

COMMISSION ON UNIFORM STATE LAWS

Item 018 from the General Fund

Budget p. LJE 9

Requested 1981-82	\$46,162
Estimated 1980-81	43,142
Actual 1979-80	38,844
Requested increase \$3,020 (+ 7.0 percent)	
Total recommended reduction	None

GENERAL PROGRAM STATEMENT

The Commission on Uniform State Laws sponsors the adoption by California of uniform codes or statutes developed by the National Conference of Commissioners wherever compatibility with the laws of other jurisdictions is considered desirable. The California commissioners attend the annual conference of the national body, at which time the various uniform codes developed or modified by it in the past year are reviewed and submitted to the total membership for consideration and recommendation. The recommended uniform codes deemed by the California members to be appropriate for implementation in California are then presented to the Legislature for consideration.

The California commission consists of seven members—four appointed by the Governor, two members of the Legislature (one selected by each house), and the Legislative Counsel. All seven members must belong to the California State Bar.

ANALYSIS AND RECOMMENDATIONS

We recommend approval.

The budget proposes an appropriation of \$46,162 from the General Fund for support of the Commission on Uniform State Laws in 1981-82. This is \$3,020, or 7 percent more than current year estimated expenditures. The increase consists of \$479 in the cost of travel and a 7 percent increase, from \$36,300 to \$38,841, in the annual membership dues that the state must pay to the national organization. These increases appear to be justified.

JUDICIAL

Item 025 from the General Fund and various funds

Budget p. LJE 10

Requested 1981-82	\$34,868,780
Estimated 1980-81	29,935,653
Actual 1979-80	26,311,782
Requested increase (excluding amount for salary increases) \$4,933,127 (+ 16.5 percent)	
Total recommended reduction	\$3,830,180

1981-82 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
025-001-001	Judicial Support	General	\$32,131,072
025-001-044	Judicial Support	State Transportation	49,300
025-101-001	Legislative Mandates	General	2,688,408
	Total		\$34,868,780

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONSAnalysis
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| 1. <i>Second Law Clerks. Reduce Item 025-001-001 by \$1,687,400.</i> | 7 |
| Recommend deletion of 59 additional law clerks for the Courts of Appeal. | |
| 2. <i>Additional Judges and Related Staff. Reduce Item 025-001-001 by \$1,781,550.</i> | 7 |
| Recommend deletion of 15 judges and 45 related staff for the Courts of Appeal because additional judgeships are not authorized by existing law. | |
| 3. <i>Workload Analysis. Recommend study of weighted caseload system for appellate judgeships.</i> | 8 |
| 4. <i>Workload Review. Recommend review of appeals to determine alternatives to adding appellate judgeships.</i> | 9 |
| 5. <i>Court Clerks. Reduce Item 025-001-001 by \$30,665.</i> | 9 |
| Recommend deletion of two clerical positions for the Courts of Appeal. | |
| 6. <i>Law Clerks—Workload. Reduce Item 025-001-001 by \$60,200.</i> | 10 |
| Recommend deletion of two law clerks for the Court of Appeal, First District. | |
| 7. <i>Additional Law Clerks. Reduce Item 025-001-001 by \$154,665.</i> | 10 |
| Recommend deletion of six law clerks for the Supreme Court. | |
| 8. <i>Appointed Counsel Fees—Supreme Court. Reduce Item 025-001-001 by \$16,800.</i> | 11 |
| Recommend reduction to reflect prior experience. | |
| 9. <i>Operating Expenses. Reduce Item 025-001-001 by \$8,900.</i> | 13 |
| Recommend reduction of operating expenses for the Commission on Judicial Performance. | |
| 10. <i>Court Interpreter Services. Reduce Item 025-101-001 by \$90,000.</i> | 13 |
| Recommend reduction to reflect prior experience. | |

GENERAL PROGRAM STATEMENT

The California Constitution vests the state judicial power in the Supreme Court, the courts of appeal and the superior, municipal and justice courts. The Supreme Court and the five courts of appeal are wholly state supported. The remaining courts are supported primarily by the counties. The state, however, provides a major portion of each superior court judge's salary, an annual \$60,000 block grant for each superior court judgeship created after January 1, 1973, and the employer contributions to the Judges' Retirement Fund for superior and municipal judges. Fines, fees, and forfeitures collected by the courts are paid into each county's general fund to be distributed to the cities, the county, districts and state special funds as required by law.

The Supreme Court and courts of appeal hear appeals from the trial courts and have original jurisdiction over certain writs such as habeas corpus, mandamus, and prohibition.

Judicial Council

The Judicial Council consists of the Chief Justice; one other Supreme Court justice; three courts of appeal, five superior, three municipal, and two justice court judges; four members of the State Bar and one member of each house of the Legislature. The council's purpose is to improve the administration of justice by surveying the judicial business, making recommendations to the courts, the Governor and the Legislature relative to the judicial functions, and adopting rules for

JUDICIAL—Continued

the orderly administration of the courts.

The Judicial Council also receives federal grants directly from the federal government and through the Office of Criminal Justice Planning to fund studies and demonstration projects designed to improve judicial administration.

Commission on Judicial Performance

The Commission on Judicial Performance receives, investigates, holds hearings on, and makes recommendations to the Supreme Court on complaints relating to the qualifications, competency and conduct of the judiciary. It may recommend to the Supreme Court that a judge be retired for disability, censured or removed for any of the causes set forth in the State Constitution.

ANALYSIS AND RECOMMENDATIONS

The budget proposes appropriations of \$34,868,780 from the General Fund (\$34,819,480) and the State Transportation Fund (\$49,300) for support of judicial functions in 1981-82. This is an increase of \$4,933,127, or 16.5 percent, over the current year estimated expenditures. The total expenditure will increase by the amount of any salary or staff benefit increase approved for the budget year.

Table 1 shows the budget program and source of funds for judicial functions in 1981-82.

