



# Judicial Council of California

455 Golden Gate Ave.  
San Francisco, CA  
94102-3688

## Meeting Minutes

Meeting materials  
are available through  
the hyperlinks in  
this document.

## Judicial Council

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Friday, March 15, 2019

8:30 AM

San Francisco

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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 8:30 a.m.

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

#### **Attendance**

##### **Council Members**

**Present:** 28 - Chief Justice Tani G. Cantil-Sakauye, Justice Ming W. Chin, Administrative Presiding Justice Brad R. Hill, Justice Harry E. Hull Jr., Justice Douglas P. Miller, Justice Marsha G. Slough, Presiding Judge C. Todd Bottke, Presiding Judge Gary Nadler, Judge Marla O. Anderson, Judge Paul A. Bacigalupo, Judge Stacy Boulware Eurie, Judge Jonathan B. Conklin, Judge Samuel K. Feng, Judge Scott M. Gordon, Judge Harold W. Hopp, Judge Dalila Corral Lyons, Judge Ann C. Moorman, Judge David M. Rubin, Judge Kenneth K. So, Commissioner Rebecca Wightman, Assembly Member Richard Bloom, Ms. Nancy CS Eberhardt, Ms. Kimberly Flener, Ms. Rachel W. Hill, Mr. Patrick M. Kelly, Ms. Gretchen Nelson, Mr. Michael M. Roddy, and Ms. Andrea K. Wallin-Rohmann

**Absent:** 2 - Judge Kyle S. Brodie, and Senator Hannah-Beth Jackson

##### **Media Present**

Ms. Maria Dinzeo, Courthouse News Service

##### **Others Present**

Hon. Samantha Jessner, Ms. Tenaya Morningstar, Mr. Ricardo Gonazlez Ortiz, Mr. Richard Park, Ms. Linda Romero Soles. and Ms. Amanda Toste

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

Chief Justice Tani G. Cantil-Sakauye, chair of the Judicial Council, called the open

session to order at 9:15 a.m. in the Judicial Council Board Room.

## Approval of Minutes

[19-028](#)

### Minutes of January 14-15, 2019 Judicial Council meeting

**A motion was made by Presiding Judge Nadler, seconded by Justice Chin, that this proposal be approved. The motion carried by a unanimous vote.**

## Chief Justice's Report

Chief Justice Tani G. Cantil-Sakauye summarized her engagements and ongoing outreach activities on behalf of the judiciary since January. On February 12 she attended Governor Gavin Newsom's first State of the State Address at a joint session of the California State Assembly and Senate. Governor Newsom covered a wide range of topics under his "California for All" vision, noting issues that will involve branch efforts, including transportation, energy, water challenges, an evolving workforce, an aging population, privacy, and criminal justice reform. On March 1 the Chief convened the first legislative-judicial summit to connect members of the California Legislature with members of the California judiciary. Participants included U.S. Senators, federal and state judges, legislators, and college deans.

The Chief Justice reported that she and a core team of Judicial Council staff regularly convene and connect with justice system partners. Her core team of council staff includes executives and council subject matter experts, as needed. They attended five liaison meetings with leadership from the California District Attorneys Association, California Defense Counsel, the California Public Defenders Association, California Attorneys for Criminal Justice, Consumer Attorneys of California, and Chief Probation Officers of California. Her core team also joined the Chief's annual meeting with the California Judges Association (CJA) along with Judge Paul A. Bacigalupo, president of the CJA, and other members of the executive board leadership and staff. The Chief Justice also participated in the council's Administrative Presiding Justices Advisory Committee meeting and addressed a joint meeting of the Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee.

The Chief Justice was invited to address California's business community at a number of engagements, including: the Monday Morning Group of Western Riverside County. At a Rotary Club of San Jose luncheon in Silicon Valley, the Chief Justice engaged in a Q&A presentation with Alan Braverman, executive vice president and general counsel of the Walt Disney Company. It was an opportunity to discuss resource challenges facing the judiciary, the growing number of self-represented litigants, and the need for all qualified legal professionals to engage in pro bono work.

The Chief Justice participated in a number of events with professional legal associations. She joined Supreme Court Associate Justices Kathryn Werdegar, now retired, and Carol Ann Corrigan at the National Association of Women Lawyers meeting, where they were introduced by the 100-years-young Selma Moidel Smith, who joined the organization in 1943. The program, “Past and Present Women of the California Supreme Court,” was moderated by the association’s president, Sarretta McDonough.

As part of the Black History Month celebration in Sacramento, the Chief Justice was honored to be invited by Shirley Weber, chair of the California Legislative Black Caucus, to attend their Dr. Martin Luther King, Jr., celebration. At a Black History Month Planning Committee event in San Francisco on February 19, the Chief introduced Betty Reid Soskin, who at 97 is the oldest National Park Ranger in the United States. Ms. Soskin works at the Rosie the Riveter/World War II Home Front National Historical Park in Richmond.

## **Administrative Director’s Report**

[19-029](#)

### **Administrative Director’s Report**

Administrative Director Martin Hoshino reported on the council’s activities since the last council meeting. Judicial Council advisory body staff convened and prepared materials for 25 committee meetings and 20 education and training programs. Mr. Hoshino noted that his full report, posted online, summarizes the progress made on the annual agenda projects and goals for judicial administration.

