

COMMISSION ON UNIFORM STATE LAWS

Item 0180 from the General
Fund

Budget p. LJE 8

Requested 1984-85	\$58,000
Estimated 1983-84.....	51,000
Actual 1982-83	49,000
Requested increase \$7,000 (+13.7 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 commission consists of seven members—four appointed by the Governor, two members of the Legislature (one selected by each house), and the Legislative Counsel.

ANALYSIS AND RECOMMENDATIONS

We recommend approval.

The budget proposes an appropriation of \$58,000 from the General Fund for support of the commission in 1984-85. This is \$7,000, or about 14 percent, more than estimated current-year expenditures.

Approximately 85 percent of the budget is used to pay the state's annual membership fee to the national conference. The balance covers travel and per diem expenses for three meetings. The budget proposes to fund an increase in the state's membership fee—from \$38,500 in the current year to \$48,500 in 1984-85.

JUDICIAL

Items 0250 from the General
Fund and the State Transportation Fund

Budget p. LJE 8

Requested 1984-85	\$51,823,000
Estimated 1983-84.....	44,322,000
Actual 1982-83	38,931,000
Requested increase (excluding amount for salary increases) \$7,501,000 (+16.9 percent)	
Total recommended reduction	\$1,540,000
Recommendation pending	\$8,923,000

1984-85 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
0250-001-001—Support		General	\$51,456,000
0250-001-044—Support/Traffic Program		Transportation	60,000
0250-101-001—Local Assistance		General	243,000
Total, Budget Bill Appropriation			\$51,759,000
Chapter 158, Statutes of 1978		General	64,000
Total, State Funds			\$51,823,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONSAnalysis
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1. **Clerks' Offices. Reduce Item 0250-001-001 by \$80,000.** Recommend deletion of two positions that are not justified on a workload basis. 10
2. **Administrative Assistants. Reduce Item 0250-001-001 by \$42,000.** Recommend deletion of one position because its duties can be absorbed by existing personnel. 10
3. **Central Staff Attorneys. Reduce Item 0250-001-001 by \$249,000.** Recommend deletion of 4.5 positions that are not justified on a workload basis. 11
4. **Expedited Appeal Attorney. Reduce Item 0250-001-001 by \$57,000.** Recommend deletion of one attorney position that is not justified on a workload basis. 11
5. **Secretarial Positions. Reduce Item 0250-001-001 by \$202,000.** Recommend deletion of seven positions that are not justified on a workload basis. 12
6. **Equipment. Reduce Item 0250-001-001 by \$329,000.** Recommend deletion of funds for unidentified equipment purchases. 13
7. **Court Interpreter Study. Revert \$64,000 in Item 0250-495.** Recommend reversion of unneeded funds. 13
8. **Expenses for Assigned Judges. Reduce Item 0250-001-001 by \$440,000.** Recommend reduction of funds because item consistently has been overbudgeted. 14
9. **Data Processing Funds. Reduce Item 0250-001-001 by \$77,000.** Recommend addition of two positions and deletion of consulting funds, to allow Judicial Council to employ needed assistance directly. 14
10. **Appointed Counsel Fees.** Recommend Judicial Council and the State Public Defender report to the fiscal committees prior to budget hearings on appointed counsel plan. Withhold recommendation on \$8,923,000 pending receipt of additional information. 15
11. **Coordination Proceedings.** Recommend enactment of legislation to provide that counties, rather than state, pay costs of coordinated lawsuits (General Fund savings: \$500,000 annually). 17
12. **Judicial Arbitration. Reduce Item 9680-101-001 by \$1,250,000.** Recommend deletion of funds to reimburse counties for judicial arbitration program. Further recommend legislation be enacted to permit, rather than require, courts to conduct judicial arbitration program (potential General Fund savings: approximately \$4.2 million annually). 18

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

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The Supreme Court and the six courts of appeal are entirely state supported. The remaining courts are supported primarily by the counties, although the state (1) pays 86 percent to 92 percent of each superior court judge's salary, (2) provides an annual \$60,000 block grant for most superior court judgeships created after January 1, 1973, and (3) pays the employer's contribution toward health and retirement benefits for each superior and municipal court judge.

Fines, fees, and forfeitures collected by the trial courts are deposited in each county's general fund, and then distributed to the cities, the county, districts, and state special funds, as required by law. Fees collected by the courts of appeal and the Supreme Court are deposited in the state's General Fund.