Table 1
State Judicial Functions
Budget Summary

<i>Funding</i>	<i>Estimated</i> <i>1980-81</i>	<i>Proposed</i> <i>1981-82</i>	<i>Change</i>	
			<i>Amount</i>	<i>Percent</i>
General Fund	\$29,886,453	\$34,819,480	\$4,933,027	16.5%
State Transportation Fund.....	49,200	49,300	100	0.2
Reimbursements.....	1,232,546	258,796	-973,750	-79.0
Totals	\$31,168,199	\$35,127,576	\$3,959,377	12.7%
<i>Program</i>				
Courts of Appeal	\$17,080,661	\$21,053,200	\$3,972,539	23.3%
Supreme Court	4,129,229	4,297,838	168,609	4.1
Judicial Council.....	7,179,071	6,839,062	-340,009	-4.7
Commission on Judicial Performance	190,830	249,068	58,238	30.5
Legislative Mandates.....	2,588,408	2,688,408	100,000	3.9
Totals.....	\$31,168,199	\$35,127,576	\$3,959,377	12.7%
Personnel-Years.....	474.4	603.1	128.7	27.1

It shows an overall increase in the Judicial budget of \$3,959,377 from all funds (including \$258,796 in reimbursements). This amounts to a 12.7 percent increase over current year estimated expenditures. The net increase results from (1) a General Fund increase of \$4,933,027, or 16.5 percent, (2) an increase of \$100, or 0.2 percent, in State Transportation monies, and (3) a reduction of \$973,750, or 79 percent, in reimbursements due to completion of 10 grant-funded projects.

The requested increase in expenditures is largely due to proposed program changes, which are displayed in Table 2.

Table 2
Significant Program Changes—Judicial

	<i>Personnel- Years</i>	<i>Amount</i>
1. Permanent one-year limited term law clerks—Supreme Court ..	6	\$154,665
2. Court-appointed counsel in criminal appeals	—	16,445
3. Permanent one-year limited term law clerks—Courts of Appeal	63	1,808,695
4. Additional judgeships and related staff—Courts of Appeal.....	60	1,781,550
5. Court appointed counsel in criminal appeals	—	569,780
6. Law librarians—Courts of Appeal	4	145,952
7. Continuing judicial studies program—Judicial Council	—	172,523
8. Studies required by statute—Judicial Council	—	109,100
9. Additional temporary help, operating expenses and equipment— Commission on Judicial Performance	0.8	52,485
10. Court interpreter services—Legislative mandate (Chapter 158, Statutes of 1978)	—	100,000
Total		<u>\$4,911,195</u>

COURTS OF APPEAL

The budget proposes total expenditures of \$21,053,200 for support of the five courts of appeal in 1981–82. This is an increase of \$3,972,539, or 23.3 percent, over current year estimated expenditures. Further increases will result if any salary or staff benefit increases are approved for the budget year.

The proposed increase is due to requests for 63 additional law clerks (\$1,808,695), 15 new appellate court judges plus 45 related staff (\$1,781,550 for six months), an increase in appointed counsel fees (\$569,870), four law librarians (\$145,952), and routine price and merit salary adjustments. The increase would be greater except for a one-time judicial salary adjustment of \$492,332 made during the current year as a result of the California Supreme Court decision in *Olson v. Cory*. This case related to the constitutionality of changing the judicial salary-setting formula during a judge's term of office. If current year expenditures are adjusted to exclude this one-time expenditure, the proposed increase for the Courts of Appeal in 1981–82 becomes \$4,464,871, or 26.9 percent.

Is a Second Law Clerk Cost Effective?

We recommend deletion of 59 permanent one-year limited-term law clerks, for a savings of \$1,687,400 to the General Fund (Item 025-001-001).

The courts of appeal are requesting 59 permanent one-year limited-term law clerks at a cost of \$1,687,400. This would provide a second law clerk to each judge. Current staffing policy provides one law clerk and one secretary per judge. A similar request was made in the 1980–81 Governor's Budget.

A two-year pilot project to determine the effectiveness of a second law clerk per judge was funded in 1978–79, with a scheduled June 30, 1980, completion date. In enacting the 1980 Budget Act, the Legislature deleted funds requested for a second law clerk per judge because the preliminary data from the demonstration project did not demonstrate that the second clerk was cost-effective. The Legislature, however, approved continuation of the eight positions in the pilot project until June 30, 1981.

According to the Judicial Council, the final report on the experimental program is to be submitted to the Legislature in March 1981. Without evidence from the report that a second law clerk per judge is cost-effective, we are unable to recommend approval of the budget request. Accordingly, we recommend that the 59 positions be deleted, for a General Fund savings of \$1,687,400.

Legislation Required to Establish New Appellate Judgeships

We recommend the deletion of funds for 15 proposed new appellate court judges plus 45 related positions, operating expenses and equipment because the proposed judicial positions are not authorized by existing law, for a total reduction of \$1,781,550 (Item 025-001-001).

JUDICIAL—Continued

Current law authorizes 59 appellate judgeships. The Governor's Budget requests funding for 15 additional justices and related staff, at a cost of \$1,781,550 for the period from January 1 through June 30, 1982. The ongoing cost of these positions would be \$2,513,100.

The Legislature generally has followed the policy that the Budget Bill should provide the funds only for the statutorily authorized number of judicial positions and supporting staff, and that when workload indicates the need for additional judicial positions, such new positions should be proposed in separate legislation. The Governor's Budget indicates that the administration intends to propose legislation to establish the additional judgeships.

Given the Legislature's policy, we recommend that funding for the unauthorized judgeships and supporting staff be deleted from the Budget Bill and considered in connection with the authorizing legislation.

We note that this request also includes funding for a second attorney law clerk per judge. We recommend that a decision on these additional clerks reflect legislative action with respect to the second law clerk requested for each of the currently authorized appellate judges.

Are All the New Judgeships Needed?

The Judicial Council justifies the need for the additional judgeships, using a workload standard of 105 written opinions per judge. This is the average number of opinions issued per judge between July 1978 and July 1980, and includes both "by the court" and judge-authored opinions.

