



Judicial Council of California

Meeting Minutes

Judicial Council

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2021 meeting

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Friday, July 9, 2021

9:45 AM

Videoconference

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: 27 - Chief Justice Tani G. Cantil-Sakauye, Justice Carol A. Corrigan, Administrative Presiding Justice Brad R. Hill, Justice Carin T. Fujisaki, Justice Harry E. Hull Jr., Justice Marsha G. Slough, Presiding Judge Samuel K. Feng, Presiding Judge Joyce D. Hinrichs, Presiding Judge Ann C. Moorman, Judge Marla O. Anderson, Judge C. Todd Bottke, Judge Stacy Boulware Eurie, Judge Kevin C. Brazile, Judge Jonathan B. Conklin, Judge Thomas A. Delaney, Judge Harold W. Hopp, Judge Dalila Corral Lyons, Judge David M. Rubin, Senator Thomas J. Umberg, Ms. Nancy CS Eberhardt, Ms. Rebecca J. Fleming, Mr. Kevin Harrigan, Ms. Rachel W. Hill, Mr. Patrick M. Kelly, Mr. Shawn C. Landry, Ms. Gretchen Nelson, and Mr. Maxwell V. Pritt

Absent: 3 - Judge Kyle S. Brodie, Commissioner Glenn Mondo, and Assembly Member Richard Bloom

Call to Order

Chief Justice Tani G. Cantil-Sakauye, Chair of the Judicial Council, called the open session to order at 9:45 a.m.

Opening Remarks

The Chief Justice explained that a new cycle of Judicial Council service begins on September 15 when new and reappointed council members begin their terms and outgoing members complete their terms. She acknowledged the service of four outgoing members:

- Hon. Thomas A. Delaney, President of the California Judges Association
- Ms. Nancy CS Eberhardt, Court Executive Officer, Superior Court of San Bernardino County
- Hon. Joyce D. Hinrichs, Presiding Judge of the Superior Court of Humboldt County
- Mr. Patrick M. Kelly, Attorney at Law

The Chief Justice also recognized the newly appointed or reappointed council members:

- Hon. Kyle S. Brodie, Judge of the Superior Court of San Bernardino County
- Hon. Rupert A. Byrdsong, President-Elect of the California Judges Association
- Hon. Jonathan B. Conklin, Judge of the Superior Court of Fresno County
- Hon. Samuel K. Feng, Presiding Judge of the Superior Court of San Francisco County
- Mr. David D. Fu, Attorney at Law
- Hon. Carin T. Fujisaki, Justice of the Court of Appeal, First Appellate District, Division Three, San Francisco
- Hon. Brad R. Hill, Administrative Presiding Justice of the Court of Appeal Fifth Appellate District, Fresno
- Hon. Ann C. Moorman, Presiding Judge of the Superior Court of Mendocino County
- Hon. Theodore C. Zayner, Presiding Judge of the Superior Court of Santa Clara County

Public Comment

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

Approval of Minutes

[21-125](#)

Minutes of May 21, 2021, Judicial Council Meeting

A motion to approve the recommendation was made by Mr. Kelly and seconded by Judge Brazile. The motion was adopted.

Chief Justice's Report

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

Administrative Director's Report

[21-126](#)

Administrative Director's Report

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

[21-127](#)

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 Mr. Kelly and seconded by Judge Rubin. The motion was adopted.

[21-043](#)

Allocations and Reimbursements to Trial Courts | Continued Distribution of Children's Waiting Room Funds During Temporary Closure (Action Required)

Summary: The Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee recommends approving a request from the Solano Superior Court to continue receiving children's waiting room funds during the unforeseen temporary closure of its children's waiting room in response to the state of emergency related to the COVID-19 pandemic. By continuing to receive funding, the court would have sufficient resources to provide a safe and healthy waiting room setting for children when the court can safely reopen.

