



# Judicial Council of California

## Meeting Minutes

### Judicial Council

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Friday, November 19, 2021

9:40 AM

Videoconference

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

Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, called the closed session to order at 9:00 a.m.

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

##### **Attendance**

##### **Council Members**

- Present:** 24 - Chief Justice Tani G. Cantil-Sakauye, Justice Carol A. Corrigan, Administrative Presiding Justice Brad R. Hill, Justice Marsha G. Slough, Presiding Judge Samuel K. Feng, Presiding Judge Ann C. Moorman, Presiding Judge Theodore C. Zayner, Judge Marla O. Anderson, Judge C. Todd Bottke, Judge Stacy Boulware Eurie, Judge Kevin C. Brazile, Judge Kyle S. Brodie, Judge Jonathan B. Conklin, Judge Rupert A. Byrdsong, Judge Harold W. Hopp, Judge Dalila Corral Lyons, Judge David M. Rubin, Commissioner Glenn Mondo, Assembly Member Richard Bloom, Ms. Rebecca Fleming, Mr. David D. Fu, Mr. Kevin Harrigan, Mr. Shawn C. Landry, and Ms. Gretchen Nelson
- Absent:** 4 - Justice Carin T. Fujisaki, Senator Thomas J. Umberg, Ms. Rachel W. Hill, and Mr. Maxwell V. Pritt

##### **Call to Order**

Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, called the open session to order at 9:40 a.m. in the Judicial Council Board Room.

##### **Public Comment**

Comments were submitted in writing and reviewed by the Judicial Council.

## Approval of Minutes

[21-124](#)

### Minutes of October 1, 2021, Judicial Council Meeting

A motion to approve the minutes was made by Judge Lyons and seconded by Judge Brodie. The motion was adopted. Judge Moorman abstained from voting on the minutes.

## Chief Justice's Report

Chief Justice Tani G. Cantil Sakauye reported on her activities since the last council meeting.

## Administrative Director's Report

[21-178](#)

### Administrative Director's Report

Administrative Director Martin Hoshino reported on the council's activities since the last council meeting.

## Judicial Council Internal Committee Presentations

21-119

### Judicial Council Internal Committee Presentations

[21-181](#)

### Judicial Council Internal Committee Written Reports

## CONSENT AGENDA

### Approval of the Consent Agenda

A motion to approve all of the following items on the Consent Agenda was made by Judge Hopp and seconded by Judge Brazile. The motion was adopted.

[21-059](#)

### Allocations and Reimbursements to Trial Courts | Early Disposition Program: Recommended Disbursement of Court Funding (Action Required)

**Summary:** The Budget Act of 2021 provided one-time funding of \$30 million to support trial courts addressing the COVID-19 pandemic-induced criminal backlog, by encouraging the establishment of early disposition programs. As directed by the Legislature, courts are required to provide data on the use of funding being requested from the Chief Justice's Temporary Assigned Judges Program, via the Judicial Council, to support their programs. Judicial Council staff developed a

funding request process for courts, consistent with requirements in the budget bill language, and recommend the Judicial Council approve the first phase of funding disbursements to courts that requested funds to support their early disposition programs.

**Recommendation:** Judicial Council staff from the Criminal Justice Services office and Temporary Assigned Judges Program recommend that the Judicial Council, effective November 19, 2021:

1. Approve the distribution of funding for the first phase of the Early Disposition Program from the Chief Justice's Temporary Assigned Judges Program (listed in Attachment A: Early Disposition Program Phase One Funding Recommendations); and
2. Direct Judicial Council staff to distribute remaining funds for the Early Disposition Program to courts during the second phase of the project starting after January 2022, consistent with the approach recommended in this report for the first phase, including identified needs of the courts and the provision of data, as required.