The Chief Justice of the Supreme Court serves as the chairperson of the Judicial Council, and is responsible for equalizing the work of judges and expediting judicial business through, among other actions, the temporary assignment of judges to courts requesting assistance.

Judicial Council

The Judicial Council consists of the Chief Justice, one other Supreme Court justice, three court of appeal justices, five superior court judges, three municipal court judges, two justice court judges, four members of the State Bar and one member of each house of the Legislature. The council is staffed by the Administrative Office of the Courts. As required by the State Constitution, the council seeks to improve the administration of justice by (1) surveying judicial business, (2) making appropriate recommendations to the courts, the Governor, and the Legislature, and (3) adopting rules for court administration, practice, and procedure. The council also operates the Center for Judicial Education and Research, which provides education for both newly appointed and continuing judges.

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 privately admonish a judge, or 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.

The Legislature has authorized 665 positions for state judicial functions in the current year.

OVERVIEW OF THE BUDGET REQUEST

The budget proposes appropriations totaling \$51,823,000 from the General Fund (\$51,763,000) and the State Transportation Fund (\$60,000) for the support of judicial functions in 1984-85. This is an increase of \$7,501,000, or about 17 percent, over current-year estimated expenditures. This increase will grow by the cost of any salary or staff benefit increase approved for state employees in the budget year.

Table 1 shows the budget program for judicial functions in the prior, current, and budget years.

Table 1
State Judicial Functions
Budget Summary
1982-83 through 1984-85
(dollars in thousands)

	Actual 1982-83	Estimated 1983-84	Proposed 1984-85	Change from 1983-84	
				Amount	Percent
Expenditures					
Supreme Court	\$5,209	\$5,845	\$6,776	\$931	15.9%
Courts of Appeal	23,948	31,027	36,359	5,332	17.2
Judicial Council	6,183	6,956	8,140	1,184	17.0
Commission on Judicial Performance	223	288	305	17	5.9
Local Assistance	105	243	243	—	—
Legislative Mandates ^a	3,276	(5,573)	(5,573)	—	—
Subtotals	\$38,944	\$44,359	\$51,823	\$7,464	16.8%
Less reimbursements	-13	-37	—	37	100
Totals	\$38,931	\$44,322	\$51,823	\$7,501	16.9%
Personnel-Years					
Supreme Court	82.5	92.4	93.4	1	1.1%
Courts of Appeals	350.5	447.6	478.6	31	6.9
Judicial Council	77.4	91.2	94.2	3	3.3
Commission on Judicial Performance	4.2	5.1	5.1	—	—
Totals	514.6	636.3	671.3	35	5.5%

^a Beginning in 1983-84, the Governor's Budget consolidated expenditures for state-mandated local programs and funded the programs in Item 9680. In addition, the amount shown for mandates in 1982-83 includes funding for different mandates than those included in the 1983-84 and 1984-85 totals. Therefore, these amounts are not comparable.

Supreme Court. The budget proposes an appropriation of \$6,776,000 from the General Fund for support of the Supreme Court in 1984-85. This is \$931,000, or 16 percent, above estimated current-year expenditures. Of this amount, \$600,000 is requested to fund a substantial increase in the cost of appointed counsel in criminal appeals (as discussed below). An additional \$103,000 is requested for a new writ attorney position, and increases for equipment repair and maintenance. The remaining \$228,000 results from normal merit salary and price adjustments.

Courts of Appeal. For support of the six courts of appeal, the budget proposes total expenditures of \$36,359,000 in 1984-85. This is an increase of \$5,332,000, or 17 percent, over estimated current-year expenditures for these courts. The increase is largely due to the proposed addition of 31.5 new positions, expanded space needs and rent increases, and a substantial increase in the cost of appointed counsel in criminal appeals. These requests are discussed later in the analysis.

The total amount of expenditures shown in the budget document for the appellate courts in 1984-85 is *understated*. This is because salary savings for the Supreme Court and the Judicial Council as well as for the courts of appeal, are budgeted in the courts of appeal item. (The overall amount of salary savings is budgeted in accordance with Department of Finance guidelines.) This unusual budgetary practice also causes the budget to *overstate* expenditures for the Supreme Court and the Judicial Council. We estimate that the amount budgeted for support of the courts of appeal is approximately \$263,000 less than the projected cost of the courts in 1984-85.

