

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 a formatted and unedited transcript of the last meeting. The official record of each meeting, the meeting minutes, are 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.

THE MEETING WILL BEGIN SHORTLY.

>> The ability to have a face-to-face conversation inside the courthouse with the custody client is essential. The Judicial Council's draft—2011 effectively destroyed this constitutionally required interaction where they state in section 8.9 regarding attorney client interview rooms a noncontact arrangement is required to prevent the exchange of contraband. The plan is defective. Attorney-client interview rooms have been repeatedly constructed in which attorney and client are completely glassed off from each other. In most cases neither can hear the other without shouting and possibly being overheard. Attorneys in Woodland, Stockton and San Diego struggle to get their clients to trust them in court houses which don't. I strongly recommend the Judicial Council repair these interview rooms by removing the glass, and stop building court houses like this, and delete from its facility standards a single sentence required noncontact visitation with attorneys in the courthouse. Thank you for your time and attention.

>> Next we will hear from Joanne Scheer. Good morning. Welcome. We are glad you are here and appreciate you taking the time to speak with us. Three minutes.

>> My name is Joanne Scheer. I live in Concord. My only trial to Anthony is serving a sentence of life without the possibility of parole. Upon conviction of murder, special circumstances in 2007. He neither committed the murder nor did he anticipate such a terrible event. The theory and special circumstances are clear only to legal professionals who prosecute and defend within the criminal justice system. Most people, even those who have been convicted of them, have no understanding of these legal terms. For 11 years people have asked how long is your son in for? When I respond he is serving life without parole the next question without hesitation is when does he come before the parole board? Upon explanation that Tony is sentenced to die in prison and will never have a chance to go before a parole board they are stunned in silence. They have a grasp this is the death sentence. When the death penalty is a perspective sentence in a criminal case a death qualified jury is chosen. The same measure should be taken in special circumstances cases since both are capital punishments. However, trials are supposed to be fair and unbiased toward the defendant. There is clear evidence that jurors who are in favor of the death penalty are more likely to convict at the guilt phase. This may also hold true for jurors who have no issue with life without parole sentences. A jury who is already in a post to the consequence of a guilty verdict holds an obvious advantage for the prosecution. Prejudiced influences a trial. Why should the rules be set up to aid one side or the other? Justice jurors in a death penalty case are you

know the consequence of a guilty verdict. So jurors are well aware of the sentence for first-degree murder conviction. In stark contrast, jurors are not aware. Of the consequence of the guilty verdict in a special circumstances trial. During potential jury should be informed of the mandatory sentence rendered by a verdict of guilt. They should understand the meaning as well as the consequence of special circumstance. 5206 people are serving life without parole sentences. Over 3700 of them are first-time offenders. Over 3200 of them were 25 or under the age of the crime. Thirteen years ago, the California Department of Corrections created a new mission with rehabilitation at its core. It was renamed the California Department of Corrections and Rehabilitation. Life without parole renders this an impotent and futile gesture. And deems a person unworthy of rehabilitation. If jurors are going to sentence a person to death they should be made aware of this when they are given a special circumstance instruction. I thank you so much for your time and appreciate your attention.

>> Thank you very much.

>> Chief, that completes the public comment.

>> Thank you to our speakers. Next we have the approval of minutes. These are the minutes from our prior Judicial Council meetings, September 14 and 15. After taking an opportunity to review I will entertain a motion to approve. Is there a second? Thank you, Judge Lyons. I'm not seeing any hands for comment or question. All in favor please say aye. The motion carries. Next on the agenda comes a series of reports. Starting off with mine. This is my regular report to the council summarizing some of my engagements and outreach activities on behalf of the branch since our last meeting. I want to start by saying we've only been fortunate in California to have such a dynamic legal talent pool. With such diverse and personal work experiences firmware our judicial officers are drawn. Inspired to become engaged with their communities in academia and the law their paths to the bench really very. They are all committed to the importance of an independent judiciary in our constitutional democracy. This time last year we had one vacancy on the Supreme Court, 11 vacancies on the Court of Appeal and 102 vacancies on the trial courts. Very soon if not recently as of yesterday thanks to the efforts of Governor Brown and his staff we do not anticipate there will be any vacancies on the appellate courts. Potentially only 37 vacancies or maybe not even on the trial courts. With one month to go before the end of the year, a lot of new folks will come in with their talents and their experience to help us advance the rule of law and access to justice. It's been my pleasure to participate in another series of commission on judicial appointment hearings just this week. Here in San Francisco. We have another series scheduled at the end of next month. For seven more justice appellate nominees. I understand I recently welcome new trial court judges to visit my chambers. That's part of our judicial orientation program. These hearings and visits have also provided me with an opportunity to encourage our colleagues to consider new rules at the statewide level and that there court level supporting statewide administration and local court administration. I continued my ongoing collaboration efforts with our federal judiciary. Participating in our regular Council meeting. Much like this council but a little bit smaller. No budget but nevertheless we come together to discuss issues of common concerns in areas where we may collaborate. Also joined our Power of

Democracy steering committee, this cooperation bore fruit with the launch of what we call the civics passport walk. As a way to introduce Civics to K-12. As part of a Constitution Day event called Walk the Talk in Sacramento. There I spoke to participants about the importance of civic education and engagement. Then high school students and teachers from throughout the state received the passport like brochure and a stamp on that. When they visited several places, the Third District Court of Appeal, the Robert T. Matsui federal courthouse, the California Museum Unity Center, the California State Railroad Museum with much of our history of the development of California, and of course the California state capital Museum. The Third District Court of Appeal also provided an educational program about Riley versus California. In the case about the Fourth Amendment and whether or not you need a warrant. Yes you do to search a phone. The teenagers were very interested in that case. The Third District also has had a number of subsequent civic passport walk visits. Justice Holland and all of his colleagues participated in the program. Civics was the thing when I participated on Election Day. In a segment on the KQED Forum, Why Civics Education Matters. The discussion on the radio dealt with issues around why Americans are struggling to understand how government works. Including the judicial branch. Other participants on the radio segment included Yonni Appelbaum and David Azerrad and Dave Eggers, the segment also featured live calls. We received a call from a teacher who was in the middle of teaching her civics class. I was a participant and a student like many of you at the appellate justice. I was engaged in a conversation in a Q&A where we covered what we covered here. Changes to programs on the court and of course her ongoing efforts to address sexual harassment and discrimination. As a student at the Institute I took my required appellate justice ethics update with my colleagues. Which outlined the sources available to justices and judges throughout the branch. The Supreme Court's Advisory Committee on the Code of Judicial Ethics and the Committee on Judicial Ethics Opinions. It is clear that we have a very robust judicial ethics offering for officers in California. Including what is offered to the California Judges Association. A staff also supported the important commercially sexually exploited children human traffic summit in San Diego. I provided welcoming remarks to a statewide group of judges and law enforcement officers, attorneys and probation officers in public defenders and district attorneys. First responders and service providers and other justice system partners who attended the summit. Council member Judge Stacy Boll led this program. It dealt with issues ranging from engaging with child youth victims in working with children testifying in adult courts to the effects of trauma on juveniles. The summit was also facilitated by Judges Maria Hernandez, Catherine Pratt, Stephen Bromberg, Carrington, and Chief Judge Richard Blake. The summit was a great opportunity to convene and connect interested parties to developing programs and ongoing concerns in this area. We have also continued her ongoing advocacy and collaboration efforts involving liaison meetings. Most recently with the California State Sheriffs Association. At a roundtable in chambers in Sacramento. We meet to discuss issues of concern and issues on the horizon. Also we met with the Chief Probation Officers of California. These liaison meetings are an opportunity to build relationships and exchange information. And of course to simply build relationships as we go forward on mutual issues. In Sacramento I participated in a Q&A session with the president of the Asian Pacific American advocates junkie dollar. As part of their bill to lead Asian-Americans and Pacific Islanders college women summit. There college students had an opportunity to

network with women leaders in government. Nonprofits philanthropy, policy, S.T.E.M. and the performing and graphic arts. Also in Sacramento I joined Mona Presque Isle of the Governor's Office. Among many others at the Secretary of State's office for a Congressional gold medal event. And machinations of Filipino veterans. Including my father. In San Francisco I was offered to receive from the Asian Pacific Fund the leadership award at their annual gala. The fund's mission is to give money to increase philanthropy and support organizations that serve our most vulnerable communities. That concludes my report to the council.