#### [21-167](#)

### **Court Facilities | Conflict of Interest Policy for Design-Build Projects (Action Required)**

**Summary:** The Court Facilities Advisory Committee recommends adoption of a conflict of interest policy governing the ability of a person or entity seeking to perform services for the Judicial Council on a design-build project to submit a proposal as a design-build entity, or to join a design-build team. Assembly Bill 143 (Stats. 2021, ch. 79), enacted on July 16, 2021, reauthorized the Judicial Council to utilize the design-build delivery method for its courthouse construction program. The conflict of interest policy shall apply to consultants and contractors for design-build projects authorized under article 7.1, Superior Court Design-Build Projects (Gov. Code §§ 70398-70398.7).

**Recommendation:** The Court Facilities Advisory Committee recommends that the Judicial Council, effective November 19, 2021, adopt the *Conflict of Interest Policy for Design-Build Projects*. The proposed policy is included as Attachment A to this report.

#### [21-136](#)

### **Judicial Council Administration | Judicial Council Conflict of Interest Code (Action Required)**

**Summary:** Judicial Council staff recommends amending *Conflict of Interest Code for the Judicial Council of California* to add Construction Inspector to the list of job classifications requiring disclosure of economic interests. The conflict of interest code does not accurately reflect the current structure of the Judicial Council, and leaving the code in its current form places the council at risk of noncompliance with Government Code section 87306. Under Government Code section 82011(h), the Judicial Council is the body that must review and approve proposed amendments to the agency's conflict of interest code.

**Recommendation:** Judicial Council staff recommends that the Judicial Council, effective December 1, 2021, amend *Conflict of Interest Code for the Judicial Council of California* to:

1. Add the job classification of Construction Inspector with a disclosure requirement of category 7; and
2. Change the effective date of the code to December 1, 2021, and make other, minor copyediting corrections.

#### [21-174](#) **Judicial Council | 2021 Summary of Legislative Policy (Action Required)**

**Summary:** The Legislation Committee recommends adopting the updated *Legislative Policy Summary* reflecting actions through the 2021-22 legislative session. Adoption of this updated summary of positions taken on court-related legislation will assist the council in making decisions about future legislation, consistent with the judicial branch's strategic plan goals.

**Recommendation:** The Legislation Committee recommends that the Judicial Council, effective November 19, 2021, adopt the *2021 Legislative Policy Summary*, which has been updated to reflect actions through the 2021-22 legislative session.

#### [21-171](#) **Jury Instructions | Civil Jury Instructions (Release 40) (Action Required)**

**Summary:** The Advisory Committee on Civil Jury Instructions recommends approval of new and revised civil jury instructions prepared by the committee. These changes bring the instructions up to date with developments in the law over the previous six months. Upon Judicial Council approval, the instructions will be published in the official 2022 edition of the *Judicial Council of California Civil Jury Instructions*.

**Recommendation:** The Advisory Committee on Civil Jury Instructions recommends that the Judicial Council, effective November 19, 2021, approve for publication under rules 2.1050 and 10.58 of the California Rules of Court the following civil jury instructions prepared by the committee:

1. Addition of 7 new instructions: CACI Nos. 2750, 2752, 2753, 2754, 3046, 3714, and 4330; and
2. Revisions to 20 instructions and verdict forms: CACI Nos. 2334, 2521A, 2521B, 2521C, 2522A, 2522B, 2522C, VF-2506A, VF-2506B, VF-2506C, VF-2507A, VF-2507B, VF-2507C, 2702, 2704, 2705, 3041, 3050, 3709, and 4304

#### [21-110](#) **Language Access Plan | Signage and Technology Grant Program, Fiscal Year 2021-22: Requests and Proposed Allocations (Action Required)**

**Summary:** The Budget Act of 2018 (Stats. 2018, ch. 29) included \$2.55 million in ongoing funding for language access signage and technology infrastructure support and

equipment needs for the trial courts and the Judicial Council. The Judicial Council approved a grant program to disburse this funding to the trial courts on an annual basis (up to \$1 million per year for language access signage grants, and up to \$1.35 million per year for language access technology grants). For the grant program's third year (fiscal year 2021-22), 22 courts applied for signage and technology needs. The Advisory Committee on Providing Access and Fairness and the Information Technology Advisory Committee recommend approving the proposed grant award recommendations to expand language access for court users.

