



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 11, 2015

Title	Agenda Item Type
Court Facilities: Judicial Council Policy Limiting the Acceptance and Purchasing of Art for Court Facilities	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	December 11, 2015
Recommended by	Date of Report
Facilities Policies Working Group Hon. Douglas P. Miller, Chair	November 30, 2015
	Contact
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Executive Summary

The Facilities Policies Working Group recommends that the Judicial Council adopt an art policy applicable to the council's acquisition of art for its capital projects and for both appellate and trial court facilities that it manages. This policy addresses acquisition of art by the council and clarifies that funds appropriated for courthouse construction, maintenance, and repair will not be used to acquire art. It does not apply to art that an individual court may acquire, unless that art will be permanently affixed to a court facility.

Recommendation

The Facilities Policies Working Group recommends that the Judicial Council, effective December 11, 2015, take the following action:

1. Adopt the attached *Judicial Council Policy Limiting the Acceptance and Purchasing of Art for Court Facilities*.

Previous Council Action

The council has taken no previous action on the attached policy. The recommended policy on the acquisition of art for court facilities is a new document.

Rationale for Recommendation

This policy addresses acquisition of art by the Judicial Council and clarifies that funds appropriated for courthouse construction, maintenance, and repair will not be used to acquire art unless the council specifically allocates money for such a purpose. The policy guides council staff in acquiring art on behalf of the council—through private gifts—in alignment with other Judicial Council policies and California Rules of Court intended to avoid conflicts of interest and any appearance of impropriety. Per this policy, the council would not acquire art for county-managed court facilities or for court facilities that are leased to non-court occupants. Also, this policy would not apply to art that an individual court may acquire, unless the art will be permanently affixed to a court facility.¹ Only the council may acquire art that will be affixed to a court facility because, once affixed, the art would become part of the court facility and a council responsibility.² Art that is framed and hung on the wall of a court facility in a manner allowing it to be moved—although sufficiently secure to prevent theft or damage—generally is not considered to be permanently affixed to the facility.

In addition, the implementation of this policy will help align the judicial branch with the policies and practices of other state entities responsible for facilities.

Comments, Alternatives Considered, and Policy Implications

In advance of the council’s review of the proposed policy, comments were solicited from the following committees and court leadership:

- Joint Court Facilities Subcommittee of the Trial Court Presiding Judges and Court Executives Advisory Committees on July 1, 2015;
- Court Facilities Advisory Committee (CFAC) on July 16, 2015;
- Trial Court Facility Modification Advisory Committee (TCFMAC) on July 17, 2015, and on August 31, 2015;
- Facilities Policies Working Group (FPWG) on July 21, 2015, and on September 25, 2015; and
- All administrative presiding justices, appellate clerk/administrators, presiding judges, assistant presiding judges, and court executive officers from August 4–14, 2015.

Prior to the CFAC and TCFMAC meetings listed above, this policy was posted for public comment on July 13 and 14, 2015, and on August 26, 2015, respectively. No public comments

¹ Art that is framed and hung on the wall of a court facility in a manner allowing it to be moved—although sufficiently secure to prevent theft or damage—generally is not considered to be permanently affixed to the facility.

² Gov. Code, §§ 70301(d)(4), 70391.

were received in relation to those public meetings. At the FPWG meeting of July 21, 2015, listed above, the working group requested that the policy be circulated for comment from the leadership of the Supreme Court, appellate courts, and trial courts, which occurred as noted above from August 4–14, 2015. Comments received by council staff from the leadership of the appellate and trial courts have been addressed and changes incorporated into the proposed policy. Attachment 2 details these comments and alterations as approved by the various reviewing committees.

No alternative policies were considered or recommended for development as part of this effort.

Implementation Requirements, Costs, and Operational Impacts

Funds appropriated in the state Budget Act for courthouse construction, maintenance, and repair may not be used to acquire art, unless the council specifically allocates money for such a purpose. The council may acquire art for court facilities that it manages through private gifts per the policy’s criteria specified under section 4.4. The implementation of this policy does not have any associated costs.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommended council action supports Goal III, Modernization of Management and Administration, and Goal VI, Branchwide Infrastructure for Service Excellence.

Attachments

1. *Judicial Council Policy Limiting the Acceptance and Purchasing of Art for Court Facilities, November 30, 2015*
2. *Comments Summary on Draft Judicial Council Policy Limiting the Acceptance and Purchasing of Art for Court Facilities*

JUDICIAL COUNCIL POLICY
LIMITING THE
ACCEPTANCE AND
PURCHASING OF ART FOR
COURT FACILITIES

NOVEMBER 30, 2015



JUDICIAL COUNCIL
OF CALIFORNIA

1. Purpose and Scope of the Policy

This policy is intended to guide Judicial Council of California (Judicial Council or council) staff in acquiring art on behalf of the council for the council's capital projects and for both appellate and trial court facilities that the council manages. (The council will not acquire art for county-managed court facilities or for court facilities that are leased to non-court occupants.)