An undetermined number of the "by the court" opinions are prepared by the central research attorneys assigned to each court. In 1976-77 "by the court" opinions numbered 1,792 out of a total of 5,905 written opinions, or 30.4 percent. In 1978-79, the "by the court" opinions declined to 1,130 out of a total of 6,031 written opinions, or 18.7 percent. While this one-year decline is not sufficient to show a trend it indicates either a change in the nature of the cases appealed to the courts or a conscious shift of workload from central research attorneys to judges. The latter would be contrary to prior legislative intent which calls for the courts to substitute central research attorneys for additional judges to the extent that the workload permits. If central research attorneys can handle the workload which otherwise would be assigned to judges, single attorney positions can be substituted for not only an additional judge but also for the staffing related to the new judgeship.

We have requested the Judicial Council to update the data on "by-the-court" opinions prepared by the central research attorneys for 1979-80, and to project output from these attorneys in 1980-81 and 1981-82. This additional workload information should be available to the Legislature at the time it considers legislation authorizing the additional judgeships.

Improved Workload Analysis Needed

We recommend that the Legislature adopt supplemental report language directing the Judicial Council to explore the feasibility of constructing an improved weighted caseload system, or other appropriate means for determining appellate judgeship requirements.

The request for additional judges emphasizes the need for improved workload information. Our analysis indicates that basing additional judgeships on the number of written opinions is not adequate. This method does not take into account the differences in workload requirements among the various types of filings, and fails to distinguish between matters which could be handled primarily by central legal research staff and those which must be considered entirely by judges. Consequently, the Legislature needs a better method for determining appellate judgeship requirements than the one now used by the Judicial Council.

Our analysis indicates that an improved weighted caseload system can be derived to more accurately show the need for additional judges and/or central legal research positions. Moreover, improved management of appellate court resources could be achieved if the system included a means of measuring case disposition on a weighted unit basis. Therefore, we recommend that the Judicial Council explore the feasibility of using a weighted caseload system for measuring the workload of the courts of appeal.

Can Appellate Workload be Reduced by Improving the Trial Courts?

We recommend that the Legislature adopt supplemental report language directing the Judicial Council to review an adequate sampling of appellate cases to determine the reasons for the appeals and identify alternatives for reducing the number of appeals.

The continuing increase in appeals from the trial courts is responsible for requests to increase the number of appellate court judgeships. Because each judgeship costs the General Fund a minimum of \$180,000, it is important to explore alternatives for reducing workload in these courts in ways that do not erode due process protections.

Appeals from the trial courts may be based on questions of law or procedural errors. The Judicial Council currently provides training and orientation programs for new judges. The council, however, does not have a formal information system that relates this training to the types of errors made most frequently. A detailed review of appellate cases might indicate that other approaches, such as additional judicial training for trial court judges, improved procedures and/or additional support staffing for the trial courts, could further reduce the need for additional appellate judgeships.

Therefore, we recommend that the Judicial Council review an adequate sampling of appellate cases to determine the reasons for appeal and identify alternatives for reducing the number of appeals.

Court Clerk Staffing

We recommend the deletion of two clerical positions, for a savings of \$30,665 (Item 025-001-001).

The budget proposes the establishment of a clerk I for the first district and two clerk typists for the second district on the basis of an increase in the number of filings. The workload data submitted to justify this request shows that the requested positions would provide one clerical position per 250 case filings in the first district and one position per 233 filings in the second district. In prior years, these two districts operated with ratios of one to 253 (the first district) and one to 263 (the second district).

Use of a workload standard of one clerical position to 250 case filings, which has been achieved in both districts, would justify approval of the request for the first district. However, the third district is projected to have a ratio of one clerical to 188 case filings in the budget year. If, instead of adding a new position to the first district, one position was transferred from the third to the first district, both of these districts would have ratios of one to 250 or better.

Moreover, if one of the two positions requested for the second district was approved, the district would have a ratio of one to 248.5.

On this basis, we recommend deletion of two of the three requested positions and the shift of one position from the third to the first district, for a savings of \$30,665.

JUDICIAL—Continued**Law Clerks for Central Research Staff**

We recommend the deletion of two permanent one-year limited term law clerks, for a General Fund savings of \$60,200 (Item 025-001-001).

The budget proposes the establishment of four law clerks for the central research staffs of the various districts on the basis of projected increases in case filings. The request includes two additional clerks for the first district and one each for the third and fifth district.

A review of the projected filings per attorney indicates that the additional attorney law clerks requested for the third and fifth districts would result in an average of 87 filings per attorney in these districts. This ratio is about equal to the average filings per law clerk in the five districts. The additional positions would, however, provide a higher staffing level than that budgeted for the second district, which has one law clerk per 96 filings, and the fourth district, which has one law clerk per 91 filings. Neither of these districts is asking for an increase in their staffing level.

The two additional law clerks requested for the first district would provide a central research staffing level of one clerk per 76 filings, which is considerably higher than the staffing level in the other four districts. Even without the two new positions, central research law clerks in the first district would need to handle only an average of 81 appeals per attorney, which is still below the ratio for the other courts. Consequently, we see no need for the two additional positions, and recommend that they be deleted, for a savings of \$60,200.

Law Librarians

We recommend approval.

The appellate courts are requesting a law librarian for each of the first, third, fourth, and fifth appellate districts. The second district is currently authorized one such position.

The courts indicate that the positions would maintain the existing law library and assist in maintaining and utilizing the new automated legal research system that will be installed in the courts. The positions would allow the courts to operate the law libraries more efficiently and expedite the judicial process.

To the extent that the automated legal research and other efficiencies may flow from the librarian positions, there should be more efficient use made of judges and legal staff with a resultant decrease in the need for additional judges and staff. The computerized law libraries available with this automated system may also reduce the need for law books.