>> Members in your materials is my regular written report. There's a couple of items I would like to highlight that are in that report as well as items that are on the consent agenda. Even some items that are on neither of both. I want to just talk a little bit about the wildfire assistance that your staff had provided recently for the Camp Fire that consumed much of Butte County. As most of you know by now the Camp Fire was contained last Sunday after burning for over 17 days. In an area of approximately 240 miles. Many lives were lost in many homes and structures were destroyed including those of at least 10 of our employees from the Butte court. Another three at this time we are aware have been evacuated indefinitely. Tamera Musburger and the court executive officer and member in the Butte bench and court employees were amazing as you would expect. We remember one of those evenings, very late in the evening where they were still trying to keep things orderly and get the emergency orders and the work in place. We became worried but it was almost as if they knew what they had to do. They waited until the last possible moment before they kept themselves safe. The court did contact us for assistance. Our Legal Services office helps process emergency orders for the Chief Justice. The Facilities Services group deployed numerous respirator masks as well as a lot of the indoor air quality testing. Not just that court, because of the smoke affected this particular fire in the length in which it burned it affected nine other courts. That struggled to provide air and sustained heavy smoke damage between Butte in the Bay Area. For all of the effort that we made to try to help indirectly and directly to that nothing compares to the work that went on with respect to the first responders. The people in the Butte community and the court itself, in terms of its leadership as well as employees. We also had a lot of lessons that we learned from this fire as we continue to learn from a lot of other fires that are sweeping throughout the state. We will do our own after action briefings to figure out how do we get better and more responsive and more helpful and understand our roles and responsibilities in dealing with what some have described as the tragic new abnormal that we are facing in our particular state. I also want to turn a little bit to some better news. Which is that we have now after some period of time recruited and named a new chief information officer for the council. It is not in your report. I want to take the opportunity to formally publicly acknowledge and congratulate our new chief information officer who is Heather Pettit. She is a current employee and she will assume this role on December 3. Prior to joining us, from 2000 to 2018 she had first served as a CIO for the Sacramento Superior Court. After that the CIO for the Contra Costa court. She has been a long-standing member of the Information Technology Advisory Committee of this council as well as an active leader in the California Court Information Technology Forum. Even at the national level she is recognized. She will be working in reporting to Rob Oyung who has been essentially wearing two hats for quite some time. As the chief information officer as well as the chief operating officer, I want to

thank Rob for doing double duty. I am sure he is thrilled and happy to now have a partner and be relieved of one of those hats. He could not give his full attention to the other responsibilities that he has. This will play a strong leadership role in working with the courts. One of the items you will be updated on today will be on your agenda for consideration. And returning to the consent agenda, there are 20 items that are there today. They are on all aspects of the judicial administration that represents a tremendous amount of research work and energy by your lower committees and by their staff. Their recommendations this month are included on technology. With respect to data collection and the information security framework. Rules of court on electronic filing. Judicial Council forms that reflect updates related or new things related to legislation on name and gender change proceedings in gun violence restraining orders. There are numerous mandated reports for the Legislature. And an annual report that we provide to the Legislature on the implementation of the California Community Corrections Performance Act. In particular, want to highlight another item that is in on the consent agenda. It's related to traffic. It's a follow-up report. On action that this body already took it his last meeting back in September. You approve the expansion of the selection criteria for the Online Traffic Adjudication Pilot Project. It will also facilitate further testing and development of ability to pay determinations for traffic infraction, fines and fees. The Budget Act of this year appropriated \$3.4 million in new funding anyone \$.3 million and ongoing funding to continue this expansion. With your consent today the five superior courts already partnering with the Judicial Council will be expanded. The other three courts would include Fresno, El Dorado and Monterey. The broad and diversity of the core size as well as the demographic and geographic diversity will help inform us in terms of future policy discussions with respect to ability to pay determinations ultimately leading to scaling this initiative statewide. So this is available for all courts and all users as they process and adjudicate these particular matters. The last thing I want to draw your attention to is the Indian civil rights act of 50 years. November is designated nationally as the Native American Heritage Month. It's part of an educational series of videos exploring issues of access and fairness related to California's diverse population. The council's Tribal Court-State Court Forum ends our education group procedure and produced a new video focusing on the history of the Indian civil rights act of 1968. And how to travel courts are affected by the act 50 years on. Something she may not be aware of. California is home to more people of Native American or Alaskan Native heritage than any other state in United States. The state is home to 110 federally recognized tribes and we have 22 tribal courts serving approximately 40 tribes. The tribal state was established in 2010. And became a formal advisory committee to the Council in 2013. This video is posted on the judicial resources network. It has an excellent panel discussion which is moderated by Christine Williams of the—in addition to looking at the effects of the Indian civil rights act it explores the California travel court issues that are related to an and intertwined with the state's judicial branch. I recommend you watch the video and visit the judicial resources network. It's a valuable resource and a great learning tool. I myself have been going there much more frequently than I had in the past. Which is where I ran into this video. It really does show how we are trying to advance the fundamental and common goal of fairness to all people in all communities in California. With that, that concludes my report to the members.

>> Thank you, Martin. Senator Jackson?

>> Thank you, A, and then a request with respect—the last year I attended the Judicial Council meeting when there was discussion about what had happened up in some of the courts in Northern California. As a result of the fires. And how the courts had been impacted. Obviously it is a year later and we are seeing more and more impacts. As a result of that conversation I did some legislation to give you broader discretion when your courts have been adversely affected. I suspect we have learned a lot more. I'm thinking Los Angeles, and up in Paradise. A lot of fires and a lot of experiences. It is my hope that if you're courts have suffered or you have observed some of the challenges associated with these fires, that you will please let me know or my colleagues know so we can perhaps help you legislatively and budget wise. When we have these fires, we don't automatically think of the courts first. I think just to offer that I am still for the next 12 hours, the chair of the Joint Committee on Emergency Management. We have been looking at all sorts of issues. I would invite all of you, if you have had experiences, things you would not necessarily think of until it is in the face, if you will. The air quality within your buildings. He might have to close them down. If there are things we can do to help you legislatively to accommodate you, please make sure—I would be delighted to hear from you or others you think would be appropriate to help legislation. The other item has to do with the consent calendar. There are two counts—items dealing with legislation. I would like to either ask you to pull them from the consent calendar for a vote or to identify my extension on items 18-192 and 18-213 without any prejudice. Just because those are issues that are likely to come before the Legislature.

>> Always happy to see you. Thank you for your comments. We could register your extension now. Also regarding the vision on the fire impact we are grateful for your attention to this matter. In your ongoing concern. Also we have the person here who is closest on the ground and who the court communicated with, Ms. Kimberly Flannery. I'd like to recognize her and ask her if she has any comments in this regard.

>> I do. On behalf of our presiding judge, Tamra Musburger, I want to thank the Judicial Council and the judicial branch for all of the assistance. Our emergency orders, which did come into play twice during this Camp Fire, Charlie Perkins was incredible. And immediately assisting us as were you, Chief, to get the order signed and back to our court. The facility response was incredible as well. With the masks, immediately the moment the fire broke out we had those masks in place. The air scrubbers in place in the testing, John, Courtney and everyone's assistance. Again very responsive and we very much appreciate it. Above and beyond that the contributions from this Judicial Council staff, all the way through to you, Chief, as well as courts from Siskiyou to San Diego that contributed to help my 13 employees who were displaced. I just cannot thank you enough.