**Recommendation:** The Advisory Committee on Providing Access and Fairness and the Information Technology Advisory Committee recommend that the Judicial Council, effective November 19, 2021:

1. Approve the proposed allocations for the Signage and Technology Grant Program for fiscal year 2021-22; and
2. Direct Language Access Services staff to work with Branch Accounting and Procurement to draft and execute intra-branch agreements with each awarded court.

#### [21-183](#)

#### **Rules and Forms | Judicial Branch Administration: Emergency Rule on Use of Technology for Remote Appearances (Action Required)**

**Summary:** The chairs of the Judicial Council's six internal committees recommend that the Judicial Council amend emergency rule 3 effective January 1, 2022, to remove civil proceedings from the scope of the rule and to affirm that the rule continues to apply to criminal proceedings. The amendment would make the rule consistent with new Code of Civil Procedure section 367.75, enacted in Senate Bill 241 (Stats. 2021, ch. 214), which will govern remote proceedings in civil cases beginning January 1, 2022. Courts may continue to rely on the authority in emergency rule 3, however, to conduct criminal proceedings remotely as they continue to address the impact of the COVID-19 pandemic and the backlog it created.

**Recommendation:** The chairs of the Judicial Council's six internal committees recommend that the Judicial Council, effective January 1, 2022, amend emergency rule 3 to remove civil proceedings from the scope of the rule and to confirm that the rule will continue to apply to criminal proceedings.

#### [21-170](#)

#### **Rules and Forms | Judicial Branch Education: Extension of Judicial College Deadline (Action Required)**

**Summary:** The Center for Judicial Education and Research (CJER) Advisory Committee recommends amending rule 10.492 of the California Rules of Court to extend the deadline to complete the B. E. Witkin Judicial College by an additional 18 months. This action is necessary to avoid the widespread inability to comply with rule 10.462(c)(1)(C) amongst new judges and subordinate judicial officers who

joined the bench before January 2020. The CJER Advisory Committee also proposes amending the rule's sunset date due to the ongoing nature of the pandemic.

**Recommendation:** The CJER Advisory Committee recommends that the Judicial Council, effective January 1, 2022, amend rule 10.492 of the California Rules of Court to:

1. Provide extended, temporary relief to new judicial officers who otherwise would be unable to comply with rule 10.462(c)(1)(C); and
2. Extend the sunset date of the rule from December 31, 2022, to December 31, 2024.

## [21-058](#)

### **Trial Courts | Trial Court Trust Fund Funds Held on Behalf of the Trial Courts (Action Required)**

**Summary:** The Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee recommends that the Judicial Council approve 11 new and 10 amended Trial Court Trust Fund funds to be held on behalf of the trial courts requests totaling \$10.4 million from 14 trial courts. Under the Judicial Council-adopted process, a court may request reduced funding as a result of the court exceeding the 3 percent fund balance cap, to be retained in the Trial Court Trust Fund for the benefit of that court.

**Recommendation:** Based on actions taken at its meeting on September 2, 2021, the Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee recommends that the Judicial Council, effective November 19, 2021:

1. Approve the following new requests totaling \$1.8 million (Attachment 1):
  - a. \$284,000 request of the Colusa Superior Court to complete needed alterations and improvements to courtrooms (Attachment 2);
  - b. \$62,000 request of the Glenn Superior Court for the rental of alternate facilities for jury trials that cannot be accommodated in the court's existing temporary facilities, and the digitization of historical case files (Attachment 3);
  - c. \$105,000 request of the Mono Superior Court to employ technological interfaces with its case management system (CMS) (Attachment 4);
  - d. \$50,000 request of the Mono Superior Court to replace an aging uninterrupted power supply server (Attachment 5);
  - e. \$56,000 request of the Napa Superior Court for audiovisual improvements and network enhancements (Attachment 6);
  - f. \$125,000 request of the Placer Superior Court to enhance the court's current CMS (Attachment 7);
  - g. \$200,000 request of the Placer Superior Court to expand the data storage on its current disaster recovery platform (Attachment 8);
  - h. \$225,000 request of the Placer Superior Court for court facility