Recommendation: Based on the action taken at its meeting on April 22, 2021, the Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee recommends that the Judicial Council approve the continued distribution of children's waiting room funds to the Solano Superior Court to support operation of its children's waiting room upon reopening.

[21-113](#)

Child Support | Updating Workload Data for the AB 1058 Child Support Commissioner Funding Methodology, Adopting a Family Law Facilitator Program Funding Methodology, and Adopting 2021-22 AB 1058 Program Funding Allocations (Action Required)

Summary: The Trial Court Budget Advisory Committee recommends that the Judicial Council approve a new funding methodology that is population-based for the

Assembly Bill 1058 Family Law Facilitator program to be implemented for 2021-22, consistent with the model that is used to allocate self-help center funding, and continue reallocating funds for the AB 1058 Child Support Commissioner program using the workload-based funding methodology previously adopted and first implemented in 2019-20 with updated workload data. The committee also recommends approving base and federal drawdown allocations for the AB 1058 Child Support Commissioners and Family Law Facilitators for 2021-22. The Judicial Council previously established a joint subcommittee in April 2015 to reconsider and make recommendations regarding the allocation methodology developed in 1997 for the Child Support Commissioner and Family Law Facilitator Program, as required by AB 1058 (Stats. 1996, ch. 957).

Recommendation: The Trial Court Budget Advisory Committee recommends that the Judicial Council, effective July 9, 2021, take the following actions:

1. Approve a new funding methodology for the AB 1058 Family Law Facilitator program base funding that allocates a \$34,000 baseline level of funding for each court and distributes the remainder of funding by total population as described below and set forth in Attachment A1. The methodology ensures that funding changes are capped at five percent, and smaller courts can continue to operate their programs.
2. Restore the overall AB 1058 program funding to 2018-19 levels, if reflected in the final enacted budget for 2021-22.
3. Approve the committee's recommended base allocation for the Child Support Commissioner program for 2021-22 and 2022-23, as described below and set forth in Attachment B1, maintaining the current funding methodology approved by the Judicial Council in 2019 with updated workload data.
4. Approve the committee's recommendation for 2021-22 AB 1058 program funding for the courts comprised of the base funding allocations derived from recommendations 1 and 3, and federal drawdown funding using the methodology adopted by the Judicial Council in January 2019.
5. Direct the Family and Juvenile Law Advisory Committee to defer making a recommendation for AB 1058 funding at a minimum service level for smaller courts until 2023-24.
6. Direct the Family and Juvenile Law Advisory Committee to review the implementation of the AB 1058 funding methodology, including its impact on the performance of the program as federally mandated, prior to 2023-24.

[21-012](#)

Court Facilities | Judicial Branch Five-Year Infrastructure Plan for Fiscal Year 2022-23 (Action Required)

Summary: The Court Facilities Advisory Committee recommends approval of the *Judicial Branch Five-Year Infrastructure Plan for Fiscal Year 2022-23* and submission

of the plan to the state Department of Finance. This five-year plan for trial court capital-outlay projects forms the basis for capital project funding requests for the upcoming and outlying fiscal years.

Recommendation: The Court Facilities Advisory Committee recommends that the Judicial Council, effective July 9, 2021, take the following actions:

1. Approve the *Judicial Branch Five-Year Infrastructure Plan for Fiscal Year 2022-23* (see Attachment 1); and
2. Direct staff to submit the plan to the state Department of Finance.

[21-128](#)

Criminal Law | Judicial Council Appointment to the California Council for Interstate Adult Offender Supervision (Action Required)

Summary: The Executive and Planning Committee recommends appointing Judge R. Glenn Yabuno, Superior Court of San Bernardino County, to the California Council for Interstate Adult Offender Supervision. The seven-member council must include a superior court judge appointed by the Judicial Council. The California Council is required by the Interstate Compact for Adult Offender Supervision, which governs state administration of the transfer across state lines of the supervision of adult parolees and probationers. The individual selected for appointment will also serve simultaneously on the California Council for Interstate Juvenile Offender Supervision.