He reported that the council is required by statute to collect and release aggregate demographic information on California’s judicial officers annually by March 1. Every judge and justice receives a survey from the council, he explained, which they are asked to respond to voluntarily. The survey includes questions on gender, race, sexual orientation, and veteran and disability status, by specific jurisdiction. The current data was collected in December 2018 and showed for the 13th consecutive year that the California judicial bench has grown more diverse. Mr. Hoshino noted that the percentage of female justices and judges is reported at 36 percent, which is almost a 10 percent increase since data was first reported in 2006. Of the almost 200 appointments made by Governor Brown during his final year in office, women accounted for more than half of those and 41 percent of appointees identified as nonwhite.

Mr. Hoshino explained that in an effort to meet the goals of access and fairness as outlined in the Judicial Council’s strategic plan, the Advisory Committee on Providing Access and Fairness has updated the judicial diversity toolkit. The toolkit was first produced by the council in 2010 and is designed to increase the diversity of applicants for judicial appointment in California. The updated toolkit will be available later in the

year for use at both the community and state level.

Mr. Hoshino reported that the audit services group shared an advisory to the trial courts highlighting best practices and providing guidance on areas of risk. The advisory is based on compliance measures that are contained in the California Judicial Branch Contract Law, the *Judicial Branch Contracting Manual*, and the *Trial Court Financial Policies and Procedures Manual*.

## Judicial Council Committee Presentations

[19-030](#)

### Judicial Council Committee Reports

#### Executive and Planning Committee

Justice Douglas P. Miller, chair of the Executive and Planning Committee (E&P), provided a summary of the activities of E&P since the January council meeting. He reported that E&P met several times to set the agenda for the March 15 council meeting and review the 2019 annual agendas of the various advisory committees. Justice Miller thanked the advisory committees and chairs for the exemplary work they accomplish.

#### Policy Coordination and Liaison Committee

Judge Kenneth K. So, chair of the Policy Coordination and Liaison Committee reported that they are going to be meeting regularly for the next two months, reviewing many bills to be presented at the next council meeting.

#### Rules and Projects Committee

Judge Paul A. Bacigalupo, member of the Rules and Projects Committee (RUPRO), reported that the committee met by telephone twice and acted by e-mail three times since the January 15 council meeting. They met to consider additions and revisions to the criminal jury instructions and minor revisions to a civil jury instruction. RUPRO recommends approval of the first two proposals, which are items 19-045 and 19-008 on the consent agenda. On February 6, RUPRO met by telephone to consider the appointment of a non-advisory committee member to a subcommittee of the Family and Juvenile Law Advisory Committee to ensure that the membership represents key domestic violence prevention stakeholders. RUPRO approved the appointment and considered two proposals on death penalty habeas corpus proceedings to implement Proposition 66 that had been circulated for comment on a special cycle. RUPRO recommends approval of these proposals, items 19-049 and 19-050 on the discussion agenda.

#### Judicial Council Technology Committee

Presiding Judge Gary Nadler, vice chair of the Judicial Council Technology Committee (JCTC), reported that JCTC held two telephonic meetings, one in-person meeting, and an education session since the last council meeting. In addition, the

Information Technology Advisory Committee (ITAC) met twice and the second update to the *Tactical Plan for Technology* was distributed for public comment. On February 26 the committee met to review and prioritize the technology budget change proposals (BCPs) for the initial funding request. The committee established evaluation criteria and used them to evaluate the concepts. They determined that five proposals would give great benefit to the branch and ranked them as follows: (1) an electronic or intelligent Judicial Council forms solution; (2) privatizing California court innovation grants; (3) disaster recovery consulting services solutions in a pilot; (4) digitizing documents, phases 2 and 3; and (5) next-generation data hosting consulting services. The rankings were provided to the Judicial Branch Budget Committee.

Judge Nadler reported that the ITAC workstream continues to be engaged. Members include judicial officers, court executive officers, IT professionals, court operations staff, and judicial staff. Participants are working together to develop solutions to effectively address statewide technology issues consistent with the Chief's Access 3D initiative, while also providing efficiencies within the court. Teams are exploring ways to extend collaboration across the branch. Judge Nadler stated that for instance, several workstreams are partnering with court innovation grant projects to develop pilots, assess findings, and share learnings. The IT Community workstream is specifically charged with finding ways to expand collaboration and professional development within the branch.

#### **Judicial Branch Budget Committee**

Judge Ann C. Moorman, member of the Judicial Branch Budget Committee (JBBC), reported on the activities of the committee since the previous council meeting. She noted that JBBC takes a branchwide approach to their work promoting the efficient, fiscally prudent, effective, and fair allocation of limited resources, reflecting the branch's overall statewide interests. JBBC met once in person since the last Judicial Council meeting and will meet again the week following the March council meeting to develop budget change proposals (BCPs) for fiscal year 2020-21. The committee will determine which of the 26 submitted funding requests will move forward to be developed into BCPs and will present them to the council at the July meeting.

JBBC also discussed the ongoing work in the Court Innovations Grant Program. Judge Moorman informed the council that a report summarizing the 2018-19 second-quarter activity is included in the council meeting's informational materials. She noted that later in the meeting Judge David M. Rubin would be introducing members of the Superior Court of San Joaquin County to provide information on their adult drug court and DUI prevention programs.

