

The Judicial Council of California is the constitutionally created policymaking body of the California courts. The council meets at least six times a year for business meetings that are open to the public and audiocast live via the California Courts website. What follows is captured live captioning, formatted and unedited, of the last meeting. The official record of each meeting, the meeting minutes, is usually approved by the council at the next business meeting. Much more information about this meeting, the work of the Judicial Council, and the role of the state court system is available on the California Courts website at www.courts.ca.gov.

>> Please stand by for real time captions.

>> Nice to see you. Nice to see new faces. Nice to see faces after our time in the Legislature and after May, which was a time of graduations for many of our friends and family. Good to see everyone here. This is the public business meeting of the Judicial Council of California for Thursday, June 23, 2016. The meeting is now in session. As you know, this is the first day of a two-day meeting. We will adjourn later today at 3:45 PM and reconvene tomorrow morning at 8:30 AM for our regular council reports, updates, public comment, our consent agenda and discussion agenda. Now, before we have our presentation on access and fairness, the key goals, as you know for the Judicial Council and for me personally, as Chief, I would like to welcome and acknowledge three of our newly appointed councilmembers who joined us today for this meeting who have been here for orientation. Their new roles, as you will recall, from your new role, becomes effective September 15, but these volunteers are joining us today, as I said earlier, to be part of the orientation to the work of the council, so when they do come in September to officially sit, they can hit the ground running. We have presiding Judge Jeffrey Barton from the Superior Court of San Diego County, who is the incoming chair of Judicial Council's Trial Court Presiding Judges Advisory Committee in the room.

>> [Applause]

>> There we go. Thank you. Welcome. We also have Presiding Judge C. Todd Bottke from the Superior Court of Tehama County, who is the president-elect of the California Judges Association.

>> [Applause]

>> We also welcome Ms. Audra Ybarra, who is a lawyer and joining the Judicial Council as a State Bar of California appointee.

>> [Applause]

>> As you know, volunteer members like all of us are the lifeblood of council, and this regular cycle of changing membership so the roles brings, I think, new voices to counsel, new eyes to our governance bodies and also fresh perspectives on all of the issues that face counsel and recur in council. It enriches our discussion and our policymaking. The membership cycle also enables

us to ensure diversity of representation and voice on the Judicial Council, throughout our branch and our sister branches of government and the bar. Also, the way we stagger terms, as you know, preserves our institutional history subject matter expertise and valuable experience over the three-year terms that most of us have. All three new members that I have just introduced are experienced and dedicated professionals with day jobs who have volunteered their expertise and time to this council. Now, as for our presentation, as I mentioned earlier, access and fairness are critical goals for all of us. As you know, it is goal one of the Judicial Council -- access and fairness and diversity -- and it is also what we coined a few years ago as my vision for the branch as Access 3-D, that access be physical, that access be remote, meaning through technology, and also equal access. So we have our Advisory Committee on Providing Access and Fairness, and it makes recommendations to us for improving access to justice throughout the state, fairness in the courts, diversity in the judicial branch, and also court services, especially for self-represented parties. Today for our presentation we have two very experienced justices and we are very fortunate to have them with their experience, their dedication to this topic for many years, who have been leaders, who have been the voice through many of our crises, to remember access and fairness as we had during the Great Recession to reduce services so we're very happy to have them here and I will introduce them to you and also invite them to the presenters table. Welcome, Presiding Justice Kathleen O'Leary -- I stumbled because we all call you K.O. -- chair of the Judicial Council Advisory Committee on Providing Access and Fairness. And of course Justice Laurie Zelon, who has appeared here before many times, cochair of this committee. Thank you and we look forward to your presentation.

>> We thought we would start with a really quick history on our committee. The current Advisory Committee on Providing Access and Fairness was established by rule in 2014. The predecessors to that committee was the Access and Fairness Advisory Committee to the Council and the Self-Represented Litigants Task Force, and so the work of those two committees was merged into one committee, the current Providing Access and Fairness, what we call the PAF committee. The rule that governs our committee is rule 10.55. One of the significant things, I think, that was done was that there was an overlap between the two populations -- the population that the Self-Represented Litigants Task Force served and the population that the Access and Fairness Committee served. And so by combining those two committees, we were able to reduce membership of about 30 people on the former access and fairness committee and about 14 people on the Self-Represented Litigants Task Force to a new, combined committee taking over the same work of about 28 members. Are you going to talk about the three main areas that we focus on?

