Francisco

CLOSED SESSION (RULE 10.6(B))—PLANNING, PERSONNEL, AND DISCUSSION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE

Session: 9:00 – 9:30 a.m.

Transitional Break: 9:30 – 9:40 a.m.

OPEN SESSION (RULE 10.6(A)) — MEETING AGENDA

A link to the live videostream of the meeting will be available in the Meeting Information Center approximately 15 minutes prior to the start of the open session. In the event the preceding closed session adjourns late, the start time of the public session may be delayed.

Open Session Begins: 9:40 a.m.

Call to Order

10 minutes

Public Comment

The Judicial Council welcomes public comment on general matters of judicial administration and on specific agenda items as it can enhance the council's understanding of the issues coming before it. For more information about meeting attendance and public comment procedures, visit:

<http://www.courts.ca.gov/28045.htm>

- 1) Submit advance requests to speak by 4:00 p.m., Tuesday, March 8.
- 2) Submit written comments for this meeting by 1:00 p.m. on Wednesday, March 9.

Submit advance requests to speak, written comments, or questions by e-mail to:

judicialcouncil@jud.ca.gov

Approval of Minutes

[22-086](#) **Minutes of January 21, 2022, Judicial Council Meeting**

Chief Justice's Report

20 minutes

Administrative Director's Report

[22-087](#) **Administrative Director's Report**

15 minutes

Judicial Council Committee Presentations

22-088 Presentation | Rules Committee

Speakers: Hon. Carin T. Fujisaki, Chair

10 minutes

[22-089](#) **Written Reports**

CONSENT AGENDA

5 minutes

A council member who wishes to request that any item be moved from the Consent Agenda to the Discussion Agenda is asked to please notify Roma Cheadle at 415-865-7640 at least 48 hours before the meeting.

[22-001](#) **Judicial Council-Sponsored Legislation | Authorization for Remote Appearances and Expansion of Defendant Personal Presence Provisions in Criminal Proceedings (Action Required)**

Summary: The Legislation Committee and the Criminal Law Advisory Committee (CLAC) recommend that the Judicial Council sponsor legislation to amend Penal Code sections 977, 1043, 1043.5, 1148, and 1193, and to enact Penal Code section 977.3. The proposed legislation would provide statutory authority for remote criminal proceedings, provide statutory authority for courts to order the physical presence of a misdemeanor defendant, and expand a defendant's right to waive their physical and remote presence in a felony case.

[22-010](#)**Jury Instructions | Criminal Jury Instructions (2022 Edition)
(Action Required)****Summary:**

The Advisory Committee on Criminal Jury Instructions recommends approving for publication the revised criminal jury instructions prepared by the committee under rule 2.1050 of the California Rules of Court. These changes will keep the instructions current with statutory and case authority. Once approved, the revised instructions will be published in the 2022 edition of the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*.

[22-078](#)**Juvenile Law | 2021-22 Allocations for Dependency Counsel Program, Expected Unspent Program Funding, and Family First Prevention Services Act Funding (Action Required)****Summary:**

The Trial Court Budget Advisory Committee recommends two redistributions of funding for court-appointed juvenile dependency counsel and allocation of new federal Family First Prevention Services Act (FFPSA) augmentation funding for fiscal year (FY) 2021-22. Under the Juvenile Dependency Counsel Collections Program, courts collect reimbursements from parents and other responsible persons liable for the cost of dependency-related legal services to the extent that those persons are able to pay. The committee recommends that the Judicial Council allocate the FY 2020-21 statutorily restricted funds remitted in excess of dependency counsel program administrative costs to the trial courts, calculated according to the methodology adopted by the council. The committee also recommends that the council reallocate unspent dependency counsel funding from courts that have identified funds they do not intend to spend to courts funded at below the average statewide funding level. Finally, beginning FY 2021-22 and annually thereafter, the judicial branch will receive new FFPSA augmentation funding. The committee recommends that the council allocate these pass-through federal Title IV-E funds to those courts receiving unspent dependency counsel reallocation funds for 2021-22, contingent upon actual receipt of the funding.