## CONSENT AGENDA

### Approval of the Consent Agenda

A motion was made by Mr. Kelly, seconded by Judge Gordon, to approve all of the following items on the Consent Agenda. The motion carried by a unanimous vote.

[19-032](#)

#### **Juvenile Law: 2018-19 Allocations for Juvenile Dependency Counsel Collections Program and Court-Appointed Counsel Expected Unspent Funding (Action Required)**

**Summary:** The Trial Court Budget Advisory Committee recommends redistribution of funding for court appointed juvenile dependency counsel for fiscal year 2018-19. Under the Juvenile Dependency Counsel Collections Program, and as directed in Welfare and Institutions Code section 903.1, courts collect reimbursements from parents and other responsible persons liable for the cost of dependency-related legal services to the extent that those persons are able to pay. The committee recommends that the Judicial Council: (1) allocate the 2017-18 statutorily restricted funds -- remitted in excess of dependency counsel program administrative costs -- to the trial courts calculated according to the methodology adopted by the council at its August 23, 2013, business meeting; (2) under council recommendations adopted in April 2015, reallocate unspent dependency counsel funding from courts that have identified funds they do not intend to spend to courts funded at below the average statewide funding level; and (3) allow staff to further survey eligible courts to determine their ability to use funding during the remainder of the fiscal year. Any funds not utilized will be prorated to other eligible courts, and staff will be directed to report the final allocation at the July 2019 council meeting.

**Recommendation:** The Trial Court Budget Advisory Committee (TCBAC) recommends the Judicial Council:

1. Allocate \$766,198, the 2017-18 Juvenile Dependency Counsel Collections Program (JDCCP) funds remitted in excess of dependency counsel program administrative costs to the trial courts calculated according to the methodology adopted by the Judicial Council at its August 23, 2013, business meeting. Attachment A shows projected allocations based on information received at the time of this report.

2. Allocate \$659,744, the 2018-19 court appointed counsel expected unspent funding, to the trial courts calculated according to the methodology adopted by the Judicial Council at its January 22, 2015, business meeting. Attachment B (column I) shows projected allocations based on information obtained from trial courts at the time of this report.

3. Direct staff to further survey courts regarding their ability to utilize funds during the remainder of the fiscal year, reallocate unspent funds to those courts demonstrating an ability to expend funds by the end of the fiscal year, and report on the final allocation to the Judicial Council at its July 18-19, 2019, business meeting.

[19-045](#)**Jury Instructions: Additions, Deletions, and Revisions to Criminal Jury Instructions (Action Required)**

**Summary:** The Advisory Committee on Criminal Jury Instructions recommends approval of the proposed revisions and additions to the *Judicial Council of California Criminal Jury Instructions (CALCRIM)*. These changes will keep *CALCRIM* current with statutory and case authority.

**Recommendation:** The Advisory Committee on Criminal Jury Instructions recommends that the Judicial Council, effective March 15, 2019, approve for publication under rule 2.1050 of the California Rules of Court the criminal jury instructions prepared by the committee. Once approved, the revised instructions will be published in the next official edition of the *Judicial Council of California Criminal Jury Instructions*.

[19-046](#)**Child Support: Midyear Funding Reallocation for Fiscal Year 2018-19 for the Child Support Commissioner and Family Law Facilitator Programs (Action Required)**

**Summary:** The Family and Juvenile Law Advisory Committee recommends that the Judicial Council approve the reallocation of funding for the Child Support Commissioner and Family Law Facilitator Programs for the remainder of fiscal year (FY) 2018-19. The funds are provided through a cooperative agreement between the California Department of Child Support Services and the Judicial Council. At midyear, under an established procedure described in the standard agreement with each superior court, the Judicial Council redistributes to courts -- with a documented need for additional funds -- any available funds from courts that are projected not to spend their full grants that year. The courts are also offered an option to use local court funds up to an approved amount to draw down, or qualify for, federal matching funds.

**Recommendation:** The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective March 15, 2019:

1. Approve the reallocation for funding of child support commissioners for FY 2018-19, subject to the state Budget Act;
2. Approve the reallocation for funding of family law facilitators for FY 2018-19, subject to the state Budget Act;

[19-008](#)**Rules and Forms: Criminal Procedure: Multicounty**

**Incarceration and Supervision (Action Required)**

**Summary:** The Criminal Law Advisory Committee recommends amending California Rules of Court, rule 4.452, to implement section 1170.3 of the Penal Code to guide the second or subsequent court when determining the county (or counties) of incarceration and supervision in multicounty sentencing.