>> I want to say thank you for your leadership throughout that. Judge P.J. Musburger I want to say we were kept in touch. Martin and team, all of us were waiting and watching and hoping. We were also very pleased and delighted to see the idea of the GoFundMe for the court employees. That all of us were enthusiastic about. We have also discussed we hope in January, I know you now had fires and now you have mudslides. Same as Los Angeles. We hope to have a recap in

the beginning of the year to talk more about what we learned and how to prepare along the lines of Senator Jackson has discussed something we can talk about, and I look forward to hopefully being able to address that early on.

>> One more thing. I want to give a plug to Ed Ellistad. It was a great assistance in getting messages out to our staff immediately. Thank you for that.

>> I wanted to make a comment following on the comments about the Carr Fire and the effects. And Senator Jackson's comments. To reflect that. And note a lot of times the far-ranging of effects are not immediately known. In Sacramento, the air quality was substantially affected. It was in the hazardous zone for many days. I just want to thank Martin and his staff for helping us out in the library and courts building and sending their staff in for testing and also for installing air scrubbers and whatever else could be accomplished. As I say, these catastrophes and their effects are far ranging. We and those of us who work in that building appreciated the help very much. I don't know if our clerk wants to add anything to that, but I do want to note the excellent support we received.

>> Thank you.

>> I would echo what Justice Hall had indicated. We had not anticipated in Sacramento we would have issues as a result of the Camp Fire. We are not thinking or worrying about having to plan for that until the air quality hit in the 300s and staff were having issues breathing internally. The response of the Judicial Council and facilities was very much appreciated. And enabled us to keep the building moving with the exception of just one afternoon.

>> Thank you.

>> With respect to the Woolsey Fire, which impacted Los Angeles and Ventura counties, over 300,000 people were evacuated in these two counties. That is a huge number of people. For a very long period of time. One judicial officer in Los Angeles County did lose her home. It burned to the ground. She lived in the Malibu area. It impacted numerous employees. I just want to acknowledge the deputies and bailiffs who serve us. They were working shifts at night on the fire lines and were working in the court houses. I applaud them for all of their service to us.

>> Thank you. I want to say two things. A great thanks to Judicial Council facilities because many of the same conditions that were described by Justice Hall were locked into the San Francisco and affected the courts here as well. There were efforts also regarding the air scrubbers and monitoring the air quality. I also want to see in January we also have a lot to learn from the heroic efforts of Judge Nadler and what happened in Sonoma. To help us plan to the best that we can for situations like this. Not only for our community but also our court family. I remember touring that area with you with a judicial officer. I know others have lost their home. I know that you and what occurred in Butte were on the front lines seeking to keep courthouses safe and the court family safe. It has been two years in a row and this is a trend if not an occurrence that we see, we are on notice. Next we move to further reports. I will start with Judge Marla Anderson.

>> Good morning. On behalf of the chair, I provide this brief summary of the activities of the Executive And Planning Committee since the September council meeting. The chair's report will be posted online. Since the September meeting the committee met by conference call on September 11 in a joint meeting. On October 3 met in a closed meeting and also on October 25 met in an open meeting and also conducted one action by e-mail on November 8. At the close session on October 3. And develop recommendations to be sent to the Chief Justice. Of following the advisory bodies. On the meeting on October 25 the approve was just the request from Los Angeles with respect to six vacant positions. And also at that meeting the Council set the agenda for the business meeting for today's date in yesterday's date as well. That concludes the report. Thank you, Chief.

>> Next we will hear from the chair of Policy Coordination and Liaison.

>> Thank you, Chief. The PCLC committee has met once. The committee approved the council's 2019 legislative priorities. This item in the 2018 legislative policy summary. Those approved it prior at a PCLC meeting. The Governor assigned three more of our council sponsor bills since my last report for a total of six measure signed into law for 2018. Other councils pondered they sponsored bills incorporated into the state budget. As you are aware the Legislature will reconvene on December 3. We will start to become very busy. That concludes my report.

>> Next we will hear from Justice Harry Hall from Rules and Projects.

>> Morning, ladies and gentlemen. Your agenda shows that Judge Lyons was going to get the report this morning. Due to a miscommunication, she only learned that at 9:20 AM. She was surprisingly not prepared. It is my responsibility, but I am going to invite Judge Lyons to offer the report at our next meeting. If she would be willing to do that as the vice chair. The Rules and Projects Committee met by telephone call three times and has acted by e-mail three times since the meeting on September 21. To approve a rule proposal to circulate on a special cycle. On October 12, we met by telephone to consider a request on an advisory committee concerning a special subcommittee. Which approved. One had already circulated for comment. Approved circulation of the proposal. After further review by the proponent is expected to come before the council at the March business meeting. Approval is recommended of the other proposal, which is item 18-200 on today's consent agenda. We met by telephone on October 19 to consider revisions. Various rules and form proposals. The annual agendas of the eight advisory committees that he oversees. All agendas were approved. Also minor revisions to Civil Jury Instructions and proposal for which the council has delegated authority to approve. Also circulation for public comment. Of two proposals arising from Proposition 66. The death penalty initiative following circulation and further review by the Proposition 66 Rules Working Group. The proposals are expected to come before the council at the March business meeting. As you will recall the law has drafted and requires us to have rules in place by the end of April. They are items 18-199, 18-202, 18-210, and 18-223. On October 23, two rule proposals that have circulated for comment at the time. They recommend approval on these proposals which are items 18-191 and 18-225. Also on her consent agenda for this meeting. On November 6, the

group met by telephone to circulate for comment on a special cycle in a proposal that makes technical changes. Following circulation and further review by the advisory committee the proposal is expected to come before you at the March business meeting. They recommend approval of the technical change proposal, which is item 18-230 on the consent agenda. They acted by e-mail on November 9 two recommend approval. Of the penalty schedules for 2019. This item is 18-206 on the consent agenda. I be glad to answer any questions the council may have. Thank you.

>> Next we will hear from Justice Marshall.

>> Thank you, Chief. Since our last council meeting JCTC has held one open meeting by teleconference. We conducted an action by e-mail. Held a new member orientation and yesterday had a good education session. In addition the information technology advisory committee known as I tack as well as the strategic plan held a meeting. During our October 15 JCTC meeting we received a report on the ongoing activities and we reviewed the proposed updates to the judicial branch information security framework. And we took action to recommend that Council adopt the proposed updates. Which is on today's consent agenda. There strategic plan work stream which you will hear from later this morning met to review and determine how best to respond to the public comment period. We sent it out for a 30-day public comment period. We received responses and discussed how to incorporate those into our strategic plan. And the committee unanimously approved how to approach and respond to those. ITAC met on October 26. Where they received an update on the IT community development work stream as well as the tactical plan work stream. In addition they discussed their 2019 annual agenda which will continue to be developed during the month of December. The team charged with developing the 2019-2020 tactical plan for technology has finished reviewing all of their initiatives and will soon circulate the proposal for branch wide comment and again will circulate it to public comment. It will come before JCTC and come before Judicial Council for consideration. The futures commission directive to investigate voice to text language interpretation outside of the courtroom is also underway. Specifically they are looking into efforts of how to use existing technologies already available to deploy them in self-help centers as service counters and other service areas. In early November, I attended a branchwide IT symposium along with fellow JCTC members Judge Brody and Miss Andrzej a Roman. We were joined by over 100 attendees. To learn about technology topics such as cloud disaster recovery and next-generation hosting, identity management and business intelligence. Miss Amy Tong, the state chief information officer and director of the California Department of Technology, provided a very informative and moving personal keynote speech, which was actually extremely meaningful. Finally, I would be negligent if I did not publicly thank our branchwide IT community for their collective good work yesterday. We saw an example of that by the way of the work going on in Monterey. I thank all of the numerous court staff who are allowed to participate in branchwide technology issues. The judicial officers and the justices and of course my great thanks to the Judicial Council staff for your continuous and consistent commitment to supporting the many technology initiatives that are underway to better serve the people of California. Chief, that concludes my report. Except to

also say thank you for allowing me to continue to work in this really important work. Thank you, Chief.