Judicial Council. The budget proposes \$8,140,000 for support of the Judicial Council in 1984-85, including \$8,016,000 from the General Fund, \$60,000 from the State Transportation Fund, and \$64,000 from funds ap-

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propriated to the council by Ch 158/78. The proposed amount is \$1,184,000, or 17 percent, above the estimated level of 1983–84 expenditures. This increase reflects the proposed addition of three positions to the council's staff, and increases in certain expenses, as discussed below.

Commission on Judicial Performance. The budget requests \$305,000 for the Commission on Judicial Performance, an increase of \$17,000, or 6 percent, above current-year expenditures. This increase is due to routine merit salary and inflation adjustments.

ANALYSIS AND RECOMMENDATIONS**COURTS OF APPEAL****Two Clerks' Office Positions Lack Workload Justification**

We recommend the deletion of two positions proposed for the clerks' offices because the positions have not been justified on a workload basis, for a General Fund savings of \$80,000 (Item 0250-001-001).

The budget requests 6.5 new positions for the clerks' offices of the courts of appeal, at a General Fund cost of \$225,000. The request is based on the Judicial Council's workload standard of 250 filings per position.

Our analysis indicates that if 4.5 of the requested positions are approved, it would provide the various courts with staffing ratios ranging from 237:1 to 264:1. Two of the requested positions, however, are not justified, given the level of filings that the Judicial Council has projected for 1984–85. The addition of the two positions would reduce the productivity of the Fifth District from 237:1 to 203:1, and the San Bernardino division of the Fourth District from 249:1 to 199:1. The council has not explained why these two courts should be staffed at a higher level than other court locations. Accordingly, we recommend deletion of these two positions, for a General Fund savings of \$80,000.

Administrative Assistant Not Needed

We recommend deletion of a proposed Administrative Assistant position because its duties can be absorbed by existing personnel, for a General Fund savings of \$42,000 (Item 0250-001-001).

The budget requests five new positions, at a total annual General Fund cost of \$199,000, to provide administrative assistants to the Administrative Presiding Justices of the five operating courts of appeal. (No position is requested for the new Sixth District because, at the time this analysis was prepared, no judges had been appointed to serve in the district.) According to the Judicial Council, these positions would be assigned to the clerks of the court, and would provide the clerks and the administrative presiding justices with administrative and technical support.

Our review indicates that the addition of these positions should assist the courts and the Legislature in obtaining useful information on the budgets and operations of the courts that is not now readily available. The Fourth District, however, indicates that it does not need this position, because it is able to handle these duties with its existing staff. Accordingly, we recommend the deletion of one position, for a General Fund savings of \$42,000.

Attorneys Cannot Be Justified

We recommend the deletion of 4.5 proposed attorney positions that have not been justified on a workload basis, for a General Fund savings of \$249,000 (Item 0250-001-001).

The courts propose to add eight attorneys to the central staffs in the First, Second, and Fourth Districts, at a General Fund cost of \$475,000.

Our review of the workload for attorneys in the courts of appeal found that 4.5 of these positions are not justified on a workload basis.

In recent years, the courts have maintained an average of approximately 346 filings per central staff attorney. (This number overstates the actual workload of these attorneys, because it includes filings which are actually handled by judges' personal staff attorneys. The courts, however, have been unable to provide separate workload data for the two types of attorney positions.) In the current year, the average number of filings per central staff attorney ranges from 354:1 in the Fourth District to 239:1 in the Third District.

Our analysis indicates that, based on the historical statewide ratio of 346:1, 2.5 additional positions are justified in the Fourth District, and one new attorney is justified in the First District. With the additional positions, attorney productivity in these districts would be 347:1 and 352:1, respectively, in the budget year. Approval of the remaining four positions requested (two in the First District and two in the Second District), however, would reduce productivity in the First District from 352:1 to 302:1, and in the Second District from 318:1 to 285:1.

We can see no justification to budget for a productivity decline of this magnitude. Accordingly, we recommend deletion of 4.5 of the 8 proposed attorney positions, for a General Fund savings of \$249,000.

Additional Expedited Appeal Attorney Unwarranted

We recommend the deletion of one attorney position that is not justified on a workload basis, for a General Fund savings of \$57,000 (Item 0250-001-001).