**Recommendation:** The Criminal Law Advisory Committee recommends that the council, effective July 1, 2019, amend rule 4.452 of the California Rules of Court to guide courts on multicounty sentencing under Penal Code section 1170(h) by adding the following:

1. Clarification that the second or subsequent court has the discretion to specify whether a previous sentence is to be served in custody or on mandatory supervision-and the terms of such supervision-but may not:
  - a. Increase the total length of the sentence imposed by the previous court;
  - b. Increase the total length of the actual custody time imposed by the previous court;
  - c. Increase the total length of mandatory supervision imposed by the previous court; or
  - d. Impose additional, more onerous, or more restrictive conditions of release for any previously imposed period of mandatory supervision.
2. A requirement that the second or subsequent court determine the county or counties of incarceration or supervision, including the order of service of incarceration or supervision.
3. A requirement that to the extent reasonably possible, the period of mandatory supervision be served in one county and after completion of any period of incarceration.
4. A requirement that the second or subsequent court calculate the defendant's remaining custody and supervision time in accordance with rule 4.472.
5. Specific factors for the court to consider when making its sentencing determination, including factors relevant to the appropriateness of supervision and incarceration in each respective county.
6. A requirement that if the defendant is ordered to serve only a custody term without supervision in another county, the defendant must be transported at such time and under such circumstances as the court directs, to the county where the custody term is to be served.
7. A requirement that the defendant be transported with an abstract of the court's judgment as required by Penal Code section 1213(a), or other suitable documentation showing the term imposed by the court and any custody credits against the sentence.
8. Discretion for the court to order the custody term to be served in another county without also transferring jurisdiction of the case in accordance with rule 4.530.
9. A requirement that if the defendant is ordered to serve a period of supervision



in another county, with or without a term of custody, the matter must be transferred for the period of supervision in accordance with designated provisions of rule 4.530.

[19-047](#)

**Rules and Forms: Civil Practice and Procedure: Adjustments to Dollar Amounts of Exemptions and Civil Penalty (Action Required)**

**Summary:** Judicial Council staff recommend that the Judicial Council take three actions required by statute to reflect changes in the California Consumer Price Index: (1) adopt Appendix H of the California Rules of Court, which sets out the five-year adjustment to the dollar amount of a civil penalty for an alleged violation of Health and Safety Code section 25249.6, as required by Health and Safety Code section 25249.7(k)(2)(B)(ii); (2) revise *Current Dollar Amounts of Exemptions From Enforcement of Judgments* (form EJ-156), which includes the three-year adjustments to the dollar amounts of certain exemptions from judgments required by Code of Civil Procedure sections 703.150(a), (b), (d) and (e); and (3) approve for submission to the Legislature the report on potential adjustments to the dollar amounts of homestead exemptions, as required by Code of Civil Procedure section 703.150(c).

**Recommendation:** Judicial Council staff recommend that the Judicial Council take the following actions:

1. Adopt Appendix H of the California Rules of Court, effective April 1, 2019, which contains the revised amount of a civil penalty described in Health and Safety Code section 25249.7(k) adjusted to reflect changes in the Consumer Price Index;
2. Revise *Current Dollar Amounts of Exemptions from Enforcement of Judgments* (form EJ-156), effective April 1, 2019, which contains revised figures adjusted to reflect changes in the Consumer Price Index;
3. Approve, effective March 30, 2019, the report to the Legislature on potential adjustments to the dollar amounts of homestead exemptions from enforcement of civil judgments, in conformance with Code of Civil Procedure section 703.150(c); and
4. Direct Judicial Council staff to submit the report to the Legislature.

[19-048](#)

**Rules and Forms: Technical Form Changes to Reflect Federal Poverty Guidelines (Action Required)**

**Summary:** Judicial Council staff recommend the revision of four Judicial Council forms containing figures based on the federal poverty guidelines to reflect the changes in those guidelines recently published by the federal government.

**Recommendation:** Judicial Council staff recommend that the Judicial Council, effective March 15, 2019, revise the following documents to reflect 2019 increases in the federal poverty guidelines:

- *Request to Waive Court Fees* (form FW-001)
- *Request to Waive Court Fees (Ward or Conservatee)* (form FW-001-GC)
- *Information Sheet on Waiver of Appellate Court Fees (Supreme Court, Court of Appeal, Appellate Division)* (form APP-015/FW-015-INFO)
- *Financial Declaration-Juvenile Dependency* (form JV-132)

### [19-052](#)

#### **Rules and Forms: Miscellaneous Technical Changes (Action Required)**

**Summary:** Various members of the judicial branch, members of the public, and Judicial Council staff have identified errors in the California Rules of Court and Judicial Council forms resulting from typographical errors and changes resulting from legislation and previous rule amendments and form revisions. Judicial Council staff recommend making the necessary corrections to avoid causing confusion for court users, clerks, and judicial officers.

**Recommendation:** Judicial Council staff recommend that the Judicial Council, effective March 15, 2019, revise:

1. Temporary Restraining Order (form CH-110) to add one additional line to Item 3, “Additional Protected Persons,” to create parallel construction to Request for Civil Harassment Restraining Orders (form CH-100), which has four lines for Item 3, to ensure the petitioner carries their additional protected persons forward from the CH-100 to form CH-110.
2. Civil Harassment Restraining Order After Hearing (form CH-130) to add two additional lines to Item 3, “Additional Protected Persons,” to create parallel construction to Request for Civil Harassment Restraining Orders (form CH-100), which has four lines for Item 3, to ensure the petitioner carries their additional protected persons forward from the CH-100 to form CH-130.
3. Request to Keep Minor’s Information Confidential (form CH-160) at the first paragraph of instructions on the first page of the form, to replace the incorrect reference to “domestic violence restraining order” with “civil harassment restraining order.”
4. Order on Request to Keep Minor’s Information Confidential (form CH-165), Item 6, to replace the incorrect reference to “Attachment (2)(b)” with “Attachment 6.”
5. Findings and Orders After Hearing to Modify Delinquency Jurisdiction to