[22-071](#)**Rules and Forms | California Environmental Quality Act Actions:
New Projects and Fees for Expedited Review (Action Required)****Summary:**

As mandated by the Legislature, the Judicial Council previously adopted rules and established procedures to implement a statutory scheme for the expedited resolution of actions and proceedings brought under the California Environmental Quality Act (CEQA) challenging certain projects that qualified for such streamlined procedures. The Appellate Advisory Committee and the Civil and Small Claims Advisory Committee recommend amending several rules to implement recent legislation requiring inclusion of additional projects for streamlined review. The committees also recommend the adoption of a new rule and the amendment of an existing rule to implement statutory provisions requiring that, for two projects, the council, by rule of court, establish fees to be paid by project applicants to the courts for the additional costs of streamlined CEQA review.

[22-038](#)**Rules and Forms | Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions (Action Required)****Summary:**

Judicial Council staff recommend that the Judicial Council take the following actions required by statute to reflect changes in the California Consumer Price Index in relation to the enforcement of judgements: (1) adopt *Current Dollar Amounts Under Code of Civil Procedure Section 699.730(b)* (form EJ-186), and revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), which include the three-year adjustments to the dollar amounts in provisions relating to enforcement of judgments, as required by Code of Civil Procedure section 703.150; and (2) approve for submission to the Legislature the report on potential adjustments to the dollar amounts of homestead exemptions, as required by Code of Civil Procedure section 703.150(c).

[22-081](#)**Rules and Forms | Criminal Law: Felony Sentencing (Action Required)****Summary:**

The Criminal Law Advisory Committee recommends amendments to specified felony sentencing rules of the California Rules of Court to reflect several major legislative changes that were made to sentencing of felony offenses and enhancements, which went into effect January 1, 2022. The recommended amendments will reflect statutory changes (1) requiring aggravated factors to be stipulated to by the defendant or found true beyond a reasonable doubt when imposing the upper term of a felony offense or enhancement; (2) allowing courts to consider as an aggravating factor that a defendant has suffered one or more prior convictions, based on certified official records, but that this exception may not be used to select the upper term of an enhancement; (3) discontinuing commitments of juveniles to the Department of Corrections and Rehabilitation, Division of Juvenile Justice; (4) regarding mitigating circumstances requiring imposition of the lower term; (5) identifying specified mitigating circumstances for consideration in sentencing; (6) allowing an act or omission that is punishable in different ways by different laws to be punished under either of those provisions; and (7) amending dismissal of enhancements due to specified mitigating circumstances. The recommended amendments would also clarify that courts may consider aggravating factors in exercising discretion in imposing the middle term instead of a low term, denying probation, ordering consecutive sentences, or determining whether to exercise discretion pursuant to Penal Code section 1385(c) and make nonsubstantive technical amendments.

[22-079](#)**Rules and Forms | Small Estate Disposition (Action Required)****Summary:**

The Probate and Mental Health Advisory Committee recommends adopting one form for mandatory use and revising three forms for optional use in judicial proceedings to dispose of property in small estates without administration. The revisions are needed to implement the legislative mandate in Probate Code section 890, which requires the Judicial Council to adjust the threshold property values that determine eligibility for disposition of small estates without full probate administration and to publish a list of

the adjusted amounts by April 1, 2022. The committee also recommends revisions to update and clarify the existing forms at the same time. The forms will be circulated for comment after adoption.

[22-028](#)

Rules and Forms | Miscellaneous Technical Changes (Action Required)

Summary:

Judicial Council staff have identified items in the California Rules of Court and Judicial Council forms that must be amended and revised to reflect changes in the law resulting from recent legislation and correct inadvertent errors. Judicial Council staff recommend making the necessary corrections as soon as possible to ensure the rules and forms comply with the law and to avoid causing confusion for court users, clerks, and judicial officers.