>> We are charged with focusing on three basic areas -- economic access, physical access, and what kind of comes under the rubric of procedural fairness, eliminating perceptions of bias and unfairness in the court and eliminating perceptions of discrimination within the court. The last year, really, we have faced a changing landscape in our work. As the Chief mentioned, the Chief, more than a year ago, brought forward access 3-D and focused us on those issues. We also are now working with the Language Access Implementation Task Force, which has taken on the issues involving language access in the court that the committee had previously dealt with. As a

result of the budget issues in the courts, there is less construction than there had been and less need to talk about some of the physical access issues that implicated construction decisions and courthouse design. And so, we began to focus more on the economic access issues, which are intractable and difficult and very important to the court users, of course. Last summer, a Conference of Chief Justices adopted a resolution on 100% access, which we will talk about a little more, and that also has implicated our work but it indicated a focus across the country, following what our Chief has focused on in terms of making sure that the courts are open, fair, and accessible to everyone. So where we wanted to start was to update you on the access protocol. You do have at your seats the access protocol which was adopted by this council in 2001. The notion behind the access protocol, which was actually brought to the council by the California Commission on Access to Justice, is that there are academic barriers to participation in the justice system for many communities. Lack of access to assistance, lack of ability to pay fees, and that the rules and forms that we as a branch adopt have the possibility of increasing the barriers to access, and the idea behind the protocol was that the advisory committees and the council and other bodies bringing forth notions for rules and forms within the court family would consider in adopting those rules and forms, whether they would present barriers to people of low or moderate income in using the court system. As the budget crisis has gone on, as new issues have come to the courts, as all of us have been trying to do more with less, the ability and the emphasis placed on adherence to the protocol has dropped off a little bit. And so the committee wants to bring to the council and will bring to the council, after this meeting, a proposal to revitalize, re-publicize, and to help implement the access protocol that was adopted in 2001. And K.O. and I thought that we would take you briefly through the proposals that we want to make so that you have an opportunity to hear about them and to ask us any questions about them before we bring them to you for action.

>> As you know, the council in adopting rules and approving forms has an invitation to comment period and historically we have reached out to legal services and to legal aid throughout the state to get comment on proposed -- the impact that these proposed new rules or forms will have on low or moderate income individuals. But we are suggesting that there be a more specific question, when we send out an invitation to comment, to ask the question, not just hope they volunteer the information, but to ask the question when we send things out for invitation to comment on how this will affect or if there will be an effect on low or moderate income individuals. We also are going to be recommending that we take a look at the people that we are sending the invitations to comment to, and who the interest groups might be, where we would probably get the most valuable information. We want to make sure that the list is expanded so that we include minority bar associations, public defenders, alternate defenders, attorneys that work on indigent panels that might be contract attorneys for low income people in various courts, because they may be able to provide us with the best information in terms of the impact of some of our changes -- that some of our changes might have on the low income residents of California. Also we have some recommendations in terms of how to better publicize the invitation to comment period. For those of us in the courts it is a pretty familiar and comfortable process and we know how it works and we know what the deadlines are. We know what the council is interested in, but we probably could do a better idea for people outside the

branch. And also, in compiling the comments, being able to tease out the specific comments as -- that would relate to low income individuals, the impact on them might assist in that process in meeting the goals of getting the comments back.

>> So part of it is not only looking at new rules, but taking a backwards look, a retrospective look, to see if we have things in place that are currently providing barriers. To get to that, I think again we need to reach out to the people who are working in the community and seeing where they are having issues, coming to court, and where they think the barriers are. There was an outreach to legal services done -- to the legal services community in 2011. It was very effective, it brought forth a lot of information, and we are suggesting that we do that again. That we make an affirmative outreach to them to help us identify areas where changes are necessary and where barriers need to be eliminated. We also think it is important to explain to the legal services community what this process is and why it is important for them to participate. As you know, they are overworked and underpaid and trying to do so much for so many. We have to justify our intrusion on their time if we are going to ask them to participate in this process. We think it is justified and their voices are valuable and so we would like to work with the State Bar and minority bars and others to help us in this effort to educate the people out in the field. We also would like to make sure that, on the website and in other media that we use, we make this information available and we make access for them to this process easier to understand, and more available.