- and technological improvements (Attachment 9);
  - i. \$150,000 request of the Placer Superior Court to support preplanning efforts and feasibility costs related to the replacement of the Tahoe City courthouse (Attachment 10);
  - j. \$15,000 request of the Placer Superior Court to complete an interface project between the court and the City of Roseville police department (Attachment 11); and
  - k. \$560,000 request of the Sutter Superior Court for facility modifications (Attachment 12).
2. Approve the following amended requests totaling \$8.6 million (Attachment 13):
- a. Request of the Imperial Superior Court to amend the fiscal year from 2020-21 to 2021-22 to complete several technological improvements, purchases, and facility modifications totaling \$762,000 (Attachment 14);
  - b. Request of the Kern Superior Court to amend its CMS expenditure plan that moves the project completion from 2020-21 to 2021-22, and to hold additional funds from its 2020-21 fund balance in excess of the 3 percent cap in the amount of \$1.2 million (Attachment 15);
  - c. Request of the Mono Superior Court to hold additional funds from its 2020-21 fund balance in excess of the 3 percent cap in the amount of \$10,000 for the purchase of a new vehicle (Attachment 16);
  - d. Request of the Mono Superior Court to amend its digital scanning/storage project expenditure plan that moves the project completion from 2021-22 to 2022-23, and to hold additional funds from its 2020-21 fund balance in excess of the 3 percent cap in the amount of \$45,000 (Attachment 17);
  - e. Request of the Sacramento Superior Court to amend its fiscal year of project completion for its Criminal, Traffic, and Family Law CMS from 2021-22 to 2022-23 (Attachment 18);
  - f. Request of the Sacramento Superior Court to amend its fiscal year of project completion for its CMS from 2020-21 to 2021-22 (Attachment 19);
  - g. Request of the San Francisco Superior Court to amend the fiscal year of project completion for its CMS from 2020-21 to 2023-24 (Attachment 20);
  - h. Request of the Shasta Superior Court to amend the fiscal year to complete several facility modifications from 2020-21 to 2021-22 (Attachment 21);
  - i. Request of the Tehama Superior Court to amend its CMS and digital scanning/storage project expenditure plan that moves the

- project completion from 2021-22 to 2022-23, and to hold additional funds from its 2020-21 fund balance in excess of the 3 percent cap in the amount of \$206,000 (Attachment 22); and
- j. Request of the Orange Superior Court to amend its CMS project expenditure plan that moves the project completion from 2022-23 to 2021-22 (Attachment 23).

## DISCUSSION AGENDA

[21-078](#)

### **Family and Juvenile Law | Court Adoption and Permanency Month (Action Required)**

**Summary:** The Family and Juvenile Law Advisory Committee recommends adopting a resolution proclaiming November to be Court Adoption and Permanency Month. As it has since 1999, in observance of National Adoption Month, the Judicial Council can recognize the ongoing efforts of California's juvenile courts and their justice partners to provide children and families with access to fair, understandable judicial proceedings leading to timely, well-informed, and just permanency outcomes. The resolution will also give courts the opportunity to raise community awareness of the importance of finding safe, stable, and permanent homes for every child or youth in foster care.

**Recommendation:** The Family and Juvenile Law Advisory Committee recommends that the Judicial Council adopt the attached resolution, effective November 19, 2021, proclaiming November 2021 to be Court Adoption and Permanency Month.