[22-085](#)

Rules and Forms | Technical Form Changes to Reflect Federal Poverty Guidelines (Action Required)

Summary:

Judicial Council staff recommend the revision of four Judicial Council forms containing figures based on the federal poverty guidelines to reflect the changes in those guidelines recently published by the federal government. The revised poverty guidelines take effect immediately on release. The revised forms will ensure that litigants and courts are provided with accurate monthly income guidelines on which a court may base a decision regarding fee waivers or financial liability.

[22-076](#)

Sargent Shriver Civil Counsel Act | Continuation of Funding for San Francisco Pilot Project (Action Required)

Summary:

The Sargent Shriver Civil Counsel Act (Assem. Bill 590; Stats. 2009, ch. 457) provides that one or more pilot projects selected by the Judicial Council are to be funded to provide legal representation and improved court services to low-income parties on critical legal issues affecting basic human needs. On May 15, 2020, the Judicial Council approved the recommendation of the Shriver Civil Counsel Act Implementation Committee, based on a competitive application process, to fund 11 pilot projects and defer another three applications for additional consideration. On May 21, 2021, the Judicial Council approved funding for one of the deferred projects for one year through May 31, 2022. The committee now recommends that the project be funded through September 31, 2023, to coincide with the grant cycle for the other Shriver projects. The grant will allow provision of legal representation and improved court services in child custody matters for low-income litigants.

DISCUSSION AGENDA[22-093](#)**Judicial Branch Administration | Sunset Emergency Rules in Response to the COVID-19 Pandemic (Action Required)****Summary:**

The chairs of the Judicial Council's six internal committees recommend that the Judicial Council amend emergency rules 3, 5, 6, 7, 8, 9, 10, and 13 to sunset the rules on June 30, 2022. This recommendation responds to the request of Chief Justice Tani G. Cantil-Sakauye that the chairs of the internal committees develop and propose to the Judicial Council a plan for retiring any emergency rules that are still in effect. This is consistent with the council's original intent that the rules be temporary to address the emergency presented by the initial impact of the COVID-19 pandemic.

Speakers:

Hon. Marsha G. Slough, Chair, Ad Hoc Workgroup on Post-Pandemic Initiatives
Hon. Marla O. Anderson, Chair, Legislation Committee

15 minutes

[22-090](#)**Ad Hoc Workgroup on Post-Pandemic Initiatives Update (No Action Required. No Report.)****Summary:**

This will be an update to the Council on the work of the Ad Hoc Workgroup on Post-Pandemic Initiatives. The Chief Justice appointed the Workgroup in March 2021 to examine successful court practices adopted during the pandemic and recommend those that demonstrate the most promise to increase access to justice, modernize services, and promote consistency and uniformity throughout the state. The last update to the Council was at its November 2021 meeting.

Justice Slough will provide a highlight of the work accomplished since that time, provide an overview of the Workgroups soon to be released interim report, Improving the Juror Experience.

Speakers:

Hon. Marsha G. Slough, Chair, Ad Hoc Workgroup on Post-Pandemic Initiatives

15 minutes

[22-059](#)**Trial Court Budget | 2021-22 State Trial Court Improvement and Modernization Fund Allocation Adjustment for the Judicial Council Information Technology Office (Action Required)****Summary:**

The Trial Court Budget Advisory Committee recommends a net zero adjustment to the Judicial Council Information Technology office's 2021-22 Judicial Council-approved program allocations from the State Trial Court Improvement and Modernization Fund. This adjustment will provide a foundational level of support with full-time resources rather than consultants.

Speakers:

Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Ms. Rebecca Fleming, Vice Chair, Trial Court Budget Advisory Committee
Ms. Heather Pettit, Information Technology

5 minutes

[22-060](#)**Trial Court Budget | Base Funding Floor Allocation (Action Required)****Summary:**

The Trial Court Budget Advisory Committee recommends that the Judicial Council approve increasing the base funding floor from \$800,000 to \$950,000. Base funding is currently allocated to the two smallest courts, Alpine and Sierra Superior Courts, and is based on the minimum level of staffing and operational costs necessary.