Transition Jurisdiction for Child Younger Than 18 Years of Age (form JV-682). The form is missing check boxes. There should be a check box that lists Welfare and Institutions Code section 450(a)(1), as well as check boxes in front of items 17a.(3) and 17a.(4). The addition of these check boxes does not change the substance of the form or implement any substantive legal change; in fact, item 9a.(1) references the distinction that should also be contained in Item 17. The purpose of the revisions to these forms in 2018 was to implement legislation that allows young people who were convicted of a crime related to commercial sexual exploitation of children (CSEC) to continue in extended foster care. The addition of the check boxes to this form simply clarifies whether the young person is a former CSEC youth or not.

6. Findings and Orders After Hearing to Modify Delinquency Jurisdiction to Transition Jurisdiction for Ward Older Than 18 Years of Age (form JV-683). The form would be more clear if there were check boxes in front of items 16a and 16b. Adding these two checkboxes does not change the form in any material way or make any substantive legal change. It simply enables the court to more clearly identify which of two subsections applies to allow the court to continue jurisdiction.

7. Proof of Service-Civil (form POS-040). Revise the hours during which service may be made at a party's residence, stated in item 6a. on the form, to between 8 a.m. and 8 p.m. (the form currently states 6 p.m. as the latest time), to comply with recently amended Code of Civil Procedure section 1011(b)(1), effective upon approval.

8. Petition for Writ (Small Claims) (form SC-300). Revise the citation in the footer on the first page of the form to reflect the correct rules of court relevant to the form, rules 8.970-8.977, effective upon approval. These rules are correctly cited in the accompanying information sheet (form SC-300-INFO), but are not correct in the footer of the form itself.

## 19-058

### **Rules and Forms: Technical Form Changes to Correct Inadvertent Errors (Action Required)**

**Summary:** Judicial Council staff have identified errors that are technical in nature in six Judicial Council forms related to preparation of the record for automatic appeals in capital cases. Specifically, the six forms that are to be signed and submitted by the primary counsel for each defendant and the prosecution include signature blocks that require identification of the defendant represented. This creates an ambiguity about whether the prosecution is required to sign and submit the forms. Staff recommend the signature blocks be revised to require the attorney to instead identify the party represented.

**Recommendation:** Judicial Council staff recommend that the Judicial Council, effective April 25,

2019:

1. Revise the following six forms by removing from the text of the signature block the phrase “NAME OF DEFENDANT” and replacing it with the word “PARTY” in order to clarify that primary counsel for each defendant and the prosecution in a capital trial must sign and submit each of the forms:

- *Capital Case Attorney Pretrial Checklist* (form CR-600)
- *Capital Case Attorney List of Appearances* (form CR-601)
- *Capital Case Attorney List of Exhibits* (form CR-602)
- *Capital Case Attorney List of Motions* (form CR-603)
- *Capital Case Attorney List of Jury Instructions* (form CR-604)
- *Capital Case Attorney Trial Checklist* (form CR-605)

2. Revise forms CR-602 and CR-603 to remove the words “on behalf of your client” in the instructions section of the two forms.

#### [19-056](#)

### **Court Facilities: Revised Trial Court Facility Modifications Policy (Action Required)**

**Summary:** The Judicial Council’s policy on trial court facility modifications presents the methodology and processes for identifying and prioritizing facility modifications that improve trial court facilities statewide. More than six years of implementation since the July 2012 update has necessitated updating the current policy. This update improves the policy’s overall clarity and readability for application to current business practices, particularly in defining, scoring, and prioritizing facility modifications. The Trial Court Facility Modification Advisory Committee recommends the Judicial Council adopt the revised *Trial Court Facility Modifications Policy*.

**Recommendation:** The Trial Court Facility Modification Advisory Committee recommends that the Judicial Council, effective March 15, 2019, adopt the revised Trial Court Facility Modifications Policy (see Attachment A).

#### [19-057](#)

### **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 Brett H. Morgan, Superior Court of San Joaquin 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 March 15, 2019, appoint Judge Brett H. Morgan, Superior Court of San Joaquin County, to the California Council for Interstate Adult Offender Supervision, as provided in Penal Code section 11181(c).

## DISCUSSION AGENDA

### [19-033](#)

#### **Judicial Branch Administration: Progress Report: Work Group for the Prevention of Discrimination and Harassment (No Action Required. There are no materials for this item.)**

**Summary:** A progress report of the Chief Justice's Work Group for the Prevention of Discrimination and Harassment will be provided by the work group co-chairs.

### [19-035](#)

#### **Trial Court Budget: Base Funding Floor Allocation (Action Required)**

**Summary:** The Trial Court Budget Advisory Committee recommends that the Judicial Council approve increasing the base funding floor from \$750,000 to \$800,000. Base funding is currently allocated to the two smallest trial courts, the Superior Court of Alpine County and the Superior Court of Sierra County, and is based on the minimum level of staffing and operational costs necessary. If approved, this would be the first increase to the base funding floor since the Judicial Council approved the Workload-based Allocation and Funding Methodology and would represent the first time that floor-funded courts have received an increase in their funding allocation since fiscal year 2014-15.