>> Individual advisory committees, too, working in certain areas of the law might be able to assist us in terms of what groups, if a rule is -- if they are proposing a rule -- who are the stakeholders in their particular area of the law that we should be contacting? They may not need to be contacted with respect to every rule and every form but the family law people would certainly know who the family law interested parties are. Also, in terms of CJER, we tried to work with CJER and we have in the past worked with CJER as the self-represented task force. We had a very good relationship with CJER so that we were able to integrate some of the self-represented litigants' issues into the standard curriculum, and access and fairness should not be standalone subjects. I think that there is a certain resistance, at least resistance on my part, if someone said, Well I am going to give you a class on how to be fair. I've been doing this for almost 35 years and I think I have some idea about fairness, but in a specific instance, if I am on the appellate court and I have a self-represented litigant, there may be a technique or a procedure I could follow that would provide greater access for that self-represented litigant, so I think that we can all learn. By integrating examples of how to increase access and how to enhance fairness in our proceedings, into the various programs, it would be extremely helpful and I think that kind of education for court executives, court executive officers and presiding justices, would also be helpful for them. Developing hypotheticals -- I know when I have talked to judges and they say, well, I am fair and you give them a hypothetical, how would you deal with this? They will say, that is a tough one, and when you talk through it, you realize that there is a way that you could probably provide greater access for a litigant. We also think that the CJER broadcasts -- there may be some CJER broadcasts that could be used that would assist judges throughout the state. Also, some articles that our Judge España, a member of our committee, wrote an article on the

bail trap -- and you know, bail and traffic cases is a very awkward issue these days -- so I think that we could all learn from how other judges are handling those kinds of issues. So maybe by disseminating, we will be recommending disseminating some of those articles so that we are collaborating with each other and trying to improve access. Because if it is going to be 100% access, it has to be from the southern border to the northern border, from the eastern border to the western border, throughout the state, consistent.

>> The next area of the policy was to bring others into the family and, by that, I mean to encourage more lawyers who work with low income folks to apply for Judicial Council committees and to be considered as the policy is being made rather than only being limited to commenting after a policy has been proposed. Many committees indeed do have slots for lawyers who are experienced in the field. But again, we are talking about folks who are busy and folks who do not traditionally see themselves as members of Judicial Council committees. So we think using some of the same lists that are developed to determine who we are going to look to for outreach, we might be able to put out materials that encourage people to apply for committee memberships, perhaps do something like a webinar on why these groups should involve themselves with the work of the council and its advisory committees. And research -- which advisory parties have slots for such people and which might meaningfully include additional slots in the future to do so. Again, getting the information as the policy is being planted and growing is much more helpful than trying to go back and redo, and so that would be the notion behind this idea.

>> Also, this access protocol, as we indicated, was adopted in 2001, and yet a number of the judicial officers and court administrators throughout the state do not even know that the council has an access protocol, so I think publicizing that access protocol and making sure that it is distributed throughout the state and that it is actually known and understood in the various courts will do a great deal to enhance the 100% access vision and the 3-D access vision of our Chief, if people actually understand that goal and how it has been articulated. We also are going to recommend that we find out which courts have local access, fairness, or diversity committees, because sometimes local efforts that are tailored to the local community will increase access more effectively than a program that is developed at the state level, and so we want to know what those programs are. Maybe in a rural area of California there is a different way to increase access than there is in a large metropolitan area, and then, we are hoping that at the local level, judges can speak at bar events, and if there are judicial meetings in a county, public events, that there will be additional emphasis on access, and so that the community will know how committed we really are to access, and that it is not just a protocol that was developed in 2001 and then put on a shelf someplace. Also in terms of self-help centers, we have self-help centers of some variety in all 58 of our courts, and so working with self-help centers I think also would help us to determine what access challenges or barriers there may be in individual counties and give us an idea of how best to remove those barriers, because that is what 100% access is all about, removing those barriers, and I think that there are barriers that exist in some California communities that we are not even aware of so by working with the local people and self-help centers, I think that would greatly assist us. Also by working on diversity issues because

diversity is another piece of access. Working with individual courts to see what their diversity issues are in terms of their staffing and the communities that they are serving.