Speakers:

Hon. Jonathan B. Conklin, Chair, Trial Court Budget Advisory Committee
Ms. Rebecca Fleming, Vice Chair, Trial Court Budget Advisory Committee

10 minutes

[22-080](#)**Rules and Forms | Judicial Branch Administration: Data Analytics Advisory Committee (Action Required)****Summary:**

The chairs of the Executive and Planning Committee and the Technology Committee recommend adoption of proposed California Rules of Court, rule 10.68 to establish the Data Analytics Advisory Committee to analyze, use, and share data to inform decisionmaking in order to enhance and expand vital and accessible services for all the people of California. The chairs also propose the repeal of rule 10.66 because the duties and responsibilities of the new proposed advisory body will include those of the Workload Assessment Advisory Committee established by that rule. If approved, the new rule will become effective as of March 11, 2022; rule 10.66 will be repealed as of September 14, 2022; and, nominations to the new advisory committee will be solicited as part of the 2022 nominations cycle.

Speakers:

Hon. Marsha G. Slough, Chair, Executive and Planning Committee
Hon. Kyle S. Brodie, Chair, Judicial Council Technology Committee

15 minutes

[22-004](#)**Judicial Branch Technology | Court Modernization Funding, Fiscal Year 2021-22 (No Action Required)****Summary:**

The Budget Act of 2020 (Stats. 2020, ch. 7) and Budget Act of 2021 (Stats. 2021, ch. 69) each appropriated \$25 million for the continued modernization of trial court operations for a total of \$50 million over two fiscal years. The Judicial Council directed the Technology Committee to recommend allocations of funding and provide regular updates on approved allocations. This is a status update on the current fiscal year's Court Technology Modernization Funding.

Speakers:

Hon. Kimberly Menninger, Superior Court of Orange County
Mr. Rick Walery, Chief Information Officer, Superior Court of San Mateo County
Ms. Heather Pettit, Information Technology
Ms. Emily Morrison, Administrative Analyst, Superior Court of Orange County
Ms. Daisy Ni, Judicial Fellow, Superior Court of San Mateo County

25 minutes

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)[22-034](#)**Court Facilities | Trial Court Facility Modifications Report for Quarter 2 of Fiscal Year 2021-22****Summary:**

This informational report to the Judicial Council outlines the allocations of facility modification funding made to improve trial court facilities in the second quarter (October through December) of fiscal year 2021-22. To determine allocations, the Trial Court Facility Modification Advisory Committee reviews and approves facility modification requests from across the state in accordance with the council's *Trial Court Facility Modifications Policy*.

[22-077](#)**Equal Access Fund | Federal Funding for Housing Issues-Distribution Report****Summary:**

The Budget Act of 2021 (Assem. Bill 164; Stats. 2021, ch. 84) includes \$40 million of federal funding from the Coronavirus Fiscal Recovery Fund of 2021 in the Equal Access Fund for distribution to legal services providers and support centers to assist with issues relating to housing matters including eviction defense or other landlord-tenant disputes; services to prevent foreclosure for homeowners; legal services to improve habitability; increasing affordable housing, and ensuring receipt of eligible income or benefits to improve housing stability; legal help for persons displaced because of domestic violence; and homelessness prevention. This report describes the process for allocating those funds and lists the grants made.

[22-075](#)**Report to the Legislature | California's Access to Visitation Grant Program (Federal Fiscal Years 2020-21 and 2021-22)****Summary:**

Family Code section 3204(d) requires that the Judicial Council submit a report to the Legislature, on the first day of March of each even-numbered year, on the Access to Visitation Grant programs administered by the Judicial Council. *California's Access to Visitation Grant Program (Federal Fiscal Years 2020-21 and 2021-22): 2022 Report to the Legislature* provides information on the programs funded for federal fiscal years 2020-22 under California's Access to Visitation Grant Program for Enhancing Responsibility and Opportunity for Nonresidential Parents.