SUPREME COURT

The budget proposes an appropriation of \$4,297,838 from the General Fund for support of the Supreme Court in 1981-82. This is \$168,609, or 4.1 percent, above estimated current year expenditures. In addition to routine merit salary and price adjustments, the proposed increase results from requests for six new law clerks, a study of the space needs of the Supreme Court, and an increase in appointed counsel fees.

Law Clerks

We recommend deletion of funding for the addition of six law clerks because the positions do not appear justified on a workload basis and the Judicial Council's report on the law clerks pilot project is not available, for a General Fund savings of \$154,665 (Item 025-001-001).

The budget proposed the addition of six permanent one-year limited term law clerks for the Supreme Court, at a cost of \$154,665. The positions would be perma-

nently approved in the budget, but filled on a one-year only basis. The Governor's Budget indicates that the positions would provide a second attorney law clerk to each of the six associate justices.

The budget change proposal for these six positions indicates that they are needed on a workload basis. The proposed positions, plus the currently authorized positions, would provide one attorney for each 110 filings in the court. The existing number of staff handled 118 filings per attorney in 1974-75, 111 in 1976-77, 118 in 1977-78, 108 in 1978-79, 118 in 1979-80, and 119 in 1975-76. Without evidence that such output ratios cannot be achieved in the future, all six of the additional positions cannot be justified on a workload basis. If only three positions were added, it would result in a 119 to one ratio of filings per attorney, the same ratio achieved in 1975-76.

Furthermore, the requested positions are similar to the 74 positions requested in this budget to provide a second law clerk for the 59 currently approved and the 15 proposed appellate court judges. Accordingly, we believe it would be premature to add even three positions in the absence of evidence from the pilot project, discussed earlier, that additional law clerks are cost-effective.

Appointed Counsel Fees Overbudgeted

We recommend that the \$38,500 requested for fees for appointed counsel be reduced to \$21,700 on the basis of past experience, for a General Fund savings of \$16,800 (Item 025-001-001).

The Supreme Court is requesting \$38,500 to provide fees for counsel appointed to represent indigent criminal appellants. This represents an increase of \$16,445 over the estimated \$22,055 expenditure for this purpose in the current year. The request is based on an average fee of \$900 plus \$100 expenses for 13 criminal appeals, and \$1,400 plus \$300 expenses for 15 death penalty appeals.

According to the court's staff, private counsel was paid an average award of \$455 plus \$95.45 for related expenses, for 18 cases in 1979-80. Five claimants paid in the first five months of 1980-81 received an average award of \$445 plus expenses of \$77.62. The court states that, because of the extremely low awards, it is exceedingly difficult to identify private counsel who will accept appointment to cases, especially death penalty cases.

Our analysis of past expenditures indicates that, if there is a problem in getting private counsel to accept cases, it has not been caused by a shortage of funds appropriated for this purpose. Actual expenditures of the funds appropriated for this purpose during the past three years are shown in Table 3.

Table 3
Supreme Court
Appointed Counsel Expenditures
1977-78 to 1979-80

	<i>Amount Budgeted</i>	<i>Amount Expended</i>	<i>Difference</i>
1977-78	\$19,500	\$9,200	-\$10,300
1978-79	17,550	13,440	-4,110
1979-80	17,550	12,352	-5,198

Using actual payment data for 1979-80, we recommend that \$21,700 be approved for appointed counsel in 1981-82. This would provide an average of \$816 for each of the 28 claimants expected to be paid in the budget year. This is 50 percent more than the amount paid per claimant since July 1, 1979.

The amount recommended for approval would still provide for an increase of \$9,348, or 75.7 percent, above the 1979-80 actual expenditure level.

JUDICIAL—Continued**JUDICIAL COUNCIL**

The budget proposes \$6,839,062 for support of the Judicial Council in 1981-82, including \$6,544,422 from the General Fund, \$49,300 from the State Transportation Fund, and \$245,340 in reimbursements. The amount proposed is a decrease of \$340,009, or 4.7 percent, below the estimated current year expenditures of \$7,179,071. The net decrease results from a reduction of \$973,750 in reimbursements (federal funds) which is partly offset by normal merit salary and price adjustments, \$65,220 in new position costs, and state funding for two activities that previously were federally funded. These two activities include the Continuing Judicial Studies program and publication of the judges bench guides for the trial courts and workbooks for the California Judicial College.

Continuing Judicial Studies Program

We recommend approval.

The continuing Judicial Studies Program (CJSP) was created in March 1979 as a federally financed educational activity of the Judicial Council and its education and research section, the Center for Judicial Education and Research (CJER).

According to the Judicial Council, CJSP is designed to fulfill three major educational needs of mid-career judges:

1. Periodic, comprehensive updates of the latest procedural and substantive law developments, so that they are able to maintain their judicial competence.
2. A thorough knowledge of the law relating to new court assignments, as well as the necessary skills and techniques for handling the various court proceedings fairly, correctly, and efficiently.
3. Periodic reexaminations of their judicial philosophies, attitudes, work habits, and roles as public servants, and a revitalization of their perspectives and their dedication to public service.

The first eighteen months of the project was used to develop the program, with the first training program presented in January 1981. Because federal funding will terminate on June 30, 1981, General Fund support of \$172,523 for two positions and operating expenses, will be necessary to continue the program.

Reports on Court Reporter Income and Activities

We recommend approval.

The budget requests an administrative analyst plus related operating costs and equipment, at a total cost of \$37,300 to maintain records and make an annual report to the Legislature. The council is required to report on the number of transcripts prepared by official court reporters as well as data on their income, expenses, and time expended by these reporters. The Legislature requires the reports submitted by the reporters to be audited.

COMMISSION ON JUDICIAL PERFORMANCE

The budget request for the Commission on Judicial Performance is \$249,068. This is an increase of \$58,238, or 30.5 percent, above estimated current year expenditures of \$190,830. The increase is due to merit salary adjustments, price increase, and increased temporary help and operating expenses and equipment. The increase of 0.8 of a position at a cost of \$14,000 appears to be necessary due to workload increase.

Operating Expense Overbudgeted

We recommend that operating expenses be reduced by \$8,900 to eliminate overbudgeting (Item 025-001-001).