>> So we also need to learn from each other. In the past, the Kleps process was often very effective at picking up good programs that were going on in local courts, putting out information about them, developing ideas about best practices and how to implement them and disseminating those, and unfortunately that process seems to have been a victim of some of the cutbacks. But I think the notion behind that, even if we cannot bring back Kleps, is that if you take a successful program and you break it down to practices and policies that are effective and tell other people about it, that it prevents other courts from having to reinvent that particular wheel, and allows them to adapt it to the situation that they face on the ground, and so that also would be part of the protocol to encourage staff to work with our committee to gather those best practices and policies and help disseminate them to other courts in a way that can be useful to them. The knowledge center, the innovation knowledge center is a tool that we can use for that, and it is on the ground and it is available and so this is not a matter of reinvention. Are you going to talk about the 100% access?

>> I can. I was going to talk about Access and Fairness and relationship with the commission. All right. Access and Fairness works with -- there is a California Access to Justice Commission, which Justice Zelon served on as a member and now serves as an ex officio member, so that certainly facilitates our coordination between Providing Access and Fairness on California's Access to Justice Commission. And we are continuing. That was part of the council's protocol in 2001 that there be a collaboration between the Judicial Council committee and the access commission and I want to assure you that there is a collaboration and it is continuing and probably the most current effort is working with the access commission in applying for a Justice For All planning grant for an access grant that will be used throughout the state and I know that the chief is familiar with resolution five which was at the Conference of Chief Justices last summer -- resolution 5 was all about 100% access and so it is a nationwide objective and we want to make sure in California that we are number one on the list if we can be.

>> K.O. is being careful because I am cochair of the advisory committee that is going to be giving the grants.

>> I want to -- we don't -- I want to make sure that California is number one on the list.

>> We meet each other coming and going all the time but sometimes that is really helpful. As I said, we will be bringing this to you as a specific proposal for implementation. I want to pause for a minute before we talk about some of our other work to see if you have questions or comments that might help us refine that before we bring it to you.

>> I have one and that is that I think that some folks are relatively new and may not be aware of the Kleps award. And maybe you might spend a little more time on that because that was very painful to cut the Kleps award program from the Judicial Council budget years ago and so we

would be interested in hearing alternatives, I know not now, of something else that could be a substitute for it because it was successful.

>> The Ralph N. Kleps Award represented -- they were presented to courts and the council had committees that went and they studied the different projects or programs that were developed in the courts and then those courts were recognized after a vetting process -- were recognized for their innovative program or process at their court. We all used to compete for Kleps awards. It was a good motivation. In terms of current work that our committee is doing, I was going to ask how many of you even knew that we had an access protocol, but I won't put anybody on the spot, but we do want to publicize that better. We are continuing to work on self-represented litigants issues and one of the things that the task force used to do is we actually produced, with a grant, in January 2007, a bench guide for judicial officers that is entitled Handling Cases Involving Self-Represented Litigants. Handling cases without lawyers is sometimes a little challenging for judicial officers and particularly newer judicial officers, so the handbook -- the bench guide has helped judges throughout the state and I wrote a foreword to the book and I get emails every once in a while from a judge saying, hey, I read your book. It is really not my book but I get credit for it, saying that it really helped me out. That book is going to need updating and it has been updated so we will continue to update it on Providing Access and Fairness. Recently we have been working with the Criminal Law Advisory Committee and the Traffic Advisory Committee on the issues of fines and fees and as I'm sure you know there have been a lot of inquiries after the Ferguson situation. So we have been working, I think, very collaboratively with those other committees to try and come up with some answers in how to level the playing field and how to address some of the concerns that have been raised. We also have worked with and will continue to work with the California Supreme Court's Advisory Committee on the Code of Judicial Ethics. The specific issue that we worked on most recently was to what point -- to what degree is it appropriate for a bench officer to assist or engage with a self-represented litigant? I think that our position is, you have to remain impartial, but you can be an engaged neutral, so you can actually interact to explain procedures, so we will continue to work with that committee. And then in the future?