[22-007](#)**Report to the Legislature | Compliance With Education Requirements of Welfare and Institutions Code Section 304.7****Summary:**

The attached report, submitted to the Legislature annually as required by Welfare and Institutions Code section 304.7(c), demonstrates compliance by judges, commissioners, and referees with the juvenile judicial officer training and education requirements of the statute. The information provided in this report was gathered from the courts by staff of the Judicial Council's Center for Judicial Education and Research.

[22-024](#)**Report to the Legislature | Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings for 2020-21****Summary:**

Pursuant to Government Code section 68086(f), the Judicial Council is required to submit a report on the statewide court reporter fees collected and expenditures for court reporter services in superior court civil proceedings to the Joint Legislative Budget Committee on or before February 1 of each year. On February 1, 2022, Judicial Council staff submitted the *Report of Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings for 2020-21*.

[22-023](#)**Report to the Legislature | Judicial Branch Courthouse Construction Program Update for 2020-21****Summary:**

Pursuant to Government Code section 70371.8, the Judicial Council is required to report annually on the status of the judicial branch courthouse construction program to the Legislature. On or before March 1, 2022, the Judicial Council's Budget Services staff submitted the *Judicial Branch Courthouse Construction Program Update for 2020-21*.

[22-073](#)**Report to the Legislature | Online Infraction Adjudication and Ability-to-Pay Determinations: Annual Legislative Report (February 2022)****Summary:**

This legislative report describes early planning activities completed in preparation for the statewide expansion of online ability-to-pay determinations as authorized by Assembly Bill 143 (Stats. 2021, ch. 79). It also provides data from the courts that have adopted the *MyCitations* tool to adjudicate eligible infractions as required by Government Code section 68645.5 (art. 7 added by Stats. 2021, ch. 79, § 8). As of the writing of this report, seven courts have adopted *MyCitations*. Of the 25,246 requests submitted as of June 30, 2021, the total amount of fines and fees initially owed by litigants was \$17,485,898, averaging \$693 per request. After review by the courts, the total amount of fines and fees ordered through the tool was \$9,154,800 and averaged \$362 per request. These approvals account for a total of \$8,331,098 in reduced fines and fees. Preliminary analysis of requests adjudicated during the pilot program shows that during the period studied, 42 percent of court-ordered debt was collected when a request was approved. By contrast, only 22 percent was collected when denied.

[22-070](#)**Report to the Legislature | Report on California Rules of Court, Rule 10.75 (Meetings of Advisory Bodies)****Summary:**

The *Supplemental Report of the 2013-2014 Budget Package* requires that the Judicial Council report to the Joint Legislative Budget Committee on implementation of the open meetings rule, rule 10.75, of the California Rules of Court. Under subdivision (p) of the rule, the Judicial Council must review the rule's impact periodically to determine whether amendments are needed. No amendments are

needed at this time.

[22-025](#)

Trial Court | Quarterly Investment Report for Fourth Quarter of 2021

Summary:

This quarterly investment report covers the period from October 1, 2021, through December 31, 2021, and provides the financial results for the funds invested by the Judicial Council on behalf of the trial courts as part of the judicial branch treasury program. The report is submitted under the Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004.

[22-084](#)

Trial Court Budget | Report on Disposition Data

Summary:

At its January 2021 meeting, the Judicial Council approved a Judicial Branch Budget Committee recommendation of a Trial Court Budget Advisory Committee (TCBAC) proposal for reporting requirements regarding progress in reducing the COVID-19 backlog. The TCBAC also provided a definition of backlog as the difference between the amount of workload disposed of during the pandemic period as compared to the same time period one year prior. This report and attachment provide a quarterly update on disposition data reported by courts.

Appointment Orders

[22-092](#)

Appointment Orders since the last business meeting.

Adjournment