Recommendation: The Judicial Council's Executive and Planning Committee recommends that the Judicial Council, effective July 9, 2021, appoint Judge R. Glenn Yabuno, Superior Court of San Bernardino County, to the California Council for Interstate Adult Offender Supervision, as provided in Penal Code section 11181(c).

[21-080](#)

Juvenile Law | Fiscal Year 2021-22 Funding Allocation for Court-Appointed Special Advocate Local Assistance (Action Required)

Summary: The Family and Juvenile Law Advisory Committee recommends approving Court Appointed Special Advocate (CASA) program grant funding allocations for fiscal year (FY) 2021-22. The judicial branch budget for Judicial Council CASA grants for FY 2021-22 is \$2.713 million, which includes a \$500,000 augmentation to support efforts to increase the number of foster children served. The recommended allocations were calculated based on the CASA funding methodology approved by the Judicial Council at its July 20 and September 21, 2018, business meetings.

Recommendation: The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 8, 2021:

1. Continue the allocation of the \$500,000 augmentation as base funding for FY 2021-22 to CASA programs using the four-tiered base funding methodology approved by the council on September 21, 2018; and

2. Allocate \$2.713 million for CASA local assistance grants to 46 CASA programs serving 51 California counties using the council's funding methodology approved July 20 and September 21, 2018.

[21-112](#)**Report to the Legislature | Pretrial Pilot Program (Action Required)**

Summary: The Budget Act of 2019 earmarked \$75 million to the Judicial Council to launch and evaluate two-year pretrial projects in local trial courts. As directed by the Legislature, the projects aim to increase the safe and efficient release of arrestees before trial; use the least restrictive monitoring practices possible while protecting public safety and ensuring court appearances; validate and expand the use of risk assessment tools; and assess any bias. Criminal Justice Services staff recommend that the Judicial Council receive *Pretrial Pilot Program: Report to the Legislature* and direct the Administrative Director to submit this report to the Joint Legislative Budget Committee and the Department of Finance. The Budget Act of 2019 mandates that this report be submitted each January and July through 2022. This is the fourth legislative report on the program and documents the activities of pilot courts and Judicial Council administration of the program carried out between January and July 2021. It also presents select data on pretrial risk assessments conducted on individuals in all pilot projects since the start of the program.

Recommendation: Criminal Justice Services staff recommend that the Judicial Council, effective July 9, 2021:

1. Receive *Pretrial Pilot Program: Report to the Legislature* (July 2021); and
2. Direct the Administrative Director to submit this report to the Joint Legislative Budget Committee and the Department of Finance.

[21-132](#)**Rules and Forms | Unlawful Detainer: Technical Changes to Implement AB 832 (Action Required)**

Summary: Assembly Bill 832 is urgency legislation that became effective when signed by the Governor on June 28, 2021. Among other things, the new law extends the tenant protections provided under the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act, which were previously to end June 30, 2021, through September 30, 2021. In light of the extension of the statutory provisions now in effect, Judicial Council staff is recommending that two unlawful detainer forms (a mandatory form for plaintiff to assert supplemental allegations and the answer form) be immediately revised by the council so that the dates on those forms that reflect the prior end date of the tenant protections be changed to reflect the correct dates under AB 832. The Civil and Small Claims Advisory Committee will make recommendations to the council addressing the other provisions in the bill in the coming months to implement the changes arising from those sections of the new law.

Recommendation: Judicial Council staff recommends that the Judicial Council, effective July 12, 2021, revise the following forms to reflect the extended time frame in the amended statutes and to make other minor technical edits:

- *Plaintiff's Mandatory Cover Sheet and Supplemental Allegations-Unlawful Detainer* (form UD-101); and
- *Answer-Unlawful Detainer* (form UD-105).