>> Next we will hear from Judge Kyle Brody, vice chair of the Judicial Branch Budget Committee.

>> Thank you, Chief. Since the last council meeting, the Judicial Branch Budget Committee has met three times, twice by telephone and once in person. The budget committee's charge is to administer the \$10 million branch emergency fund, coordinate budget change proposal requests that the branch submits to the Department of Finance, and also to administer the \$25 million innovation grant program, as well as any other budget tasks we are assigned. In these three meetings, two by telephone and one in person, the bulk of those meetings was to address requests for adjustments. And modifications to various integration grants that have been awarded. The committee reviewed documentation that have been offered by the courts supporting those requests and we acted on each of them in turn. During the in-person meeting, budget services directors and Judge Rubin give a presentation on the state budgeting process, during which we reviewed how many flows into and out of state accounts. And how our own internal budget process relates to those interactions. Finally, as part of its oversight into the innovations program the grantee courts provided quarterly and annual progress reports on their projects in the budget committee in turn decides that she the details of the second annual report was recently submitted to the Legislature. It is included in today's information materials. The broad summary is there are 50 projects going forward. They been awarded the total of \$22.3 million. There is a contingency fund the committee continues to hold for the adjustments. Which have been requested. Courts have been collaborating on many of those initiatives leveraging information that they have learned. Particularly on projects related to self-help customer portals and also remote video technologies. The courts have spent a total over \$10.3 million of the amount awarded. The committee wants to acknowledge the hard work of the grant recipients. It is a lot of work. Not just in running the projects but also documenting the progress in making sure that the information that is learned from these grants is something that other courts can use. That it can be scaled up and scaled down and ported over to other courts. And our efforts have been successful so far. We are optimistic they will continue to be. Also, we would like to acknowledge the staff that does so much work supporting the committee's efforts, led by a host of others as well. Without them we cannot do the work that we do. Without that, thank you, Chief. That concludes my report.

>> Judge Brody, I wanted to thank you and Judge Rubin for bringing me to this body yesterday. The presentation on the app from Monterey, which I commented yesterday, is incredible. This is exactly what we want to see from the innovation grants. I also want to thank Justice Slough for bringing to the Technology Committee yesterday another innovation grant from Orange County. It involves data analytics. From those data analytics that they have been able to accumulate they were able to determine that the family law program in Orange County needed two more judges. That is the exact kind of data analytics that we need for the entire branch. We are not going to go to the Legislature and say we have a drop in workload so we don't need more judges. We have a

drop in workload but look how the workload has expanded. We need those data analytics statewide so when we go to the good senator she will have materials to take to her colleagues. To give us the funds that we actually need for the entire branch. I thank all three of you for bringing this to our attention. I am for once excited about technology and the progress that we are making.

>> I am glad to hear that.

>> I want to say one thing in the process. We heard from Judge Anderson yesterday. Exciting news about Monterey court. I will let you say it again.

>> It is our pleasure to be the leader in technology. I think our staff has done a wonderful job in following through with the Chief's plan of being online rather than in line. We are a fully electronic court. We have a paperless court in all case types. As well as we have been e-filing for the last year. We do not have any paper filing unless you are indigent and do not have access to online e-filing. All at the same time, you heard yesterday the staff was also working to complete the app, and will make it so that each one of the 58 courts can utilize the app if they so choose. Being a leader is good. Thank you.

>> As Martin just said, competition is a good thing.

>> Just to follow up with that, we have a new Governor coming in, who I think is quite in tune with the technological potential. When it comes to the budget, to be able to make that connection and have the metrics that have been demonstrated, the innovation that we are seeing, I think it will go a long way towards helping the courts get some of those resources up until now haven't been this forthcoming. I think that is a plus.

>> Thank you very much for that perspective. We appreciate hearing that. Next on our agenda is the consent item you have already heard there are 20 items. Before we go on record with the consent agenda I want to take this opportunity to thank the hundreds of hundreds of volunteers who are on our advisory committees who dedicate time, a tremendous amount of time and detail to the work that goes into developing these reports. Preparing them for us and being able to reach consensus in their advisory committee such that they are put on her consent agenda. The fact that they are on our consent agenda does not in any way diminish their importance or the critical need for these reports. They also mean they have been adopted without any great concern raised. So I think these volunteers because they enable the council to accomplish so much policy and decision-making on an annual basis. Before we move any discussion or agenda we have already noted and recorded Senator Jackson's abstention from items. After we have another opportunity to review the consent agenda, I'll entertain any motion to move it and a second. Mr. Patrick Kelly moved and I thought I heard a second from Judge Hopp. Thank you. All in favor of moving the consent agenda, please say "aye." Any abstentions or no's that are recorded, the consent agenda passes. We are ahead of schedule. Something I always like to say and stay ahead. We will not take the recess at this point. We can take one later. If you need one feel free to exit and return. We are going to have our discussion agenda item. This is an action item. It is item

number 18-213. I will have the presenters come to the panel and I will have judge Ken So introduce.

>> Thank you, Chief. This is our annual trip to the council to establish the 2019 legislative priorities. I'm sure you all know Corey; he is going to describe the legislative priorities.

>> Good morning, Chief and members of the council. I am happy to briefly go over the proposed 2019 legislative priorities that have been developed and recommended by Judge So's PCLC committee. Our priorities are focused on adequate funding for the branch. Improved efficiencies for the courts as well as securing judge ships. The priorities for 2019 are very similar. I will briefly highlight those. They are listed in the memo in the Council packet. Are not in any order. We will start with priority one is to continue to advocate for investment in the branch. Including a method for stable and reliable funding. To allow courts to handle annual cost increases as well as plan for the future. Additional resources to improve physical access by keeping the courts open. And to restore those programs and service levels that have been reduced over the last few years. The next priority is to continue as the Council has consistently for the last 10 years now. Advocate for funding in the Legislature to find at least—they asked 10 of the previously authorized but unfunded judgeships dating back to 2006. This also includes a continued legislative ratification for the courts that have remaining subordinate judicial officer positions. That could be converted to judgeships when they become vacant. The next priority is to seek legislative authorization if needed to dispose of any additional unused courthouses. Over the last couple of years we have been granted authorization by the Legislature to dispose of about 10 unused courthouses. There is not a proposal for this year of a specific courthouse. Would like to get the authorization to pursue that if in the next couple of months that is needed. We would also like to continue to sponsor and or support any legislation that would improve judicial branch operational efficiencies including cost savings and cost recovery. Advocate for any legislation to implement recommendations from the Chief's Futures Commission. And number six is advocate for legislation to advocate detention reform, and finally authorization to continue to delegate to PCLC, the authority to take positions on behalf of the Council on legislation that is proposed as well as any additional administrative rules or regulations. Of course those positions are taken after we have consulted with the appropriate Judicial Council advisory committees. Those are the recommendations for 2019. I would be happy to answer any questions.

>> Without any questions or remarks and even after motions are made I entertain a motion regarding items and recommendations one through seven.

>> So moved.

>> Thank you.

>> I will second that.

>> Seconded by Gretchen Wilson. I'm not seeing any hands raised for further comment. Some of these are known to us. At this point all in favor police say "aye." Any abstentions? Thank you, Senator Jackson. Any noes? Items one through seven pass. Thank you.

>> We will keep you apprised.

>> Our next item, action required as promised by Justice Slough is the Strategic Plan for Technology 2019-2022. And as the panel takes their place at the table I have Justice Marsha Slough who will introduce her panel.