The budget proposes to expand the "expedited appeal" program by continuing two limited-term clerical positions in the First and Third Districts, and establishing one new attorney position in the Third District, at a cost of \$114,000. This program, which began in February 1981, allows litigants to forego lengthy legal briefs, and instead, participate in expanded oral arguments at an earlier hearing than would otherwise occur.

For the current year, the Legislature approved two limited-term clerical positions, as well as one permanent attorney position in the Third District, but rejected a request by the Third District for an additional attorney. The Legislature also approved the First District's request to redirect an attorney from central staff to the expedited appeals program.

Preliminary studies of the expedited appeals program during 1981 and 1982 showed that it is effective in *reducing the time and money expended by litigants* taking part in the program. Because its effects on state costs were uncertain, however, the Legislature adopted language in the *Supplemental Report of the 1983 Budget Act* directing the Judicial Council to report on the program's effect on *court costs, attorney workload, and the length of time* it takes to reach a decision in cases handled by the program and those handled in the traditional manner.

In response to the Legislature's directive, the Judicial Council provided us with a report prepared in March 1983 by the American Bar Association

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(ABA), which reviewed the program's operations in the Third District. This report concludes that the program saves litigants an average of \$1,100 per case, and that it increases the productivity of both judges and court attorneys. For example, the study notes that the expedited appeal attorney handled between eight and nine appeals per month, compared to an average central staff attorney's rate of about five per month. The ABA study concludes that an attorney working on expedited appeals is *more* productive than the average central staff attorney.

While we acknowledge the benefits resulting from the expedited appeals program, we cannot recommend approval of an increase in staffing for the Third District in order to make an additional attorney available for the program. The court has not demonstrated that workload for the court as a whole has increased to the point where additional staff is needed. In fact, it may be that the reverse is true. The new position requested by the court would use the more productive expedited procedures to handle a caseload currently handled by existing attorney staff. This will reduce the average caseload of attorneys in the Third District, which already is the lowest of any of the courts of appeal. Rather than further reduce these caseloads, we suggest that the court assign an existing attorney position to handle expedited appeals. Accordingly, we recommend deletion of the proposed new position, for a General Fund savings of \$57,000.

Some Courts Are More Equal Than Others

We recommend deletion of one proposed and six existing positions that are not justified on a workload basis, for a General Fund savings of \$202,000 (Item 0250-001-001).

The budget requests \$373,000 for seven new positions and an increase in temporary help funds to provide secretarial support to central research staffs in four of the courts of appeal. The request seeks to equalize the support staffing ratios of the various courts.

On the basis of the workload data presented to us, six of these positions and the additional temporary help funds are justified. The data indicates that the additional positions will provide three of the four courts requesting positions with staffing ratios of 1.6 to 2.2 attorneys per support position. These ratios are approximately the same as the staffing ratios maintained by both the Department of Justice and the State Public Defender's office.

The Second District also requested one additional clerical position. That district, however, currently has a staffing ratio of 0.9 attorneys per support positions—*more secretaries than attorneys*. The Judicial Council has not been able to explain why this one court has a level of support staffing so significantly higher than any other court. Moreover, we could find no justification for the level of support provided to attorneys in this one court.

Accordingly, we recommend that the Legislature disapprove the request for one new position for the district. In order to bring the level of clerical support staff in the Second District more into line with the levels in other courts, we further recommend that six of the district's existing clerical positions be deleted, for a total General Fund savings of \$202,000. Adoption of this recommendation would provide the district with a ratio of 1.5 attorneys per support position.

JUDICIAL COUNCIL

Subsequent data provided. Issue withdrawn.

Amount Requested For Equipment Purchases Not Fully Justified

We recommend that the amount requested for equipment purchases be deleted because no justification has been presented on the need for these funds, for a General Fund savings of \$329,000 (Item 0250-001-001).

The budget requests a total of \$962,000 for equipment-related expenditures in 1984-85. Of this amount, \$633,000 will be used to repair and maintain equipment the courts currently operate. The budget proposes an additional \$329,000 for new equipment purchases by all judicial components during the budget year.

Last year, in reviewing the council's equipment request of \$304,000 for 1983-84, we asked the council to identify what equipment it intended to purchase with the requested funds. The council indicated that it was not able to do so because it had never before prepared such documentation. The council indicated, however, that it would provide a more detailed equipment request for the 1984-85 Governor's Budget. On this basis, we recommended approval of these expenditures in our Analysis of the 1983 Budget Bill.