[21-079](#)

Trial Court Budget | Fiscal Year 2021-22 Allocation of Court-Appointed Juvenile Dependency Counsel Funding (Action Required)

Summary: The Trial Court Budget Advisory Committee recommends allocation of \$166.7 million for fiscal year 2021-22 from the ongoing Trial Court Trust Fund to the trial courts for court-appointed juvenile dependency counsel. The allocation may change based on final appropriations included in the signed 2021 Budget Act.

Recommendation: The Trial Court Budget Advisory Committee recommends that the Judicial Council, effective July 1, 2021:

1. Allocate \$166.7 million to the trial courts for court-appointed juvenile dependency counsel costs. The *2021-22 Allocation of Dependency Counsel Funding* was prepared using the methodology specified by the Judicial Council.

[21-114](#)

Trial Court Budget | Self-Help Funding, Allocation Methodology for 2021-22 and Ongoing (Action Required)

Summary: The Trial Court Budget Advisory Committee recommends that the Judicial Council maintain the current funding methodology for self-help funding allocated to trial courts for fiscal year 2021-22 allocations and ongoing, including (1) a three-year population update schedule using rolling three-year average census data, (2) providing annual population updates to trial courts using rolling three-year average data for informational purposes only, and (3) maintaining the current self-help allocation baseline of \$34,000 per court. These recommendations will ensure that resources are allocated effectively and will provide adequate notice to courts so they can plan for funding changes.

Recommendation: The Trial Court Budget Advisory Committee (TCBAC) recommends that the Judicial Council, effective July 9, 2021, take the following actions related to self-help funding to trial courts for 2021-22 allocations and ongoing:

1. Maintain a three-year population update schedule using rolling three-year average census data;
2. Provide annual population updates to trial courts using rolling three-year average data for informational purposes only; and
3. Maintain the current self-help allocation baseline of \$34,000 per court.

These recommendations would take effect immediately, and the next allocation changes based on population using this methodology would be made in 2024-25.

[21-042](#)**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 two amended Trial Court Trust Fund funds to be held on behalf of the trial court requests totaling \$742,005 from one trial court. 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 April 22, 2021, the Fiscal Planning Subcommittee of the Trial Court Budget Advisory Committee recommends that the Judicial Council approve the following amended requests totaling \$742,005 (Attachments A, B, and C), effective July 9, 2021:

1. Request from the Superior Court of Sutter County to amend the fiscal year to complete technological enhancements and facility modifications from 2020-21 to 2021-22; and
2. Request from the Superior Court of Sutter County to amend the fiscal year to complete the replacement of its information technology infrastructure from 2020-21 to 2021-22.

DISCUSSION AGENDA[21-040](#)**Judicial Branch Budget | 2022-23 Budget Change Proposals for the Supreme Court, Courts of Appeal, Superior Courts, Judicial Branch Facilities Program, Habeas Corpus Resource Center, and Judicial Council (Action Required)**

Summary: To continue responsible reinvestment in the judicial branch allowing for greater access to justice for California's citizens, the Judicial Branch Budget Committee unanimously recommends submitting these 2022-23 budget change proposals to the State Department of Finance.

Recommendation: The Judicial Branch Budget Committee recommends that the Judicial Council, effective July 9, 2021, approve the following 2022-23 budget change proposals (not in priority order) for submission to the California Department of Finance on September 3, 2021:

1. Proposition 66 Costs in the Courts of Appeal and Habeas Corpus Resource Center-\$15.5 million;
2. Appellate Court Security-\$1.5 million;
3. Courts of Appeal Court-Appointed Counsel Program-\$6.4 million;
4. Self-Help Centers in Trial Courts: Expanding In-Person and Online Resources-\$23.3 million;
5. Criminal Justice Improvements to Increase Services and Efficiencies Related to Substance Use Disorders, Mental Illness, and Sex Offender Registration Termination-\$35.9 million;

6. Trial Court Capital-Outlay Funding: 2022-23 through 2025-26-\$151.7 million;
7. Trial Court and Court of Appeal Deferred Maintenance and Emergency Leak Mitigation-\$102.4 million;
8. Facility Modification Prioritization and Costs-\$68 million;
9. Branchwide Information Technology Modernization-\$40.6 million;
10. Language Access Efforts in California Courts-\$17 million;
11. Additional Legal Services Staff for Public Access Work-\$767,000;
12. Trial Court Workload Formula Gap Funding to 85 percent-\$148.1 million; and
13. Judicial Branch Data and Information Governance-\$11.5 million.