The budget requests \$76,365 for operating expenses and equipment for the commission. However, total operating expenses are overstated in two categories, namely out-of-state travel (\$1,915) and consultant services (\$6,985). This overbudgeting appears to have resulted from adding the total (rather than incremental) requirements to the baseline budget. Therefore, we recommend that operating expenses be reduced by \$8,900.

LEGISLATIVE MANDATES

The budget proposes \$2,688,408 from the General Fund to reimburse local government for court-related state mandated programs, as shown in Table 4.

Table 4
Judicial Council
Legislative Mandates

Program	Estimated 1980-81	Proposed 1981-82	Change	
			Amount	Percent
1. Circuit Justice Court Judges' Salaries (Chapter 1355, Statutes of 1976)	\$57,750	\$57,750	—	—
2. Economic Litigation Study Project (Chapter 960, Statutes of 1976)	30,658	30,658	—	—
3. Court Interpreter Services (Chapter 158, Statutes of 1978)	—	100,000	\$100,000	—
4. Judicial Arbitration (Chapter 743, Statutes of 1978)	2,500,000	2,500,000	—	—
Totals	\$2,588,408	\$2,688,408	\$100,000	3.9%

Court Interpreter Services Overbudgeted

We recommend that funding to reimburse the counties for costs mandated by Chapter 158, Statutes of 1978, be reduced by \$90,000 (Item 025-101-001) to reflect actual expenditures.

Table 4 shows that the budget requests \$100,000 for Court Interpreter Services. Actual expenditures for this program in 1979-80 totaled \$2,625. As of October 31, 1980, eight county claims for reimbursements, totaling \$3,531, have been received for the current fiscal year. We asked the Judicial Council, Department of Finance, and the Controller's Office for supporting data on this request without success. Therefore, based on the actual expenditure level for the first two years of this program and the low number of claims filed in the current year, we recommended that Item 025-101-001 be reduced by \$90,000.

JUDICIAL COUNCIL—CAPITAL OUTLAY

Item 025-301 from the General
Fund, Special Account for
Capital Outlay

Budget p. LJE 15

Requested 1981-82	\$495,788
Recommended approval	342,100
Recommended reduction	153,688

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

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1. *Office Alterations—San Diego State Building. Reduce by \$98,850.* 14
Recommend equipment funds and excess construction funds be deleted.
2. *Office Alterations—San Bernardino State Building. Reduce by \$54,838.* 15
Recommend equipment funds and excess construction funds be deleted.
3. Budget Language. Recommend adding language to clarify intent of capital outlay appropriations. 15

ANALYSIS AND RECOMMENDATIONS

The budget includes \$495,788 from the General Fund, Special Account for capital outlay, for office alterations and equipment for the courts. Table 1 summarizes the request.

**Table 1
Judicial Council
Capital Outlay 1981-82**

	<i>Budget Request</i>	<i>Analyst's Proposal</i>
Fourth District Court of Appeals		
Division I—San Diego		
—Alterations to office building.....	\$331,650	\$241,300
—Equipment	8,500	0
Subtotals, Item 025-301-036 (a)	\$340,150	\$241,300
Division II—San Bernardino		
—Alterations to office building.....	\$140,000	\$100,800
—Equipment	15,638	0
Subtotals, Item 025-301-036 (b)	\$155,638	\$100,800
Totals	\$495,788	\$342,100

Office Alterations—San Diego

We recommend Item 025-301-036 (a) be reduced by \$98,850 in order to delete equipment funds and reduce the amount of construction funds related to inflation.

The budget proposes \$340,150 to alter space in the San Diego state office building occupied by Division I of the Fourth Appellate District, Court of Appeals. The court has occupied this space since the state building was constructed in 1954. Additional judgeships and related staff have been created by statute since that time, but the building has not been remodeled to accommodate this additional staff. This project would modify the building to provide (1) a functional arrangement for the present judges and staff and (2) additional library space. In addition,

the project would eliminate existing fire and life safety deficiencies as well as provide access for the physically handicapped. The budget proposes \$331,650 for preliminary plans, working drawings, and construction of the alterations, and \$8,500 for equipment.

The Department of General Services, Space Management Division (SMD), has prepared an estimate of costs for the proposed alterations to the San Diego state office building. The December 1980, SMD estimate for this work was \$220,330, compared with the budgeted amount of \$331,650. The department indicates that the SMD estimate has been increased on the basis that inflation between December 1980 and the date construction will ultimately commence will increase costs by more than 50 percent.

Each year, the Department of Finance advises state agencies of the appropriate construction cost index to use in preparing estimates for all projects included in the Budget Bill. The Department of Finance inflationary adjustment for the 1981-82 budget is 8 percent above the 1980-81 index. Thus, the proposed budget for this project includes an amount for project inflation which substantially exceeds the Department of Finance estimate.

Our analysis indicates that a total project cost of \$241,300 would provide sufficient funds for this project based on the Department of Finance approved construction cost index. Upon receipt of construction bids, any additional construction funds required for inflationary cost increases will be allocated by the Department of Finance from funds appropriated for this purpose. The proposed construction funds for this project are overstated, and we, therefore, recommend that Item 025-301-036(a) be reduced by \$90,350.

The budget also proposes \$8,500 for unidentified equipment that apparently is related to the office alteration project. We have not received any information delineating the specific items proposed for purchase. According to the department, the proposed alterations are based on the needs of the present staff at the Division I Court, not on any growth in staff. Adequate equipment funds were provided for existing positions through the support budget at the time that these positions were established. Consequently, there is no basis on which to approve additional equipment funds, and we recommend that the \$8,500 be deleted.

Office Alterations—San Bernardino State Office Building

We recommend Item 025-301-036(b) be reduced \$54,830 to delete equipment funds and reduce the amount of construction funds related to inflationary increases.