>> It is a pleasure to present to you the Strategic Plan for Technology. Which if it is approved today will be in effect from 2019–2020. This actually represents the very first update to our strategic plan. Which was originally adopted by this body in 2014. At that time the strategic plan was incorporated into entire governance document. Which I hold and carried with me from Redlands California it was heavy. The original strategic plan was 33 pages long. It was written more like a brief than a technology document. It was very important and it has been critical to the success we have seen over the past few years. It is time that it be updated and modernized. That it looks like what we would like it to look like. Sleek and accessible through the Internet. And interesting. Something you would turn to, to have a better understanding of what our overarching goals are for the state of California when it comes to technology. With that, today I have three members of our work stream helping out today. Ms. Audra Ibarra, who is a private attorney and her perspective is extremely important to us as we continue to improve in reaching out to lawyers to understand how can we help you do your work better. She also is a member of Judicial Council. We have Ms. Andrea K. Wallin-Rohmann, who is the clerk/executive officer at the Third Appellate District. Who has a breadth of government experience across the different branches of government, and also has the appellate perspective. We have Ms. Andrea K. Wallin-Rohmann, who is the chief information officer for the Napa Superior Court. Bringing in the trial court perspective which is always of critical importance to us as we do our evaluation and work. At this time rather than me continuing to talk let me ask Ms. Andrea Rohmann to proceed.

>> Thank you for allowing us to come and present. As Justice Slough had indicated the strategic plan was a very large effort by a large group of individuals as you see on the screen. The individuals represent the public and branch members trial and appellate court members. Various perspectives from CIOs to CEOs to judges, to PJs and legal IT staff. As well as non-IT staff. In addition to that we had representation from the state of California's Department of Technology, CIO Amy Tong. When we started the effort we really started with looking at as Justice Slough indicated the original strategic plan. And then tie not back to our governance model. This model is the foundation of how we built the strategic plan. The intent of our strategic plan is to have a tie back to the business goals of the branch. We have in there the Four strategic plan from that. We developed the two-year tactical plan which is part of what ITAC oversees. That we had the annual agenda in the meat and potatoes of all of it is done by the work streams. We are going to talk now about the actual plan updates. Really I think it is important to note that the plan is not an uplift of the original strategic plan. It was our goal to recognize the value in the initial document provided to the branch and establish a unified direction for technology. We did not

believe the document was no longer relevant. What we did recognize was in implementing strategic plans it's important to maintain a level of stability. In technology and that we involve in accordance with some level of stability. The governance model I spoke to earlier is what drives our stability and our ability to shrink the document from that 38-page document that Justice Slough held up. To what it is today is because of the efforts of ITAC and our ability to move actions into those documents instead of having them be defined in the strategic plan. As Justice Slough indicated in the past and continues to support much has been done, much continues to be done. In the organization. Our intent here was to have a future focus and to look at the strategic plan a look at where the organization and the branch was going as a whole and ensure that what we built into that was a forward-thinking model. We look to improve that usability to make it something that was more readable for the users. That was more reliant, to acknowledge our positive progress and to show where we are going. We introduced an executive summary in the page. That was modeled after the California Department of Technology. That enabled us to really put up front for those of you that just want to get a flavor for what's going on in the plan a very quick read. We updated and we did not re-create as I indicated before. We updated the introduction so it was streamlined a minute relevant to moving forward. And we showed the positive progress in where and how accomplishments are focused next. We also looked at and revised all four of the goals are driven and Jeanette will go into great detail about those goals. Our goal the time was really to make sure that everything that we did included the Chief's 3-D access to justice, and also recognize the Futures Commission's directives. That we properly leveled the strategic plan. Meaning here that it does the work that it should do. That we are not stepping on toes of the other documents. That we identify metrics that are truly measures of success. And that we are able to build from that to continue to progress technology within the organization. Then we looked at the principles. If you recall the original strategic plan there were 14 principles that were defined in great detail. We took those 14 principles and really looked at what the theme, amongst those principles and were able to category guys those things into three things. Access, reliability and innovation. When you see the plan you will see the original 14 principles did not go away. They are instead regrouped amongst these three categories. For us the categories really speak to ease of use. As we modernize the overall strategic plan. For a strategic plan to be successful it has to be digestible. Words need to be easy to remember. It has to become part of your culture. The three categories versus 14 individual principles enabled us to ensure words are repeatable and become part of the general discussion. These words you will see throughout the plan, and they align back to the overall branch business goals. Finally the goals themselves. The goals have been refined again supporting this idea of modernization and ensuring alignment with the business goals of the branch. Two of the titles have been changed to show how these areas have grown. That will be for Goals 2 and 3. There was rework within Promote the Digital Court. That the theme and title did remain the same. For more rules and legislation changes but also the same title. We've reworked there to make it more proactive. The detail of how these goals have been refined, as I indicated, will be addressed by Ms. Audra Ibarra and Ms. Jeannette Vannoy. At this time, I turn it over to Ms. Ibarra.

>> I will do a quick overview of Goal 1 and Goal 2. Here is Goal 1 on the slide before you. Goal 1 has always been entitled Promote the Digital Court. These are the key updates. For those of

you new to the strategic technology plan, this Goal 1 is about how we are going to fulfill the Chief's vision of Access 3-D and how we want to use technology to give better service to the public, and give them better access and make the courts run more efficiently and effectively. As Andrea mentioned this was the most reworked goal. Previously they had two separate parts to this goal. One was promoting a foundation in the second was promoting access, service and partnerships. We deemphasize promoting a foundation because happily we can say most of the courts are to have a digital foundation. Now we are telling the branch through our strategic technology plan update that we really just need to keep the foundation current. We have a long way to go in leveraging the technology so we can provide innovative services and access service and information, consistent with private businesses. Like it or not, the public that interfaces with us even though we our government expects the same ease-of-use as they do with private industry. We also said an hour update that we need data sharing for data-driven decision-making. On the next line, you will see how we reworked and rewrote Goal 1. Note the emphasis on case processing efficiencies. And a new emphasis on comprehensive digital services. One of the new objectives is to enable real-time 24/7 access to court services and information. Your respective digital device or platform for the public and court. Now on to Goal 2. Goal 2 is formally known as Optimize Branch Resources now known as Innovate IT Community. And here are the key updates. Goal 2 is about how we get the technology to make as the digital court we want to be. We changed its name because we wanted to deemphasize a particular result and emphasize a process that we found to be important in the last few years. In addition to optimizing resources we must continue to innovate. As Jake Chatters, a member of the work stream, former member of the council and CEO of Placer County has said that the courts are innovation centers for the branch. In Goal 2 for the update we encourage innovation in the courts. Through education, collaboration between the courts and relationships with external stakeholders. On the next slide you will see how we have rewritten Goal 2 in the updated strategic plan. Note the emphasis on strengthening and broadening the IT community. In leveraging innovative solutions and resources. New objectives to Goal 2 include part IT solutions for use throughout the branch and creating an online knowledge bank of information and resources. When a court has a good technology product it can be easily shared with another court as we saw for Monterey County. The interested court can do the three Cs, consume and use the technology product as planned, contribute and build the product for the greater good, or clone and make it something else entirely. We will share the information like that. I just wanted to give a shout out to the CIO of Monterey County for bringing that that vocabulary to the council. The next two goals belong to Jeanette.