This year, at the time this analysis was prepared, the council had not provided us with any information indicating a need or purpose for the funds requested for 1984-85. Moreover, the council was not able to identify what equipment it had or would purchase with its funds in the current year.

We recognize that in an operation the size of the state judiciary, some funds to purchase new equipment will be needed, in addition to expenditures for repair and maintenance of existing equipment. Lacking any justification for these expenditures, however, we have no basis for recommending that they be approved. Accordingly, we recommend that the funds requested for new equipment purchases be deleted, for a General Fund savings of \$329,000.

The \$64,000 Question

We recommend adoption of Budget Bill language (Item 0250-495) reverting to the General Fund \$64,000 appropriated to the Judicial Council by Ch 158/78 because these funds are no longer needed.

The Judicial Council proposes to spend \$64,000 in the budget year, from funds appropriated to it by Ch 158/78. The council could not tell us how it would use these funds.

Chapter 158 requires the Judicial Council and the State Personnel Board to establish standards to improve the provision of foreign language interpreter services in the superior courts. In addition, it required the Judicial Council to establish rules governing the use of interpreters in the trial courts, and to collect and analyze data on their usage. The council was required to report its findings to the Legislature by December 31, 1980. Chapter 158 appropriated \$65,000 to the council from the General Fund, without regard to fiscal year, for this purpose.

By December 1980, the council had fulfilled the requirements of the law. It had adopted rules for the use of court reporters and submitted to the Legislature a study which recommended no additional changes to the interpreter program. A total of \$1,000 was expended for the study. The balance of the appropriation, \$64,000, has been available for expenditure in the Judicial budget since 1980-81.

Our analysis indicates that the money is no longer needed to carry out

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the provisions of Chapter 158. Accordingly, we recommend the adoption of Budget Bill language to revert the unexpended surplus of these funds—\$64,000—to the General Fund:

“Notwithstanding any other provision of law, on the effective date of this act, the unencumbered balance of the appropriation provided in Chapter 158, Statutes of 1978, shall revert to the unappropriated surplus of the General Fund.”

\$115,000

Expenses of Assigned Judges Consistently Have Been Overbudgeted

We recommend the deletion of \$440,000 requested from the General Fund to fund expenses of assigned judges, because the Judicial Council consistently overbudgets for this purpose (Item 0250-001-001). Add language

The Constitution requires the Chief Justice to equalize the work of judges and to expedite judicial business by temporarily assigning judges to courts requesting assistance. The budget requests \$815,000 to provide expenses and compensation for trial court judges when they are assigned to other courts. This is the same amount requested in the current year, but it is significantly more than what has actually been spent for this purpose since 1978–80, as reported in Table 2.

Table 2
Judicial Council
Expenses For Assigned Judges
1979–80 through 1984–85
(dollars in thousands)

Year	Budgeted	Expended	Percent Spent of Total Budgeted
1979–80	\$670	\$120	18%
1980–81	704	326	46
1981–82	772	345	45
1982–83	815	243	30
1983–84	815	N/A	N/A
1984–85	815	N/A	N/A

— has expenditures from Item 0420 until 75% of funds in 0250 are used up.

Our review of actual expenditures during the years 1979–80 through 1982–83 indicates that the council has spent an average of only 35 percent of the amount budgeted to fund the expenses of assigned judges. These expenditures have ranged from \$120,000 to \$345,000, and from 18 percent to 46 percent of the amount budgeted. On the basis of recent experience, we believe it is likely that no more than \$375,000 (46 percent of \$815,000) will be needed to support this program in the budget year. Accordingly, we recommend the deletion of \$440,000 to correct for overbudgeting.

More Cost-Effective to Hire Staff than to Use Consultants

We recommend a reduction in the amount of funds requested for consulting and the addition of two permanent positions so that the council can employ needed data processing assistance directly, for a net General Fund savings of \$77,000 (Item 0250-001-001).

The Judicial Council is requesting two positions and \$399,000 to continue its implementation of various data processing projects.

Beginning in 1981–82, the council began installing an automated case

management system in the courts of appeal. Currently, systems are operating in three of the five courts. By the end of the budget year, the council expects to have the project completed for the courts of appeal and the Supreme Court. The Council is also developing automated accounting, budgeting, and personnel systems for the courts and council operations which we believe will improve significantly the quantity and quality of management information available to the courts and to the Legislature.