The department has also proposed alterations in the San Bernardino state office building to accommodate the present staff of Division II of the Court of Appeals, Fourth Appellate District. The proposed alterations would provide functional space arrangements for existing judges and staff as well as provide corrections to existing fire and life safety deficiencies and handicapped access requirements.

The department indicates that \$15,638 will be used for equipment and \$140,000 will be needed for planning and construction of the proposed alteration. Our analysis of the Department of General Services' estimate indicates that this project should be budgeted at \$100,800 based on the Department of Finance's inflation index for 1981-82 fiscal year budget. The proposed equipment is not justified because the proposed alterations are to meet the requirements of existing staff. Adequate equipment funds were provided for these positions through the support budget at the time they were established.

We, therefore, recommend that construction funds be reduced by \$39,200 and the equipment request of \$15,638 be deleted, for a total reduction of \$54,838 to Item 025-301-036(b).

Budget Language Clarification. The projects for the Judicial Department will require approval of the Department of Finance and the State Public Works Board

JUDICIAL COUNCIL—CAPITAL OUTLAY—Continued

before funds can be expended for preliminary plans, working drawings, or construction. In order to make this appropriation consistent with all other capital outlay appropriations, we recommend that language be included in the Budget Bill to indicate the proposed funds are appropriated for "preliminary plans, working drawings and construction." *We recommend adoption of the following Budget Bill language:*

- (a) preliminary plans, working drawings and construct office alterations—Division I, San Diego..... \$241,300
- (b) preliminary plans, working drawings and construct office alterations—Division II, San Bernardino..... 100,800

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND

Item 039 from the General Fund

Budget p. LJE 16

Requested 1981-82	\$10,325,187
Estimated 1980-81.....	14,617,348
Actual 1979-80	10,460,146
Requested decrease (excluding amount for salary increases) \$4,292,161 (-29.4 percent)	
Total recommended reduction	None

1981-82 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
039-001-001—Supreme and Appellate Court Judges		General	\$552,563
—Government Code Section 75101		General	387,468
039-101-001—Superior and Municipal Court Judges		General	4,222,993
—Government Code Section 75101		General	5,162,163
Total			\$10,325,187

GENERAL PROGRAM STATEMENT

The Judges' Retirement Fund provides retirement benefits for municipal, superior, appellate and supreme court judges and their survivors under the Judges' Retirement System. This system is administered by the Public Employees' Retirement System.

Primary receipts of the fund consist of (1) state General Fund contributions equal to 8 percent of the payroll for all authorized judgeships, (2) contributions equal to 8 percent of salary from the active judges, (3) fees on civil suits filed in municipal and superior courts and (4) annual Budget Act appropriations from the state General Fund needed to keep the fund solvent on a year-to-year basis. Table 1 shows these receipts for the past, current and budget years.

Table 1
Receipts of the Judges' Retirement Fund
(in millions)

<i>Receipts</i>	<i>Actual 1979-80</i>	<i>Estimated 1980-81</i>	<i>Proposed 1981-82</i>
1. State Contribution			
a. For judges' retirement	\$4.7	\$5.2	\$5.5
b. Budget Act appropriations	5.7	6.8	4.8
c. Olson v. Cory ^a	—	2.6	—
Totals, State Contributions	\$10.4	\$14.6	\$10.3
2. Other receipts:			
a. Judges' contributions	\$4.6	\$5.0	\$5.4
b. Filing fees	3.2	3.3	3.5
c. Other receipts ^b6	.6	.6
Totals, Other Receipts	\$8.4	\$9.0	\$9.5
Grand Totals ^c	\$18.8	\$23.6	\$19.8

a. For retroactive benefits due to retired members. A decision of the California Supreme Court in *Olson v. Cory* resulted in cost-of-living salary adjustments for some sitting and retired judges.

b. Consists of interest income on temporary cash flow and county contributions (as employers of judges).

c. Details may not add to total due to rounding.

ANALYSIS AND RECOMMENDATIONS

We recommend approval.

The budget proposes appropriations of \$10,305,187 from the General Fund to the Judges' Retirement Fund in 1981-82. This is a decrease of \$4,292,161, or 29.4 percent, from estimated current year General Fund support. As shown in Table 1 the total consists of \$5.5 million in statutory appropriations for the state's required contribution of 8 percent of judges' salaries, and a proposed \$4.8 million Budget Bill appropriation.

The \$5.5 million contribution is an increase of \$0.3 million, or 6.8 percent, over current-year contributions. The contribution, which is tied directly to judges' salaries, will increase because (1) salaries will be adjusted for inflation automatically on July 1, 1981 and (2) 41 new judgeships which are authorized for only 6 months of 1980-81 will be filled for the full 12 months in 1981-82. The \$4.8 million Budget Act appropriation is to pay the difference between the fund's statutory income and actual 1981-82 payments.

The \$4.3 million reduction in state support is misleading, because the gap between income and outgo is actually increasing. As Table 2 shows, benefit payments will increase by \$2,544,110 in 1981-82, while budgeted income from contributions, filing fees and investments will increase by only \$818,582, a difference of \$1,725,528.

The \$4.3 million reduction occurs for two reasons. First, current year expenditures include a \$2.6 million one-time expenditure to fund a California Supreme Court decision (*Olson v. Cory*). Second, Budget Act appropriations in prior years have provided more money than was actually needed for those years, resulting in a \$2.7 million surplus in the fund. The budget proposes to use \$2.5 million of this surplus in 1981-82 in order to reduce the amount of the General Fund appropriation needed in the 1981 Budget Bill. These two factors distort the comparison of state support in the two years.

Table 2 summarizes the fund's receipts and disbursements. It shows that the fund balance will be reduced by \$2.5 million in the budget year, leaving virtually no surplus to meet any future-year costs.