>> The two goals I will be focusing on starting on Goal 3 is Advanced IT Security and Infrastructure. This was formerly titled Optimize Infrastructure. As you can see by the new title there is a greater emphasis on security. Similar to what has been mentioned, that we try to remove some of the specific name technologies. To avoid limitations. This is the most technical component of the four goals—technology changes rapidly in this area. The new goal statement for Goal 3 is that we will invest in the secure scalable and reliable technology infrastructure. We also want to maintain that focus on privacy protections and security. You may have heard just this morning the Marriott Corporation announced that they had a 500 million customer data

breach that really you just can't get your mind around that. How mind-boggling that is. Here at the branch I am personally grateful this is a high priority for the branch. And that our approach to working together to maintain the secure and reliable infrastructure is a very important matter for all of us. That has been the new focus for Goal 3. For Goal 4, it's about Promoting Legislative and Rule Changes. Some of the key updates for this is that when we are approaching these changes that we are looking at being proactive and allowing for change for future innovation instead of possibly maybe what has occurred in the past of being a little bit reactive and addressing issues that already exist as we do this work to try to look forward and see how we can make things open ended so it can accommodate the greater adoption of technology innovation. An example of that would be as we have mentioned, we heard Judge Anderson from moderate indicate going to a complete electronic case files earlier. As this happens more rules and decisions are required to work in this digital world. Including electronic signatures and noticing how anything that ties into this electronic case file needs to now interact. We need the rules to support how that can happen. The new goal statement for Goal 4 is to modernize and promote the modernization of statutes, rules and procedures, to facilitate the use of technology and court operations in the delivery of court services. This is a continual effort. And how this ties in is through the strategic plan. As we mentioned there is a subcommittee on ITAC. That completes the four goals.

>> If you could move to the last, there is a sneak preview of the sleek new look to our product. It will look a lot different. It will be much lighter to carry around. I guess what I would close by saying as you all know the strategic plan defines where we are going to go and where we plan to go with technology. The technical plan with ITAC is working on its revision. I firmly believe that the work that has been done by this committee and this subcommittee of JCTC, putting together this updated strategic plan provides a strong foundation to get us to where we want to go and to continue the success of the work streams that have been so invaluable. For the work that has been accomplished over the past four years. Assuming that you folks agree, and approve this update to our strategic plan we look forward to getting out to you and finalizing a beautiful colorful copy. Thank you very much.

>> I move that the council adopt the plan as outlined. Thank you all very much. Very good work.

>> There are multiple seconds because of the enthusiasm. Judge Nadler, no surprise all very technologically talented people. Let me also say this advancement in the branch and use of technology and comfort with technology, and your ability here to discern through the technical aspects, the goals of the branch and to recognize that the public wants the same kind of interface as with private business. And to know that attorneys and staff have contributed to this, mix all of the difference. It seems only yesterday we were struggling to understand the development of a strategic plan. Here we are at the first update. That has made it sleeker and more flexible. And pinpoints where we have had concerns and issues from outside stakeholders. It is pretty exciting to hear it and to understand it, and to see how you are looking forward to it. I appreciate justice Slough in your deep work on this. We are very excited. Not to influence the vote in any way. Those in favor of voting for it.

>> If I may, there was a debacle a few years ago with an attempt to create a unified system. Just as some context. What you are proposing now is not necessarily a statewide system but systems that will interface with each other and that will mesh so different counties can use whatever systems they like. They will be coordinated.

>> Great question and thank you for asking it. The answer simply put is absolutely. The reason why it is so important is because we have learned clearly that we end up with a greater product. When we start the development of the product on the very ground level. That is the trial court and the people walking in the door the trial courts. That is where we learn the most. When we have really tried to accomplish and thanks to the good work of you and others in Governor Brown and some of the monies that have come to us to advanced technology by way of new modernize case management systems, that is allowing the trial courts to purchase the system that makes the most sense to them. And because of the teamwork and because of the IT community that has been developed over the years, to bring these counties together and have them share their products and have them be able to share data and also share with judicial counsel and share with you, Senator, and your colleagues and share it with the executive branch as well. It is a critical piece to our success. In a very astute point. I appreciate your question that you asked.

>> I also have a question and a comment. A lot of our underserved communities do not have access to technology. How are you addressing that and are you also going to be implementing this in various languages that are spoken throughout the state.

>> Again, very appropriate and great questions. Judicial counsel technology committee has the ITAC group that is actually working on language access issues. And working on expanding applications throughout the 58 counties. And again because of the IT community that has been and is continuing to grow, the courts are sharing, courts are giving to each other applications that they are developing on the ground level. Again the monies from the innovation grants are proving to be extremely beneficial in allowing us to get into the petri dishes and grow some of these things. The reality is when it comes to technology we will have some failures. Let's have them on a small level. Let's improve them and find out what works. Let's spread that across and up and down the state. That is actually what is happening in the issue of language access, and the issue of providing remote access. I had a wonderful conversation with my colleague Nancy Eberhardt who is the CEO for San Bernardino County. My home court, prior to moving to the Court of Appeal. She shared with me their online mediation program. She wants me to see it. I'm looking forward to seeing it. She said you don't have to come. Get it on your phone. You can participate in mediation if somebody happens to be deployed overseas or for physical reasons cannot come to court. They will be able to conduct portions of their mediation online. There is a lot of great stuff that touches on the points that you raised a senator.

>> The last point I would like to make is we have seen in the Senate Judiciary Committee, all civil coordinations, come to us. Efforts by some of my colleagues to push some of these technological advances that may be a little bit ahead of themselves. I would urge you to try to consider and to try to learn what kinds of things are being proposed. One that comes to mind is the use of an out-of-state notary. To have them be able to notarize online. There were a lot of

questions we had because the purpose of a notary is to be able to have a signature. I think we will be seeing more and more of those issues. I think we will see—it would be very helpful to me and I suspect to those on the Legislature if you are able to anticipate then because of the very nature of the work that you do. Either give us guidance up front or certainly to follow those pieces of legislation. Rather than tell us afterwards about the unintended consequences. If we could get ahead of it, then we don't have to use that as an excuse for fixing a mess that we have created that we might not have had to create if we had known.

>> Good point. Along those lines, that is one of the great things about the partnership with the state Department of technology and working with Ms. Tong. I know that Rob Oyung works closely with her to share information and goals and ideas. And to assure that we are on the same path and track together. As important as technology is and it clearly is, it is also one of our principles to maintain traditional access with the courts. There is significant segment of our society that wished to maintain that traditional access to the court. And it is very important that we keep that in mind and that we continue to grow and support and build up traditional access and only make it better with the ability to also overlay with that technical piece of that. Thank you very much.

>> Yesterday the technology committee heard from Bonnie Hough in the group that she has put together on self-help. One of the basic principles that they are using is quite normal. It is called user centric. They are developing the program around the individual who is going to use the program. It will make it easier for them to use the court system. We all ought to be doing that. So we are not creating a program that is imposed upon the trial courts or the appellate courts. We are creating a program that they want to use to help people with access. I think we are making great progress. We hope we can count on you for your support to get the money to move it forward.

>> That is why you have all been so nice to me.

>> Me I finally say thank you to all of the members of the work stream who worked very hard and participated with us in updating our strategic plan. Thank you for presenting with me ladies this morning. And extreme shout-out to our staff. Thank you, Jessica and Jamel. Robin many more fingerprints are all over this. Thank you all very much.

>> Thank you. Well said. All in favor of voting for the recommendation found under this number please say “aye.” Any abstentions? The matter carries. Thank you all and we will stand in recess for the next 10 minutes. We will reconvene our final matters at 11:00.

>> [Captioners Transitioning]

>> [The event is on a 10 minute recess.]

>> The first is rules and forms, qualification of counsel for appointment in death penalty appeals and habeas corpus proceedings. Item 18-210. I will have you introduce your panel. Welcome. Thank you for being here.