**Recommendation:** The Trial Court Budget Advisory Committee (TCBAC) recommends that the Judicial Council approve an increase of \$50,000 to the base funding floor for trial courts. This action would raise the level of funding to the smallest trial courts to \$800,000, effective July 1, 2019, for 2019-20 budget allocations.

**A motion was made by Presiding Judge Nadler, seconded by Judge Hopp, that this proposal be approved. The motion carried by a unanimous vote.**

### [19-034](#)

#### **Language Access Plan: Video Remote Interpreting (VRI) Pilot Project and Recommended Guidelines for VRI (Action Required)**

**Summary:** Pursuant to recommendations in the Judicial Council's *Strategic Plan for Language Access in the California Courts*, the Language Access Plan Implementation Task Force and Judicial Council staff conducted a six-month pilot project for video remote interpreting (VRI) in 2018. The pilot was evaluated by an independent, third-party evaluator, San Diego State University Research Foundation. The pilot was successful in demonstrating that when properly installed and utilized by trained court interpreters, judges, and other court staff, VRI equipment allows meaningful participation by limited English proficient (LEP) court users and provides a solution to increase access

to qualified interpreters. Among its recommendations, the task force recommends that the council approve updated Language Access Plan guidelines for VRI, which now include guidelines for recommended minimum technology requirements, and direct council staff to begin and implement a coordinated VRI program for the judicial branch contingent upon available resources.

**Recommendation:** The Language Access Plan Implementation Task Force and Judicial Council Information Technology Advisory Committee make the following recommendations to the Judicial Council:

1. Adopt the updated Language Access Plan guidelines for video remote interpreting (VRI), which now include guidelines for recommended minimum technology requirements (see Attachment A).
2. Direct Judicial Council staff to create Leveraged Procurement Agreements for courts with the two approved VRI vendors that successfully participated in the VRI Pilot Project.
3. Direct Judicial Council staff to begin and implement a coordinated VRI program for the branch in 2019.
4. Direct staff to regularly report on implementation progress of the VRI program to the council, including any need for refinement of the VRI guidelines, identification of funding needs, and/or development of new rules or forms to support appropriate use of VRI.

**A motion was made by Justice Chin, seconded by Judge Gordon, that this proposal be approved. The motion carried by a unanimous vote.**

[19-049](#)

**Rules and Forms: Criminal Procedure: Superior Court Procedures for Death Penalty-Related Habeas Corpus Proceedings (Action Required)**

**Summary:** The Proposition 66 Rules Working Group recommends the adoption of seven new rules of court to govern the filing, hearing, and adjudication of death penalty-related habeas corpus petitions in the superior courts. These proposed rules are intended to partially fulfill the Judicial Council's rule-making obligations under Proposition 66. The working group is concurrently submitting a separate report and recommendation to amend an existing rule and adopt new rules and a form related to the appeals from superior court decisions in death penalty-related habeas corpus proceedings.

**Recommendation:** The Proposition 66 Rules Working Group recommends that the Judicial Council, effective April 25, 2019:

1. Adopt rule 4.571 to establish procedures related to the filing of death penalty-related habeas corpus petitions in the superior courts, including by:

- a. Establishing the filing, service, and formatting requirements for the petition and related papers;
  - b. Establishing requirements for the supporting documents that accompany the petition;
  - c. Requiring the clerk of the superior court to file a petition submitted by an attorney notwithstanding noncompliance with the rule, and allowing the court to notify the attorney that the court may strike the petition or impose a lesser sanction if the petition is not brought into compliance within a reasonable time; and
  - d. Establishing a deadline for the superior court to take action following the filing of a petition in, or transfer of a petition to, the court;
2. Adopt rule 4.572 to provide a deadline for a superior court to transfer a death penalty-related petition to the superior court that imposed the sentence unless the court finds good cause to consider the petition;
3. Adopt rule 4.573 to establish procedures related to the filing of an informal response to an initial petition when the superior court requests an informal response by:
- a. Establishing the filing, service, and formatting requirements for an informal response and reply;
  - b. Establishing deadlines for the service and filing of an informal response and reply and authorizing the superior court to extend the deadlines for good cause shown; and
  - c. Establishing when the petitioner is entitled to the issuance of an order to show cause;
4. Adopt rule 4.574 to establish procedures following the issuance of an order to show cause by:
- a. Establishing the filing, service, and formatting requirements for a return and a denial;
  - b. Establishing deadlines for the service and filing of a return and a denial and authorizing the superior court to extend the deadlines for good cause shown;

- c. Establishing a deadline for the superior court to act following expiration of the deadline for the filing of a denial;
  - d. Establishing when the petitioner is entitled to an evidentiary hearing; and
  - e. Establishing that a cause is deemed submitted at the conclusion of an evidentiary hearing, if one is held, or if supplemental briefing is ordered after the evidentiary hearing, when the supplemental briefing is filed with the court.
5. Adopt rule 4.575 to establish requirements for the statement of decision;
6. Adopt rule 4.576 to establish procedural requirements related to successive petitions by requiring a superior court to:
- a. Provide a notice to petitioner and an opportunity to respond before dismissing the successive petition; and
  - b. Grant or deny a certificate of appealability concurrently with the issuance of its decision denying relief on the successive petition;
7. Adopt rule 4.577 to require counsel for a petitioner to deliver all files counsel maintains related to the proceeding to the attorney representing the petitioner in any appeal taken from the decision in the superior court proceeding; and
8. Refer to the Judicial Council's Rules and Projects Committee all proposals for additional substantive changes that the working group discussed or received from commenters, but that it was not able to address during its work, so that the Rules and Projects Committee may determine which advisory body, if any, should consider such proposals in the future.