>> The future. Well, you gave us a gift this year at the end of the year, which was some of the recommendations from the Mental Health Advisory Committee. Mental health is not an area in which we traditionally had a lot of expertise, but we are trying to come up to speed on that and in making our recommendations for new members to the committee, we were looking for people who had mental health expertise and experience and hope to continue to work on those proposals and to get the resources that we need in terms of understanding to be able to make effective recommendations on those areas. You know, we view our role not as telling anyone what to do but as trying to assist bench officers and the court as a whole in meeting these goals that we all share, to disseminate good practices, to help identify them, to find solutions to problems that we become aware of. We are lucky because so many of our members have been involved in these issues over the long term and have deep connections in the community that allow us to hear about things that might not come to our attention otherwise, and when we hear about them, we do try and find ways that we can make it easier for members of the court family to deal with

them, always with the focus on making our courts more accessible to the users who come to us with their problems. We are open to new areas from the council. If you have looked at our work plan, we have quite a bit on our plate and we are going to endeavor to do that as best we can. But the real future is trying to help the courts do what they want to do in this area.

>> And I think our focus has always been and it has to continue, as we move forward, is maintaining trust and confidence in our courts. There are certain questions that are being raised in the community and being raised in the legislature in terms of some of our practices. And there is, I think, some concern among the public and court users that what we are perceiving that there is a lack of consistency among the courts and, in some ways, California is getting smaller in the sense that people know in Sacramento what is going on in San Diego, and they know what is going on in Orange County, and they know what is going on in Oakland, but the fact that fines, fees and assessments vary so dramatically from county to county, debt collection methods, things like the availability of night court, the opportunity for traffic school, community service, and all of those things are very different throughout the state. And I know that when the Great Recession hit and we suffered such dramatic budget cuts, they were unprecedented, and so courts scrambled to try and operate within their means. And different courts reduced self-help services and others eliminated court reporters in civil, family, and some reduced court interpreters in civil cases. Some eliminated the specialty courts and others closed court facilities, some centralized courts, certain court functions, some reduced hours, but I think that is something that in the future we need to look at because sort of the ad hoc approach has led to some great confusion among the public, and I think can jeopardize public trust and confidence in the courts. We so often say we rely on the rule of law, and the rule of law is so important in a civilized society and yet it appears to the public as if we do not have a very coordinated or consistent response throughout the state and so they wonder what that rule of law is. And the distinction between how we operate administratively and how we make our judicial decisions, I think, is lost on some, and we are hoping that with working with the courts and following the access protocol, moving forward, we will be able to avoid some of the litigation -- because that really should not be what is motivating us. We want to do the right thing but it seems as we are not doing it fast enough, but we are working as fast as we can. We are open to suggestions. I am hoping that what we do reflects the branch's commitment to procedural fairness and to access, because I know that is what the Chief and the council are committed to, and we are doing our best to work to support that effort.

>> I want to say that I think we can never be reminded too many times of access and fairness and procedural fairness, and that in times of greatest challenges to the court, especially as referenced in the Great Recession, it is paramount that that be what we all continue to strive for. I know that the courts have done it in different ways and I understand public confusion in terms of the different practices and the different choices made by the trial courts and the Courts of Appeal and the Supreme Court and the Judicial Council and its decisions and policy regarding its reaction to that. I will also say that I am excited to hear about the proposal and that we will be hearing through your work from people on the ground who now can say what works and what does not work or what are other barriers out there that we have not been able to identify and I

think that the work that you are describing that you will bring back to us is the core of what we are supposed to be doing in that Judicial Council. Thank you.

>>We look forward to seeing it also. Thank you very much for your presentation.

>> Thank you for letting us come here today.

>> Our pleasure. [Applause] As I indicated earlier, this ends our public business meeting for today. Our public business meeting will reconvene tomorrow at 8:30 AM where we will begin our regular business. At this time, we are going into closed session and so we will shut down our media and begin our closed session.