>> I appreciate the opportunity to speak to the council. On my left is my lead staff and on my right, another staff member. These two have been primarily responsible for the items on the agenda this morning. What I would like to do is start with a brief overview and then provide highlights of the key provisions in both of the proposals that are on this morning's agenda, since in reality they work together. Proposition 66, the Death Penalty Reform Act of 2016 was approved by the electorate in November, 2016. It wasn't effective immediately. There was a constitutional challenge, which was resolved by the Supreme Court in 2017. And Proposition 66 became effective on October 25, 2017 when the hearing was denied. That date is important, because the work that the Council is required to do and that we are here to discuss this morning needs to be completed within 18 months of that effective date. So, April 25, 2019. The basic intent of Proposition 66 was to have a direct appeal and initial habeas corpus state review in capital cases completed within five years. At a more abstract level, it was to expedite the process of appellate review and habeas corpus review in death penalty cases. The case held that the overall five-year time limit was directive only, not mandatory. Nonetheless, the goal of making more efficient review procedures in capital cases is something which the proposition directed through legislative change, for the Council to be mindful of. Several of the most significant provisions in Proposition 66 relate to the transfer, in effect, of jurisdiction in the first instance over habeas corpus in death penalty cases to the Supreme Court. Historically, those petitions have been almost exclusively file directly in the Supreme Court. Under Proposition 66, absent a showing of good cause for another court to hear the petition, the petition is to be filed in the Superior Court that imposed the judgment of death. Subject to certain limitations, the Superior Court must offer to appoint counsel. The appointment process is in the Superior Court in habeas corpus proceedings related to death penalty cases, after the entry of a judgment of death in the trial court. When after the entry of a judgment of death is not specified. The proposition also provides that a habeas corpus provision must be filed within one year of appointment of counsel. Now the standard time is three years. So it has reduced that to a one-year period. It also severely limited the right to file a successive habeas corpus petition. Proposition 66 also mandated that the Superior Court was to decide the petition within one year, unless there was a substantial claim of actual innocence. As it did with the overall time limit, the Supreme Court held that the one year time limit was directive, not mandatory. But again, it is a provision for the courts to be mindful of when dealing with habeas petitions. And what brings us here today is the proposition directed the Judicial Council to adopt rules to expedite the processing of capital reviews and state habeas corpus reveal. And for the Judicial Council, as well as the Supreme Court, to reevaluate the competency standards in death penalty appeals and death penalty related habeas corpus proceedings. The Chief Justice established the working group. The Proposition 66 Rules Working Group in January 2018. Attached immediately behind the actual report to the council is the charge that the Chief gave to the working group as well as the list of the 23 members of the group. It was intentionally diverse. It includes appellate justices, Superior Court justices, court administrators and attorneys with subject matter expertise. As I said, Proposition 66 charged the

Council with developing rules to expedite and evaluate competency. That was basically the charge of the working group. Importantly, I guess mindful of the last presentation as well, issues of funding were not within the purview of our working group. Obviously funding issues are going to be significant in the successful implementation of Proposition 66. But the working group was directed to make its proposals without considering what funds may be available. We had our initial meeting in March of this year. That all day meeting included an educational component in which those of us who were less familiar with what was going on now, before Proposition 66, as well as what the proposition required, were educated by subject matter experts. We then had a large discussion about where the working group needed to work on rules and what areas should come first. We ultimately identified six areas for consideration of rules. Record preparation and death penalty appeals, qualifications of counsel for appointment to death penalty appeals, appointment of counsel, and then the procedures themselves in the Superior Court. I think I omitted to say that one of the other significant changes with Proposition 66 is that not only do the habeas positions go to the Superior Court, but then there is an appeal. Either side can appeal the decision to the Court of Appeal. So another area for rules to apply in the Court of Appeals. For those of you who aren't familiar with our jurisdiction, one of the benefits of being an appeal justice was that you didn't have to deal with death penalty cases. Not anymore. And the sixth area that we explored, the proposition has some areas relating to the methods for challenging, or challenges to the method of execution. After some discussion, the group that was charged with that in the first instance decided that those rules should be developed through the course of litigation, rather than the court. So we ended up with five actual areas where we developed rules. The first, record preparation, was actually on the consent agenda in September and those rules were approved. They are intended to expedite the automatic appeals. That set of rules will be effective April 25, 2019. The two sets of rules you have before you today are four qualifications of death penalty related counsel in habeas proceedings and then, the appointment process. The remaining two areas, procedures and Superior Court and the court of appeal, draft rules have already been circulated for comment. The comment period has closed. We will have, I am told, what will be the 20th meeting of our working group if you include the subgroups, on December 13, to evaluate the comments, revise to the extent appropriate and then present a report to the Council, which we anticipate having to you in March, in time for the April 25 effective date. Maybe that overview wasn't quite as brief as I thought it would be. In terms of the set of rules dealing with qualifications of counsel, the goal was to achieve competent representation without unduly restricting the attorneys willing and able to accept appointment. There is a bit of a tension in the desire in Proposition 66 to explain the role of attorneys who represent petitioners, to expand the pool, and to ensure adequate, competent representation. With respect to the appointment of counsel for automatic appeal, that is an appointment that is done by the Supreme Court. There is a rule of court. The proposal before you makes clear that that rule will relate only to appointment by the Supreme Court in the automatic appeals and really only minor changes. Fiddling, maybe. The only significant change that we proposed was including experience as a prosecutor, either in the trial court or the Attorney General's office on appeal in death penalty related cases, as being able to satisfy part of the experience requirement. The minimum qualifications. That clearly was something that was desirable from the standpoint of expanding the pool. 8.605, as it currently exists, also sets out qualifications for the appointment

of habeas counsel. We propose a new rule which will set minimum qualifications for counsel in death penalty related cases. What we did, in terms of the changes that we are proposing, was to increase to five years the minimum membership requirement in the state bar. The reason for that change is that one of the mandates in Proposition 66 was to try to conform our minimum qualifications to federal fast tracking rules and the federal fast tracking rules are a five-year minimum experience. The folks on the working group who have done these appeals assure us that nobody with only four or five years' experience is doing these things. These are typically lawyers with a vast amount of experience. So we did not perceive that this change would, in any practical way, reduce the pool. Again, as we did in qualifications for representation in a direct appeal, have provided that experience as a prosecutor, or representing the people on appeal would satisfy part of the experience requirements. We modified and streamlined some of the experience requirements, in general. We did a moderate increase in training, from the minimum of nine hours, 250 hours. We were told by—from the minimum of nine hours, to 50 hours. Since there will only be one year, there is less time to learn on the job and therefore it is important to make sure that the people had the requisite training before they began. And we broadened and clarified the provisions that allow for somebody who is not a criminal defense lawyer or a former prosecutor, partners in large law firms, academics. There have always been provisions for alternative ways to qualify and we want to make it clear that those continue to exist and were expanded somewhat, in the hope of being able to encourage more lawyers to engage in this type of practice without hurting the quality of their representation. The code that relates to qualifications of counsel, as amended by Proposition 66, mandates that the competency rules be evaluated not only by the Judicial Council, but also by the Supreme Court. On November 19, the Supreme Court approved the proposal you have in front of you for qualifications. So, we are half of the way there. With respect to the second set of proposals that you have before you, there are two central roles. The first is to prioritize the oldest judgments that exist without counsel. The proposed rule establishes the principle that whenever possible, and that was important, because we didn't want to preclude appointment of counsel that might be ready and willing to take a case. But, whenever possible, counsel should be appointed first for those individuals subject to the oldest judgments of death and the rule creates the mechanism, by which that principle can be effectuated by the superior courts. The second goal was to provide superior to the Superior Court. They are now tasked with the appointment of counsel in death penalty related habeas proceedings. As I said, prior to Proposition 66, the petitions were filed directly in the Supreme Court and the Supreme Court appointed counsel, not only for direct appeals, but also for habeas cases. Proposition 66 has tasked the Superior Court with the appointment of counsel and while some of our courts are more than capable of undertaking that on their own, we heard from representatives of many of the Superior Court's that they needed help. That they were not going to be able to do this on their own and that creating 58 mechanisms to do it wasn't very efficient. So we propose the creation of regional habeas corpus panel committees, one for each Appellate District, to be staffed. Committee staff, in a sense. The membership would have a justice of the court of appeal, three Superior Court judges from the superior courts within the area of the Court of Appeal and three attorneys, so that the balance on the committee would be 4-3 judiciary versus non-judges, with the view that the appointment was to be a judicial function, not a lawyer function, but that there could be additional advisory committee members from a variety of