**A motion was made by Mr. Kelly, seconded by Administrative Presiding Justice Hill, that this proposal be approved. The motion carried by a unanimous vote.**

[19-050](#)

**Rules and Forms: Criminal and Appellate Procedure: Appeals from Superior Court Decisions in Death Penalty-Related Habeas Corpus Proceedings (Action Required)**

**Summary:** The Proposition 66 Rules Working Group recommends amendments to an existing rule of court relating to appeals from decisions in habeas corpus proceedings and the adoption of several new rules of court and a form addressing appeals from superior court decisions on death penalty-related habeas corpus petitions. These proposed rules and the form are intended to partially fulfill the Judicial Council's rule-making obligations under Proposition 66 by establishing procedures for this new type of appeal. This proposal is submitted concurrently with a separate report to the Judicial Council containing the working group's proposal for rules governing procedures for death penalty-related habeas corpus proceedings in the superior courts.



**Recommendation:** The Proposition 66 Rules Working Group recommends that the Judicial Council, effective April 25, 2019:

1. Adopt rule 8.390 to provide that the rules in article 2 apply only to appeals from superior court decisions in death penalty-related habeas corpus proceedings, and to specify what existing appellate rules also apply to these appeals;
2. Adopt rule 8.391 to establish qualifications of counsel eligible for appointment and to require the designation of an assisting counsel or entity;
3. Adopt rule 8.392 to establish procedures for filing these appeals, including for:
  - a. Signing, serving, and filing a notice of appeal;
  - b. Requesting, responding to, and granting or denying a certificate of appealability; and
  - c. Notification of the filing of a notice of appeal by a superior court clerk;
4. Adopt rule 8.393 to implement the 30-day time limit for filing a notice of appeal set forth in Penal Code section 1509.1(a);
5. Adopt rule 8.394 to provide that a petitioner may apply for a stay of execution pending appeal, and that a reviewing court may grant interim relief pending its ruling on the application;
6. Adopt rule 8.395 to specify, with respect to the record on appeal:
  - a. The contents and form, the number of copies required, and to whom they must be sent;
  - b. That the parties may stipulate to a partial transcript;
  - c. When preparation must begin and when it must be completed; and
  - d. Procedures for augmentation and correction and for judicial notice;
7. Adopt rule 8.396 to specify, for the briefs on appeal, their contents and form, length, time for filing, and to whom they must be sent;
8. Adopt rule 8.397 to establish procedures for raising and hearing claims of ineffective assistance of counsel under Penal Code section 1509.1(b), including that:
  - a. The claim must be raised in the first brief filed by petitioner;
  - b. The claim must be accompanied by a proffer;
  - c. An evidentiary hearing may be required;
  - d. The claim may be considered by the superior court, pursuant to a limited remand;
  - e. The Court of Appeal may stay the remainder of the appeal pending the decision of the superior court on remand;
  - f. A new notice of appeal must be filed to challenge the superior court's decision on remand, and any resulting appeal may be consolidated with the pending appeal of the habeas corpus decision;
9. Adopt rule 8.398 to provide that rule 8.366 regarding finality also applies to these appeals, except that the Court of Appeal's denial of an application for a certificate of appealability is final in that court on filing;
10. Amend rule 8.388 to limit its application to non-capital habeas corpus appeals;

11. Adopt *Petitioner's Notice of Appeal-Death Penalty-Related Habeas Corpus Decision* (form HC-200) for mandatory use by petitioners; and
12. Refer to the Judicial Council's Rules and Projects Committee all proposals for additional substantive changes that the working group discussed or received from commenters, but that it was not able to address during its work, so that the Rules and Projects Committee may determine which advisory body, if any, should consider such proposals in the future.

**A motion was made by Mr. Kelly, seconded by Administrative Presiding Justice Hill, that this proposal be approved. The motion carried by a unanimous vote.**

[19-051](#)

**Court Innovations Grant Program: Superior Court of San Joaquin County - Community Supervision Court Project Presentation (No Action Required. There are no materials for this item.)**

**Summary:** The Budget Act of 2016 allocated \$25 million to the judicial branch to promote court innovations and efficiencies through a grant program. During this session, the Superior Court of San Joaquin County presented and provided information related to the court's Adult Drug Court and DUI Court Programs.

**INFORMATION ONLY ITEMS (NO ACTION REQUIRED)**

[19-036](#)

**Court Facilities: Trial Court Facility Modifications Report for Quarter 1 of Fiscal Year 2018-19**

**Summary:** This informational report to the Judicial Council outlines the allocations of facility modification funding made to improve trial court facilities in the first quarter (July through September) of fiscal year 2018-19. To determine allocations, the Trial Court Facility Modification Advisory Committee reviews and approves facility modification requests from across the state in accordance with the council's *Trial Court Facility Modifications Policy*.