**A motion to approve the recommendation was made by Judge Boulware Eurie and seconded by Judge Brazile. The motion was adopted.**

[21-147](#)

### **Special Report | Final Report From the Work Group on Homelessness to the Chief Justice (Action Required)**

**Summary:** The Work Group on Homelessness, established by Chief Justice Tani G. Cantil-Sakauye, recommends that the Judicial Council review and receive its final report and recommendations. The report recommends ways the judicial branch might work with the Governor, the Legislature, and other entities to address homelessness, and identifies how court programs and services might be improved to increase access and assistance for court users experiencing or at risk of experiencing homelessness. Implementation of the recommendations is likely to make significant progress toward reducing homelessness while broadening access to the courts and promoting efficiencies and cost savings. The recommendations not only urge improvement and expansion of certain existing court programs with proven value, but also identify innovative new ideas for the California judicial branch based on available evidence and data. The recommendations will require funding and a coordinated approach among the state branches of government and other justice partners and stakeholders.

**Recommendation:** The Work Group on Homelessness recommends that the Judicial Council, effective November 19, 2021, review and receive the attached *Work Group on Homelessness: Report to the Chief Justice*.



A motion to approve the recommendation was made by Justice Slough and seconded by Judge Rubin and Judge Brodie. The motion was adopted.

[21-175](#)**Judicial Branch Administration | Court's Duty to Prevent Bias  
(Action Required)**

**Summary:** To support the integrity and impartiality of the judicial system and to promote a court environment free of bias and the appearance of bias, the Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings recommends amendments to California Standards of Judicial Administration, standard 10.20 (Court's duty to prohibit bias). The work group was appointed by Chief Justice Tani G. Cantil-Sakauye to identify improvements and propose amendments to standard 10.20. The work group was charged with ensuring that the standard reflects current law and current understandings regarding the elimination of bias.

**Recommendation:** The Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings recommends that the Judicial Council approve amendments to California Standards of Judicial Administration, standard 10.20 (Court's duty to prohibit bias) to ensure the standard reflects current law and understandings regarding the elimination of bias and provides a framework for courts to work with local communities to address this important issue. These include amendments to:

- Emphasize the goal for courts to prevent bias, rather than simply prohibit bias;
- More broadly define the scope of the standard and its applicability to all court interactions;
- Update the list of protected classifications enumerated in the standard;
- Define the optimal roles for local or regional bias committees, and outline contemporary considerations for the composition of those committees; and
- Ensure that court users can access information regarding how they can submit complaints about court employees and judicial officers concerning bias in court interactions.

These amendments are consistent with the work group's goal to create a framework and expectations for the elimination of bias, while also recognizing the diversity of size, demographics, needs, and viewpoints of the various legal communities in the state, and the need to allow them to develop customized approaches that will best result in the elimination of bias in court interactions.

A motion to approve the recommendation was made by Justice Slough and seconded by Judge Bottke. The motion was adopted.

[21-177](#)**Judicial Branch Administration | Ad Hoc Workgroup on  
Post-Pandemic Initiatives: Judicial Remote Proceedings Resource  
Guide for Judicial Officers (No Report. No Action Required.)**

**Summary:** This semi-regular update to the Judicial Council on the work of the Ad Hoc Workgroup on Post-Pandemic Initiatives is a presentation of the Judicial Remote Proceedings Resource Guide for Judicial Officers.

[21-180](#)**Judicial Branch Outreach | The Power of Democracy Civic Learning Initiative (No Report. No Action Required)**

**Summary:** The Power of Democracy Steering Committee promotes civic learning, inclusive of the courts, for all of California's K-12 students. This annual report provides information on committee efforts to connect courts with schools in their community, and achievements made expanding access to civic education, particularly during the pandemic and through remote learning.