groups that would have the ability to assist in recruiting and vetting potential attorneys. We also, in the proposed rules, direct the superior courts that would have to be involved to develop their own programs for recruiting potential lawyers and there is an opt out provision that would allow, by local rule, any Superior Court that wants to do it on its own, or in part on its own and in part with the committee, to do it that way. Those are the highlights. I just have two concluding thoughts. Well, maybe three concluding thoughts. One is, this has been a tremendous project in a compressed period of time. It would not have been possible without the staff that we have, as well as the advisory committee members. Incredibly helpful in bringing all of us up to speed in terms of what needs to be done and helping with the actual drafting of it. The other two concluding thoughts, first of all, education for judges and staff will be essential for these rules to be implemented in any way that comes close to being effective. Secondly, these are really, and all of us on the working group view them, as a work in progress. The procedures for the court to do things they have never done before or rarely before. We have done similar things. But the rules are our best efforts at them. Inevitably when they are put into practice, there will be improvements, refinements, wholesale revisions that appear to be necessary. And in our report, I think we have welcomed that. I think that will be a necessary part of what the process is, and indeed, Proposition 66 directs the Council to continue with its oversight to make sure that improvements are made where they are needed. So, with that, I am happy to answer questions, though if you have any real questions, I will probably have to turn to my left on my right.

>> In terms of the refinements that you anticipate, is it your belief that the group you have together now would remain in existence for some. Going into the future?

>> As a formal matter, this group will be disbanded automatically on April 25 or April 26, 2019. Both of those dates are marked on my calendar. It ultimately will be up to the Chief to figure out whether the Criminal Advisory Committee is the appropriate place to consider these things. Whether there should, again, be a special implementation committee. While I facetiously, at the Appellate Justice Institute, said these improvements would have to be made by some other group, if I were asked to continue, as always, it would be difficult for me to say no.

>> Dennis, I'm sorry, Justice Perluss.

>> Dennis is fine.

>> You mentioned creating regional opportunities to find counsel to fill these positions. In the committees, how would that work?

>> It is sort of regional, in a sense. The idea is, the more local you are, the greater the opportunity to persuade potential members of the panel to participate. So, the supervising judge might be able to hold a brown bag lunch and encourage lawyers to do it. The idea of the regional committee is to promote suggestions and provide support for efforts at the county level, but also to have the actual vetting of candidates being done at the regional level, just because the resources of each individual County, putting aside L.A. County and San Diego County, Orange County, the larger counties might be able to do it. But others will not be able to do this

effectively. But, when the lawyers are vetted and approved as meeting the minimum qualifications, and capable of doing this, the rules provide that a statewide list will be created, so it is not written—a lawyer who applies through my district will not be only available to anticipate within cases in the second district. When, you know, Judge Jones in Fresno County is told that here is one of the oldest cases that needs counsel, the judge that handles that will be able to go to the regional committee, if he or she wants, and say I need some help. Who do you have that may be available? I have one of the oldest cases. Here is the nature of the case. One of the things that affects people's willingness to take these cases is geography. Where is it? Frankly, how horrific is it? What is the nature of the crime? And what else am I doing? So the regional committee will be able, using a statewide list, to help the local judge match a case to an available lawyer. So it is really at all three levels. There is also a provision that recognizes that two of the regional committees might want to join efforts. So, you know, hypothetically, the committee and the first district and the committee in the sixth district might want to share, doing it together. And there is the local rule option, where the court can opt out as much as it wants to opt out. Under the local rule, the lawyers would still have to meet the minimum qualification requirements, but the entire vetting and matching process can be done, entirely within the local court.

>> Thank you.

>> [Indiscernible - low volume]

>> Consider them immediately, one after the other. So, any questions on either, or observations, please, now would be the time.

>> Is there a mechanism to remove someone from the panel if they are determined—

>> Yes. Yes.

>> I would just like to comment, I think we would be remiss in not thanking Justice Perluss and everyone who worked on this. These are hard cases. Being able to accomplish this in a short amount of time and creating a system that is going to be extremely effective, I commend you.

>> Thank you, very much. The whole committee was filled with people dedicated to working together. Part of the charge that the Chief gave us was, although there were individuals from particular groups, they were not there as representatives of the interests of the groups. They were there to really try to work out what was appropriate. And you can see that, because we got comments from members of our committee in their role as representatives, criticizing some things, commenting on, suggesting improvements maybe instead of criticizing. We had a number of conferences. They were really trying to reach consensus and accomplish a fair result that was faithful to the underlying intent of Proposition 66, whether or not the individual supported Proposition 66. So it was a great group.

>> I will say, I am grateful for the group that came together. The solicitation went out and many of us crossed our fingers as to who might apply, because this is one of our most important areas

of law. It has been esoteric for most of the legal community. Those in the community that practice habeas corpus petition cases or automatic appeal, it is a limited population. People with very deep knowledge of the evolution and the case law and the rules of court, but also an awareness of the fact that these cases go on to federal court, with its own timelines and standards. Quite often they return to the state court from the federal court. These cases are incredibly long and complicated and important. Then a proposition came along and reformed an area and added onto an already complex area. In my view we had a challenge on our hands. For the first time I can remember, the branch was tasked with implementing an initiative, frankly, without legislative or executive branch guidance or approval along the way. And without any additional resources, because it has not been a practice for the state to fund initiatives that it did not otherwise place on the ballot. We were tasked with interpreting, after Briggs was affirmed and we were recused because of our role on counsel, we now had 18 months to act, according to the statute. A whole number of legal questions came up. Winded that 18 months start to run? Vendor reach out and get the best and the brightest of practitioners, judges, and ADA, it took a tremendous amount of education. And an understanding of what has now been bracketed onto a very complex area and established rules by a small but sophisticated community of volunteers. I certainly hear you, Justice Perluss, when you say you have this mark on your calendar. The attention to detail that has been reported back to the California Supreme Court on a few of the work streams that you have, the five that your team and staff have created. It is truly amazing and never done before, that I have seen. There will be public interest. Continuing public interest. This is not something the council will walk away from. I can't speak enough to how this has transformed the branch in many ways. Now having three courts review habeas corpus petitions, when it was only one court. The people power, the attorney power, is going to be very, very challenging. For your work here, we are absolutely grateful, respectful and thankful. You and your team and staff, thank you very much for this. It has made the branch accountable to the public and this is what you were required to do and you have done it with incredible detail. Thank you.

>> One question. The alternative experience provision talks about other things that you could have done in your career to satisfy the experience component. How does that affect counsel that wouldn't meet it but has death penalty experience in another state and applies—you will sometimes see that happen, innocence project, things like that. Was that addressed at all?

>> I think, maybe the short answer is, nobody specifically raised to that point. But I think under the other experience category, somebody who was qualified and applying would be approved.

>> The only reason I ask is because three through five doesn't have California bar membership, so I figured that is where it might apply, but I didn't see anything specifically about that.

>> We will take a look further at that.

>> You need to do so by April, I don't know.

>> Or as soon as the issue arises. I know because I was sitting pro tem the last case is still under submission. The counsel for the appellant was from New England, although a member of the California bar.

>> Without any other questions or comments, I will entertain a motion on items 18-210 and 18-209. All motions carry. Thank you very much for this amazing work you have done on behalf of the branch.

>> And thank you to the counsel, for the approval.

>> Thank you.

>> Finally we conclude this meeting with a list of colleagues who are deceased. Some of the folks we are honoring today were still serving on the bench: Judge John J. Almquist, on the Superior Court. Other colleagues retired from the bench: Judge Thomas N. Douglass, Jr., Judge Terry M. Finney, Judge Thomas N. Douglass, Jr., Judge Kenneth R. Kingsbury. Judge Romero J. Moench, and Judge Edwin M. Osborne. We honor them all. This concludes our meeting. Our next meeting will be in the new year. Happy holidays, safe travels.

>> [Event Concluded]