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND—Continued

Table 2
Judges' Retirement Fund
Fund Condition
(in millions)

	Actual 1979-80	Estimated 1980-81	Proposed 1981-82	Change	
				Amount	Percent
Beginning Resources	\$0.2	\$1.4	\$2.7	\$1.3	92%
Receipts:					
Statutorily required contributions and fees	13.1	14.2	15.0	0.8	6
Budget Act appropriation	5.7	6.8	4.8	-2.0	-42
Olson v. Cory special allocation	—	2.6	—	-2.6	-100
Totals, Receipts ^a	\$18.9	\$23.6	\$19.8	-\$3.8	-16
Totals, Resources	\$19.0	\$25.0	\$22.5	-\$2.5	-10
Less: Disbursements					
Retirement allowances, death benefits and refunds ..	\$18.2	\$20.2	\$22.8	2.6	13
Assignments	-0.5	-0.5	-0.5	—	—
Olson v. Cory retroactive payments	—	2.6	—	-2.6	-100
Totals, Disbursements ^a	\$17.6	\$22.3	\$22.3	—	—
Funding Resources, June 30	\$1.4	\$2.7	\$0.2	-\$2.5	-93%

^a Details may not add to totals due to rounding.

Budget Impact of *Olson v. Cory Case*

The recent decision of the California Supreme Court in *Olson v. Cory* has increased both the benefit obligations and the contribution receipts of the fund.

Prior to 1977, judges received automatic cost-of-living increases equal to the California Consumer Price Index (CCPI). Beginning January 1, 1977, the Legislature froze judges' salaries for 18 months, and then allowed them to rise with the CCPI, but by no more than 5 percent annually.

Judges whose terms began under the old formula argued that they were entitled to the full cost-of-living adjustment throughout their terms, and the court agreed. Therefore, the court ruled these judges were entitled to a retroactive pay adjustment, and increased pay until their terms expire.

Because a retired judges' benefits are tied to the current salary of the judge in the position the retired judge last held, the *Olson v. Cory* decision meant that certain retired members also were entitled to retroactive adjustments. The amount required to provide these adjustments appears in the 1980-81 column of Tables 1 and 2 as a one-time-only state-funded expenditure of \$2.6 million.

Under the court decision, judges receiving higher pay would have continued to receive the higher amount until the end of their terms. As they began new terms, their salaries would have decreased to the amounts received by all other judges whose terms began while the 5 percent cost-of-living adjustment limit was in effect.

Subsequent actions taken by the voters and the Legislature, however, have changed the effects of the decision.

1. Proposition 11, approved by the electorate on November 4, 1980, set the salaries for *all supreme and appellate court judges* at the amount paid to those judges who began their terms while the 5 percent cost-of-living adjustment limit was in effect. This change became effective on January 1, 1981.
2. Chapter 835, Statutes of 1980 (SB 2060), adjusted *all superior and municipal court judges'* salaries to the weighted average of salaries paid to these two groups of judges on December 30, 1980.

If Chapter 835 had not been enacted, all superior and municipal court judges would have been receiving the lower salary amount by January 5, 1980. The 1981-82 budget for the Judges' Retirement Fund was prepared assuming that these

lower salaries would be in effect rather than the salaries approved in Chapter 835. As a result, the budget underestimates contributions to the retirement fund from the state and judges, as well as the amount of benefits to be paid to retirees from the fund. The exact amount of these adjustments is not yet known, but we anticipate that the additional costs will significantly exceed the additional receipts.

Long-Term Funding a Continuing Issue

The Judges' Retirement System operates on a pay-as-you-go basis, using virtually all current receipts to pay benefits to retired members and their survivors. No revenues are set aside to pay for the benefits that active judges are accumulating. This approach creates both short- and long-term funding problems.

1. **Annual pay-as-you-go deficits.** In the short term, annual receipts are less than annual benefit costs. The gap has grown from \$1 million in 1973-74 to \$5.5 million in 1980-81, and an estimated \$7.3 million in 1981-82. State law requires that the General Fund provide the amounts needed to cover the deficits. The deficits have resulted from wage inflation and from increased benefit allowances enacted since the 1960's, as well as from an increase in the ratio of retired to active judges. The deficit would be even larger if new judgeships, which contribute more *in the short-run* to revenues than to costs, were not created annually. Table 3 shows the increase in the system's membership.

Table 3
Membership in the Judges' Retirement Fund

Type of Judge	Actual 1979-80	Estimated 1980-81	Increase	Proposed 1981-82	Increase
			Over Previous Year		Over Previous Year
Supreme	7	7	—	7	—
Appellate	59	60	1	60	—
Superior	607	628	21	628	—
Municipal	472	491	19	491	—
Retired and survivors	640	685	45	725	40
Totals.....	1,785	1,871	86	1,911	40
Ratio of Retired to Active Members358	.366		.379	

2. **The unfunded liability problem.** At the present time, the state is not making any provision for the retirement benefits being earned by active judges. This unfunded liability, which stood at \$400 million in 1977, increases by an estimated \$30 million per year, due to increases in salaries and the absence of a reserve fund which could produce investment revenues. A reserve-based system, on the other hand, would require taxpayers to fully pay for current judicial services (including the cost of retirement benefits earned), instead of allowing them to bequeath the unfunded liability to future taxpayers.

The Legislature has directed that the Judges' Retirement System be fully funded by the year 2002. According to the most recent actuarial valuation (1977), annual revenues equal to 84.4 percent of the judicial payroll would be required to fund the existing unfunded liability by the deadline. For 1981-82, the required revenues would be \$58,548,611, which is \$38,789,788 more than projected total receipts and \$48,223,424 more than proposed state support.

While we recognize the need for some state participation in putting the fund on a sound actuarial basis, the state should not bear the entire cost of doing so. The following actions would require judges and those who use their services to help reduce the unfunded liability.

1. **Increase the judges' retirement rate.** Because judges enjoy more generous (and more costly) retirement benefits than other state employees, they should contribute a higher proportion of their salary toward retirement.

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND—Continued

2. *Reduce the level of benefits for new judges.* Provisions which are more generous than those of other state retirement systems and are particularly costly include allowances up to 75 percent of an active judge's salary, and cost-of-living increases that are tied to active judges' salary increases.
3. *Increase court filing fees and the fund's share of these fees.* Projected 1981-82 revenues from fees on civil suits filed in municipal and superior courts amount to \$3.5 million, or almost half of the budget year's pay-as-you-go deficit. Doubling or tripling them could at least minimize the need for an annual Budget Act appropriation to meet current benefit costs.