**INFORMATION ONLY ITEMS (NO ACTION REQUIRED)**[21-056](#)**Court Facilities | Lease-Revenue Bond Issuance, Fall 2020 and Spring 2021**

**Summary:** The Administrative Director presents this report on actions taken in connection with lease-revenue bonds issued by the State Public Works Board in fall 2020 and spring 2021, for the financing of court facilities projects as authorized and directed by the Judicial Council. New lease-revenue bonds were issued for one capital outlay project, refunding of existing bonds occurred for six capital outlay projects, and interim loans were issued for six capital outlay projects in construction.

[21-055](#)**Report to the Legislature | Allocation of the State-Level Reserve in the Trial Court Trust Fund in 2020-21**

**Summary:** Pursuant to Government Code section 68502.5(c)(2)(C), the Judicial Council is required to submit a report accounting for all trial court requests and allocations from the authorized reserve in the Trial Court Trust Fund for unforeseen emergencies to the Legislature and the Department of Finance by October 1 of each year. On October 1, 2021, Judicial Council staff submitted the *Report of Allocation of the State-Level Reserve in the Trial Court Trust Fund in 2020-21*.

[21-054](#)**Report to the Legislature | Allocations and Reimbursements to the Trial Courts in 2020-21**

**Summary:** Pursuant to Government Code section 77202.5(a), the Judicial Council is required to submit a report on allocations and reimbursements to the trial courts to the Senate Committees on Budget and Fiscal Review and Judiciary and the Assembly Committees on Budget and Judiciary by September 30 of each year. On September 30, 2021, the Judicial Council's Budget Services staff submitted a report on the *2020-21 Allocations and Reimbursements to the Trial Courts*.

[21-166](#)**Report to the Legislature | Annual Report on Contracts for the Trial Courts for the Fiscal Year Ended June 30, 2021**

**Summary:** Public Contract Code section 19209 and the *Judicial Branch Contracting Manual* require that the Judicial Council submit a report annually to the Joint Legislative Budget Committee and the State Auditor to provide information related to contracts and payments for the trial courts. The report includes a list of vendors and contractors as required by section 19209(b). The report further identifies the amounts of

payments to the contractors and vendors, the types of services and goods provided, and the trial courts with which the contractors and vendors contracted to provide those goods and services. The report summary also includes a list of all amended contracts as required by section 19209(c), identifying the vendors, contractors, and types of services and goods provided under the contract, including any changes to the contract value, type of services or goods, or contract. Therefore, in compliance with this Public Contract Code mandate, Judicial Council staff submitted this report on September 30, 2021.

[21-176](#)

### **Report to the Legislature | Disposition of Criminal Cases According to Race and Ethnicity of the Defendant**

**Summary:** Penal Code section 1170.45 directs the Judicial Council to report annually on the statewide disposition of criminal cases according to defendants' race and ethnicity. In accordance with this requirement, Judicial Council staff will submit this annual report on November 19, 2021. The data used in this report come from the Automated Criminal History System, which is a repository of data that includes dispositions maintained by the California Department of Justice. This report describes patterns seen in criminal case dispositions of adult felony arrests by race/ethnicity and tests whether any available legal or demographic information can account for the observed patterns.

[21-057](#)

### **Trial Court Budget | Report on Disposition Data**

**Summary:** At its January 2021 meeting, the Judicial Council approved a Judicial Branch Budget Committee recommendation of a Trial Court Budget Advisory Committee (TCBAC) proposal for reporting requirements regarding progress in reducing the COVID-19 backlog. The TCBAC also provided a definition of backlog as workload that was not disposed of during the pandemic period compared to the same time period one year prior. This report and attachment provide a quarterly update on disposition data reported by courts.

## **Appointment Orders**

[21-184](#)

### **Appointment Orders since the last business meeting.**

## **Adjournment**

With the meeting's business completed, the Chief Justice adjourned the meeting at approximately 11:39 a.m.

*Respectfully submitted by Administrative Director Martin Hoshino, Secretary to the Judicial Council, on January 21, 2022.*