This policy does not apply to art that an individual court may acquire, unless the art will be affixed to a court facility. (Only the Judicial Council may acquire art that will be affixed to a court facility because, once affixed, the art becomes part of the court facility and a council responsibility.)¹

This policy does not apply to or affect art that may be included or displayed in court facilities on the date that the Judicial Council approves this policy.

2. Goals and Principles Guiding Acquisition of Art

Incorporating art into court facilities is intended to improve the experience of all court users and court personnel, consistent with the design excellence principles that the Judicial Council has adopted for court facilities.²

3. Definitions

3.1. Acquire/Acquisition: To purchase or accept as a donation works of art for court facilities.

3.2. Affix: To attach, add to, or fasten on permanently, as a permanent fixture to a court facility.³ (For example, framed art that may be hung on the wall of a court facility in a manner allowing it to be moved, although sufficiently secure to prevent theft or damage, generally is not considered to be permanently affixed to the facility.)

3.3. Art: A decorative or creative element to be added to the exterior or interior spaces of a newly constructed or existing court facility. (The term does not include provision for decorative or creative elements in an approved architectural design, for example, an ornamental iron staircase or security gate.)

3.4. Capital Project: New courthouse construction and major renovations or expansions to existing court facilities.

3.5. Court Facility: The definition provided in Government Code section 70301(d) is incorporated by reference and, as used in this policy, includes appellate court

¹ Gov. Code, §§ 70301(d)(4), 70391.

² See Judicial Council of Cal., *California Trial Court Facilities Standards* (2010); Judicial Council of Cal., *Appellate Court Facilities Guidelines* (2002).

³ See Black's Law Dict. (7th ed. 1999), p. 60, col. 2 (defining "affix"); *id.*, at p. 652, col. 1 (defining "fixture").

facilities. The term “courthouse” is an alternative and may be used interchangeably.

4. Acquisition of Art

- 4.1. Funds appropriated in the state Budget Act for courthouse construction, maintenance and repair (including funds deposited in the Court Facilities Trust Fund) may not be used to acquire art, unless the Judicial Council specifically allocates money for such a purpose.
- 4.2. The Judicial Council may acquire art for court facilities that it manages through private gifts (either of art or of funding for the purchase of art), provided that acceptance of such gifts, and any resulting displays, will not create an appearance of impropriety.⁴
- 4.3. Only the Judicial Council may accept a gift of art to be affixed to a court facility. The Administrative Director may accept such gifts on behalf of the Judicial Council, as provided in rule 10.102 of the California Rules of Court, subject to paragraph 5, below.
- 4.4. Pursuant to rule 10.102 of the California Rules of Court, the Administrative Director is designated to accept gifts of art, or funds for art, on behalf of the Judicial Council, subject to paragraph 5, below. If the art would be affixed to a court facility, it may only be accepted on execution of an agreement between the Judicial Council and the artist (and anyone else holding rights to the art) addressing rights of ownership and display.

5. Approval of Art

A gift of art will not be accepted for placement in a court if the donor is appearing before or is reasonably likely to appear before the receiving court in litigation as a party or attorney, or does or is seeking to do business with the receiving court.

The receiving court and the Administrative Director must both approve any art that would be subject to this policy before it is acquired (i.e., any art that the Judicial Council would acquire for display in a court facility and any art to be affixed to a court facility).

6. Questions Regarding Acquisition, Ownership, Reproduction, or Installation of Art

Judicial Council legal staff is available to assist with any issues regarding acquisition of art (e.g., contracts to commission or purchase art) or regarding intellectual property (e.g.,

⁴ See, e.g., *Trial Court Financial Policies and Procedures Manual* (7th ed. 2010) FIN 15.01, 6.2.2., para. 3, at p. 7 (A superior court should not accept a gift if the gift is conditioned on the court’s “use or display of the prospective donor’s name or logo”); see also Cal. Rules of Court, rule 10.102(b)(1) (Pursuant to delegation of authority from the Administrative Director of the Courts, a superior court executive officer may accept a gift for the court); Cal. Code Judicial Ethics, canon 4D(6) (limiting the ability of judges to accept gifts).

ownership rights and reproduction of art). Judicial Council facilities staff also is available to assist with the installation of art that is to be affixed to a court facility.