A complete description of these BCPs is provided in the Analysis/Rationale section.

A motion to approve the recommendation was made by Administrative Presiding Justice Hill and seconded by Judge Hopp. The motion was adopted.

[21-120](#)

Trial Court Budget | Allocation Methodology of \$72.2 Million Trial Court Funding in Governor's Proposed 2021-22 Budget (Action Required)

Summary: The Judicial Branch Budget Committee recommends a Consumer Price Index allocation methodology for the \$72.2 million ongoing General Fund included in the Governor's proposed 2021-22 budget for trial courts to address inflationary cost increases that are effective July 1, 2021, and contingent on inclusion of the proposed funding in the final enacted 2021 Budget Act. An alternative recommendation of note is described later in this report.

Recommendation: The Judicial Branch Budget Committee recommends that the Judicial Council, effective July 9, 2021, allocate to all courts \$72.2 million using the 3.7 percent Consumer Price Index-based increase over each court's fiscal year 2020-21 Workload Formula allocation.

A motion to approve the recommendation was made by Judge Hopp and seconded by Ms. Hill. The motion was adopted.

[21-041](#)

Trial Court Budget | Allocations from the Trial Court Trust Fund and Trial Court Allocations for 2021-22 (Action Required)

Summary: For 2021-22, the Judicial Branch Budget Committee recommends approval of the Trial Court Budget Advisory Committee recommendation that the Judicial Council allocate \$2.259 billion to the trial courts from the Trial Court Trust Fund, including \$167.8 million in restoration funding and \$72.2 million in new funding, \$68.8 million from the state General Fund for employee benefits, and \$50.0 million in State Court Facilities Construction Fund for support of operation of the trial courts. In a separate report prepared for this meeting, the Judicial Branch Budget Committee recommends an allocation methodology for the \$72.2 million ongoing funding increase for trial courts to address inflationary cost increases.

The Judicial Branch Budget Committee also recommends the council approve the Trial Court Budget Advisory Committee recommendation for the Workload Formula allocation of \$2.215 billion based on methodologies approved by the council. Assuming approval of the allocations, current revenue projections, and estimated savings from 2020-21 appropriations, the Trial Court Trust Fund will end 2021-22 with a fund balance of \$69.9 million, of which approximately \$44.8 million will be unrestricted.

Recommendation: The Judicial Branch Budget Committee recommends approval of the Trial Court Budget Advisory Committee recommendation that the Judicial Council, effective July 9, 2021:

1. Approve base, non-base, discretionary, and non-discretionary program allocations in the amount of \$2.259 billion (Attachment B, columns Q plus X) which includes the following:
 - a. An allocation of \$167.8 million in restoration funding to the trial courts on a dollar-for-dollar basis, consistent with the reduction amounts implemented in 2020-21;
 - b. An allocation of \$72.2 million ongoing funding for trial courts (please see the accompanying report, item 21-120, addressing this allocation);
2. Approve \$68.8 million from the state General Fund for employee benefits;
3. Approve \$50.0 million in State Court Facilities Construction Fund for support of operation of the trial courts; and
4. Approve a Workload Allocation of \$2.215 billion based on methodologies approved by the Judicial Council (Attachment C, column Y).

A motion to approve the recommendation was made by Judge Brazile and seconded by Mr. Kelly. The motion was adopted.

[21-037](#)

Trial Court Budget | State Trial Court Improvement and Modernization Fund Allocations for 2021-22 (Action Required)

Summary: The Judicial Branch Budget Committee recommends approval of the Trial Court Budget Advisory Committee recommendation that the Judicial Council approve allocations for 2021-22 from the State Trial Court Improvement and Modernization Fund in the amount of \$55,002,000. This amount represents updated costs for current service levels.