[19-037](#)

**Court Facilities: Trial Court Facility Modifications Report for Quarter 2 of Fiscal Year 2018-19**

**Summary:** This informational report to the Judicial Council outlines the allocations of facility modification funding made to improve trial court facilities in the second quarter (October through December) of fiscal year 2018-19. To determine allocations, the Trial Court Facility Modification Advisory Committee reviews and approves facility modification requests from across the state in accordance with the council's *Trial Court Facility Modifications Policy*.

[19-038](#)

**Judicial Branch Budget: Quarterly Report on the Court Innovations Grant Program, Fiscal Year 2018-19, Quarter 2**

**Summary:** This report summarizes Judicial Council Court Innovations Grant Program activity for the second quarter of fiscal year 2018-19.

[19-039](#)**Trial Courts: Quarterly Investment Report for Fourth Quarter of 2018**

**Summary:** This *Trial Courts: Quarterly Investment Report for Fourth Quarter of 2018* covers the period of October 1, 2018, through December 31, 2018, 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, Statement of Investment Policy for the Trial Courts and Resolutions Regarding Investment Activities for the Trial Courts, approved by the Judicial Council on February 27, 2004.

[19-040](#)**Report to the Legislature: 2017-18 Fee Revenues and Expenditures for Court Reporter Services in Superior Court Civil Proceedings**

**Summary:** Government Code section 68086(f) requires that the Judicial Council annually report to the Joint Legislative Budget Committee information concerning court reporter fees collected under Government Code sections 68086(a)(1-2), and 68086.1; and expenditures on court reporter services in superior court civil proceedings statewide. To comply with the statute, Judicial Council staff submitted to the Joint Legislative Budget Committee on February 1, 2019, Report of Court Reporter Fees Collected and Expenditures for Court Reporter Services in Superior Court Civil Proceedings for 2017-18.

[19-041](#)**Report to the Legislature: Disposition of Criminal Cases According to Race and Ethnicity of Defendant as Required by Penal Code Section 1170.45**

**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. The Judicial Council staff submitted this annual report on March 1, 2019. The data used in this report come from the Offender-Based Transaction Statistics data set, which is a compilation of data on adult felony arrest dispositions produced annually by the California Department of Justice. This report describes patterns seen in criminal case dispositions by race/ethnicity and tests whether any available legal or demographic information can account for the patterns seen.

[19-042](#)**Report to the Legislature: Judicial Branch Courthouse Construction Program Update for 2017-18**

**Summary:** Government Code section 70371.8 requires the Judicial Council to report annually to the Joint Legislative Budget Committee and the chairs of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget on the status of the Judicial Branch courthouse construction program. The Status of Active Judicial Branch Courthouse Construction Program Projects (2017-18) satisfies the requirement of this mandate. The report includes information on the status of each project established by the State Public Works Board under section 70371.7 and an

accounting of the revenues generated and expenditures made in the Immediate and Critical Needs Account.

[19-043](#)

**Report to the Legislature: Compliance With Welfare and Institutions Code Section 304.7**

**Summary:** The attached report, submitted to the Legislature annually as required by Welfare and Institutions Code section 304.7(c) concerns compliance by judges, commissioners, and referees with the education requirements of the statute. The information provided in this report was gathered by staff of the Judicial Council's Center for Judicial Education and Research from a response form completed by the courts in December 2018.

[19-044](#)

**Report to the Legislature: Evaluation of the Effectiveness of Family Code Section 4007.5**

**Summary:** On October 8, 2015, Governor Brown signed Assembly Bill 610 (Jones-Sawyer; Stats. 2015, ch. 629) into law, enacting Family Code section 4007.5, which authorizes a local child support agency to (1) suspend current child support obligations during an obligor's period of incarceration or involuntary institutionalization, provided certain conditions are met and (2) administratively adjust account balances accordingly. Assembly Bill 610 requires the Department of Child Support Services and the Judicial Council to conduct an evaluation of the effectiveness of the administrative adjustment process, including a review of the ease of process to the obligor and obligee, the number of cases administratively adjusted, the number of cases adjusted in court, and the number of cases not adjusted. This report was submitted to the Assembly Judiciary Committee and Senate Judiciary Committee in fulfillment of this mandate.

[19-053](#)

**Report to the Legislature: Semiannual Report on Contracts for the Judicial Branch for the Reporting Period of July 1 through December 31, 2018**

**Summary:** Public Contract Code section 19209 and the Judicial Branch Contracting Manual require that the Judicial Council submit a report semiannually to the Joint Legislative Budget Committee and the State Auditor listing (1) all vendors or contractors receiving payments from any judicial branch entity and their associated distinct contracts; (2) for every vendor or contractor receiving more than one payment, the amount of the payment, type of goods or services provided; and (3) judicial branch entity receiving the goods or services. Therefore, Judicial Council staff submitted this report on February 1, 2019, which listed all judicial branch entity contracts that were amended during the reporting period covering July 1 through December 31, 2018.

## Appointment Orders

[19-059](#)

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

## Adjournment

With the meeting's business completed, the Chief Justice adjourned the meeting at approximately 12:15 p.m.

*Respectfully submitted by Administrative Director Martin Hoshino, Secretary to the Judicial Council, on May 17, 2019.*