Comments Summary: Appellate and Superior Court Comments on Draft Art Acquisition Policy

All comments are verbatim

	Commentator	Comments	Responses from JC Staff
1.	Hon. Jim Humes, Presiding Justice, First District Court of Appeal	<p>First, I think the part of the policy explaining the limits on accepting gifts of art is good. But, second, I think more should be explained about if and when art can be purchased. I notice that the policy includes a prohibition on using construction funds to buy art. Are other funds ever used to buy art? If so, under what conditions and under what constraints?</p> <p>My general concern is that, without knowing more, a reader could interpret this policy as a suggestion that the judiciary is thinking about going on an art-acquisition spree in the middle of our fiscal challenges.</p> <p>I would also think about renaming the policy something like “JCC Limits on Accepting or Purchasing Art” or “JCC Policy on Accepting Gifts of Art and Prohibiting the Use of Construction Funds to Purchase Art.”</p> <p>I know very little about the background of this policy, and for all I know there are lots of pre-existing limitations on buying art. But I think we should be careful to make sure that we’re not inadvertently sending the message (even if it’s not true) that we’re giving a green-light to buying art.</p>	<p>Recommend the following adjustments:</p> <p>Add to Section 4.1: Funds appropriated in the state budget act for courthouse construction, maintenance and repair nor funds associated with the Court Facilities Trust Fund</p> <p>Adjust title to read: Judicial Council Policy Limiting the Acceptance and Purchasing of Art For Court Facilities</p>
2.	Ms. Sherri Carter, Chief Executive Officer, Superior Court of California, County of Los Angeles	<p>I would suggest that there be language that the court be included in the approval of the art before it is purchased or accepted as a gift since it is the court that lives in the courthouses.</p> <p>Re 4.5, I would never allow the Administrative Director to accept a gift from a donor who appears before or is reasonably likely to appear before the receiving court. Even if there is no name tag, that donor lawyer or party could easily tell the Bar Association or others that s/he gave the gift which could potentially cause a conflict.</p>	<p>Recommend the following adjustments:</p> <p>Adjust Section 5 as follows: The receiving court and the Administrative Director must both approve any art that would be subject to this policy before it is acquired (i.e. any art that the Judicial Council would acquire for display in a court facility and any art to be affixed to a court facility.</p> <p>Adjust former Section 4.5 (now Section 5) as follows: Art will not be accepted and placed within a court to where a donor may appear before or is reasonably likely to appear before the receiving court in litigation, or does or seeks to do business with the receiving court.</p>

Comments Summary: Appellate and Superior Court Comments on Draft Art Acquisition Policy

All comments are verbatim

Commentator	Comments	Responses from JC Staff
<p>3. Mr. Jake Chatters, Chief Executive Officer, Superior Court of California, County of Placer</p>	<p>4.1. Funds appropriated in the state budget act for courthouse construction, maintenance and repair may not be used to acquire art. What if the State Budget specifically calls for those funds to be used in that fashion? Perhaps include a statement: “, unless specifically allocated for such purpose.”</p>	<p>Recommend the following adjustment: Adjust Section 4.1 as follows: Funds appropriated in the state budget act for courthouse construction, maintenance and repair (including funds deposited in the Court Facilities Trust Fund) may not be used to acquire art, unless the Judicial Council specifically allocates money for such a purpose.</p>
<p>4. Superior Court of California, County of San Joaquin – Hon. Lesley D. Holland, Presiding Judge; Hon. Robin Appel, Judge, Chair, Court Facilities Committee; and Ms. Rosa Junqueiro, Chief Executive Officer</p>	<p>Comments 1. There is no indication in the proposed policy as to how, when or if the policy may apply to projects that are already in construction. We suggest that the policy not apply to projects already in construction. If the policy is approved and applied to projects already in construction, then change orders will have to be made which may cost more than the original planned creative element or architectural design. New courthouse projects have already been cut to bare bones by the Courthouse Cost Reduction Subcommittee and can not afford additional costs due to unnecessary change orders at this stage of a project under construction. If the proposed policy is applied to projects already in construction, who will be responsible for payment of additional costs due to change orders?</p> <p>Comments 2. Under the Definitions section of the proposed policy, number 3.3, Art is defined. This definition also includes a parenthetical “(The term does not include provision for decorative or creative elements in an approved architectural design.)” This parenthetical should be further defined. What is considered a decorative or creative element? What is considered an approved architectural design?</p>	<p>Recommend the following adjustment: Add to Section 1 as follows: This policy does not apply to or affect art that may be included or displayed in court facilities on the date that the Judicial Council approves this policy.</p> <p>Comment 2: Additional detail under consideration for addition to this section.</p>
<p>5. Hon. William Highberger, Judge of the Superior Court of California, County of Los Angeles</p>	<p>I would like 4.5 to be clarified that no art is to be accepted “where a donor may appear before or reasonably likely to appear before the receiving court in litigation AS A LITIGANT OR AS AN ATTORNEY, ...” [New language is the stuff in all caps.] Otherwise the policy as provided to us for the 8/31/15 TCFMAC meeting looks fine to me.</p>	<p>Recommend the following adjustment: Adjust former Section 4.5 (now Section 5) to read: A gift of art will not be accepted for placement in a court if the donor is appearing before or is reasonably likely to appear before the receiving court in litigation as a party or attorney, or does or is seeking to do business with the receiving court.</p>