SALARIES OF SUPERIOR COURT JUDGES

Item 042 from the General Fund	Budget p. LJE 17
Requested 1981-82	\$32,522,200
Estimated 1980-81	33,541,721
Actual 1979-80	26,753,141
Requested decrease (excluding amount for salary increases) \$1,019,521 (-3.0 percent)	
Total recommended reduction	None

GENERAL PROGRAM STATEMENT

This item funds the state's share of the superior court judges' salaries and benefits. The county contribution to each judge's salary is either \$5,500, \$7,500, or \$9,500 per year, depending on the county's population. The state pays the balance of the total salary which is now set at \$59,686.

ANALYSIS AND RECOMMENDATIONS

We recommend approval.

The budget proposes an appropriation of \$32,522,200 from the General Fund to pay the state's share of superior court judges' salaries in 1981-82. This is a decrease of \$1,019,521, or 3.0 percent, below the current-year estimated expenditure. This reduction is due to the one-time salary adjustment that was required in the current year by the California Supreme Court's decision in the *Olson v. Cory* case.

Cost-of-Living Increases for Judges

Prior to Chapter 1183, Statutes of 1976, judges (except justice court judges) received annual increases on September first based on the full percentage increase in the California Consumer Price Index for the prior calendar year. Chapter 1183 prohibited a salary increase in 1977 and beginning in 1978, limited annual increases to a maximum of 5 percent.

Chapter 1018, Statutes of 1979, provided that judges receive automatic annual salary adjustments equal to the average increase granted state employees or 5 percent, whichever is less. If, however, the average increase for state employees is less than 5 percent in either of two consecutive fiscal years, Chapter 1018 provided that judges could receive an increase greater than 5 percent in the following year. Under these circumstances, an increase sufficient to bring the three-year average increase up to 5 percent could be granted, provided the increase did not exceed the increase granted to state employees. For example, if state employees received an average of 5 percent, 3 percent, and 8 percent for

three consecutive fiscal years, Chapter 1018 would allow judges to receive 5 percent, 3 percent, and 7 percent in those same years.

Olson v. Cory

In the case of *Olson v. Cory*, the State Supreme Court held that Chapter 1183, Statutes of 1976, was unconstitutional because it reduced the salary of some judges during their term of office. The court decision pertained to those superior court judges whose terms commenced prior to September 1, 1977, the date on which judicial salaries were last adjusted prior to enactment of Chapter 1183. The decision is now moot with respect to these judges' current salaries because all of them are now serving terms of office that began after the effective date of the law reducing their cost-of-living formula.

The effect of the *Olson v. Cory* decision was to provide a dual pay system for municipal, superior, and appellate court judges. In the superior courts, those judges not affected by the decision received an annual salary of \$56,915 (under Chapter 1018, Statutes of 1979) during the first half of the current year, while the judges benefiting from the decision were paid at annual rates of \$59,628 from July 1 to August 31, 1980 and \$69,281 from September 1 to December 11, 1980.

Proposition 11 and Chapter 835

A constitutional amendment approved in November 1980, made major revisions in superior court judicial salaries, effective January 1, 1981. This amendment set superior court judges' salaries equal to the annual salaries payable on July 1, 1980, for that office had the judge been elected in 1978. The constitutional amendment also authorized the Legislature to prescribe salary increases and to terminate prospective increases at any time during a judge's term, provided that the salary was not reduced below the highest salary level paid during that term.

In addition, Chapter 835, Statutes of 1980, which became effective on January 5, 1981, provides for a one-time adjustment in municipal and superior court judges' salaries on the basis of the weighted average amount paid to sitting judges of such courts as of December 31, 1980. In the future, the provisions of Chapter 1018, Statutes of 1979, will govern cost-of-living increases for all superior court judges.

The constitutional amendment restored the July 1, 1980 statutory rate (\$56,915) from January 1 to 5, 1981 for those judges affected by the *Olson v. Cory* decision. On January 5, Chapter 835, raised the pay of all superior court judges to \$59,686, an increase of \$2,771, or 4.9 percent.

STATE BLOCK GRANTS FOR SUPERIOR COURT JUDGESHIPSItem 044 from the General
Fund

Budget p. LJE 18

Requested 1981-82	\$8,460,000
Estimated 1980-81	8,460,000
Actual 1979-80	7,140,000
Requested increase—None	
Total recommended reduction	None

ANALYSIS AND RECOMMENDATIONS*We recommend approval.*

The state provides the counties with an annual block grant of \$60,000 for each new superior court judgeship established after January 1, 1973. This subvention assists the counties in providing the necessary fiscal and staff support for the additional judges.

The item provides block grants of \$8,460,000 for 141 superior court judgeships, including 21 approved during the 1980 legislative session. The state also contributes towards the salary, retirement, health and death benefits for superior court judges.

NATIONAL CENTER FOR STATE COURTSItem 046 from the General
Fund

Budget p. LJE 19

Requested 1981-82	\$14,000
Estimated 1980-81	14,000
Actual 1979-80	14,000
Requested increase—None	
Total recommended reduction	None

ANALYSIS AND RECOMMENDATIONS*We recommend approval.*

The budget proposes an appropriation of \$14,000 from the General Fund as California's membership fee in the National Center for State Courts. This is the same amount as that appropriated for the current year. The center is supported by federal grants, donations from private foundations, and state membership fees. Current membership includes all 50 states, four territories, and the District of Columbia. The \$14,000 is based on the state's population and is approximately 7 percent of the membership fees paid by the states.

The center encourages judicial reform, recommends standards for fair and expeditious judicial administration, and seeks solutions to state judicial problems. Membership entitles California to judicial research data, consultative services, and information on the views of the various states on federal legislation and national programs affecting the judicial system.