Recommendation: The Judicial Branch Budget Committee unanimously recommends the Trial Court Budget Advisory Committee's recommendation that the Judicial Council, effective July 9, 2021, approve a total of \$55,002,000 in allocations for 2021-22 from the State Trial Court Improvement and Modernization Fund.

A motion to approve the recommendation was made by Presiding Judge Moorman and seconded by Judge Lyons. The motion was adopted.

INFORMATION ONLY ITEMS (NO ACTION REQUIRED)[21-116](#)**Judicial Branch Administration | Prevention of Discrimination, Harassment, Retaliation, and Inappropriate Workplace Conduct Based on a Protected Classification**

Summary: On July 19, 2019, the Work Group for the Prevention of Discrimination and Harassment made five recommendations to the Judicial Council to improve how judicial branch entities prevent and address harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification. These recommendations included that the Rules Committee develop a California rule of court setting forth minimum requirements for court policies on these topics; that the Center for Judicial Education and Research Advisory Committee engage in rulemaking regarding required education for judicial officers in these areas, and revise its 2020-2022 Education Implementation Plan to enhance education offerings; that courts take actions designed to improve existing court procedures in these areas; and that Judicial Council staff be directed to support courts in these efforts. The Judicial Council approved these recommendations and directed the work group to report back in July 2021. The work group is pleased to share the success of the committees, courts, and staff in completing these recommendations.

[21-094](#)**Judicial Branch Technology | Court Technology Modernization Funding Status, Fiscal Year 2020-21**

Summary: The Budget Act of 2020 (Stats. 2020, ch. 7) appropriated \$25 million for the modernization of trial court operations. The Judicial Council asked the Technology Committee to make recommendations on the funding and to provide regular updates on the approved allocation of \$12.5 million directly to trial courts for use in one or more identified program categories, \$10 million for branchwide initiatives, and \$2.5 million to be held in reserve for program adjustments. This is a status update for fiscal year 2020-21.

[21-038](#)**Report to the Legislature | Electronic Recording Equipment**

Summary: Government Code section 69958 requires the Judicial Council to report to the Legislature semiannually on the purchase and lease of any electronic recording equipment that will be used to record superior court proceedings. During the reporting period of July 1 through December 31, 2020, five courts reported spending a combined total of \$242,214 for equipment or related items.

[21-115](#)**Trial Court Budget | Report on Disposition Data**

Summary: At its January 2021 meeting, the Judicial Council approved a Judicial Branch Budget Committee (JBBC) 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 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.

[21-121](#)**Trial Courts | Resource Assessment Study Filings Adjustment for FY 2021-22**

Summary: The Resource Assessment Study (RAS) model uses a three-year average of filings to estimate court workload that is used in the trial court Workload Formula. The 2021-22 Workload Formula includes four months of pandemic-impacted data, which is not reflective of typical court workload as during this period many courts' operations were constrained by pandemic-related closures. The Workload Assessment Advisory Committee (WAAC) has adopted a one-time modification to the filings data for 2021-21 Workload Formula calculations. This modification is consistent with existing policy and is being shared with the Judicial Council as an informational item only.

[21-039](#)**Trial Courts | Quarterly Investment Report for First Quarter of 2021**

Summary: This *Trial Courts Quarterly Investment Report for First Quarter of 2021* covers the period of January 1, 2021, through March 31, 2021, and provides the financial results for the funds invested by the Judicial Council on behalf of the trial courts as part of the judicial branch treasury program. The report is submitted under agenda item 10, Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004.

Appointment Orders[21-131](#)**Appointment Orders since the last business meeting.****Adjournment**

With the meeting's business completed, the Chief Justice adjourned the meeting at approximately 11:19 a.m.

Respectfully submitted by Administrative Director Martin Hoshino, Secretary to the Judicial Council, on October 1, 2021.