In addition to two permanent positions, the council is requesting \$150,000 in consulting funds to contract with the Department of General Services for the equivalent of two full-time programming positions. Our review of the council's request found that the programming positions will be needed by the council on an ongoing, rather than a temporary, basis. Furthermore, the cost to the council of employing two programmers directly, instead of contracting for them, would be \$73,000, or less than one-half the budgeted amount.

For these reasons, we do not believe it would be appropriate for the council to use consulting funds to obtain the services of programmers. Accordingly, we recommend the addition of two programmer positions to the councils' budget, at a cost of \$73,000, and a reduction of \$150,000 in consulting funds, for a net General Fund savings of \$77,000.

Too Many Uncertainties in Appointed Counsel Plan

We withhold recommendation on \$8,923,000 requested for appointed counsel fees because of uncertainties regarding the Judicial Council's plan for the provision of counsel to indigent appellants. Further, we recommend that the Judicial Council and the Office of the State Public Defender jointly report to the fiscal committees prior to budget hearings on specific unresolved issues concerning that plan.

Background. Under the State and United States Constitutions, indigent criminal defendants have a right to counsel from the time criminal charges are filed against them through the exhaustion of appeals. Prior to the establishment of the Office of the State Public Defender (SPD) in 1976, all indigent criminal appeals were handled by private counsel appointed by the court. The Legislature created the SPD in response to concerns about the quality of representation being provided to indigent appellants. The SPD consistently has been commended for the high quality of its representation.

In recent years, the SPD has handled only about one-third of all indigent criminal appeals, and the office has never taken more than 45 percent of the total cases available. As a result of a 50 percent reduction in its staff during the current year, the SPD will be able to handle considerably less than one-third of all cases in the current and budget years. Private counsel appointed by the courts will continue to represent indigent appellants in cases which the SPD does not handle.

Currently, systematic methods are used in only two courts of appeal to select and assign private attorneys to handle indigent appeals. In November 1980, the First District contracted with an organization funded by Santa Clara County, to recruit a panel of attorneys for appellate work, classify each case according to complexity, and recommend a qualified attorney in each case. When a case is complete, the group recommends to the court the appropriate level of compensation for the attorney, based on the Supreme Court's current guideline of \$40 an hour. Similar systems now operate in several other counties in the First District.

In the Fourth District, the SPD, until the current year, provided serv-

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ices similar to those provided by the Santa Clara County organization. In addition, it (1) assisted less-experienced attorneys with the preparation of their appeals, (2) reviewed attorney's briefs after the case was complete, to determine whether the attorney should be offered more or less complex cases in the future, and (3) directly handled a small number of appeals. As a result of the reduction in its budget, however, the SPD closed that office. In order to continue the provision of these services, the former SPD staff reorganized as a nonprofit organization called Appellate Defenders, Inc. (ADI). ADI currently provides these services to all three divisions of the Fourth District, through a contract with the court and the Judicial Council.

In the three remaining districts of the court of appeals and in the Supreme Court, there is currently no systematic method of selecting qualified attorneys, or determining which attorney should be assigned to a particular case.

Efforts to Improve System. In recent years, a number of difficulties with the handling of indigent appeals by appointed counsel have come to light. There are three basic shortcomings with the current system: (1) there is a shortage of qualified, private counsel willing to represent indigent appellants; (2) there are no uniform statewide procedures for appointing and paying private counsel; and (3) there is not adequate workload data which can be used to monitor and evaluate the system.

The Legislature took three specific actions during the current year to address these deficiencies. First, it attempted to maintain the SPD's role in defending indigents by rejecting the 50 percent reduction in the SPD's staff proposed in the Governor's Budget for 1983-84, and restored the reduced funds. (The Governor, however, subsequently vetoed the additional funds and returned the office's staffing to the level he originally proposed.) Second, in the *Supplemental Report to the 1983 Budget Act*, the Legislature directed the Judicial Council and the SPD to develop workload data on the cost-per-case and complexity of cases handled by the SPD and appointed counsel. Third, it enacted Ch 970/83, which required the Judicial Council to establish, by January 1, 1985, procedures for the appointment of counsel.

Budget Projects Significant Cost Increases. The budget requests \$7,600,000 for the courts of appeal and \$1,323,000 for the Supreme Court to pay appointed counsel in criminal appeals. This is an increase of \$2,214,000 (41 percent) for the courts of appeal, and \$600,000 (83 percent) for the Supreme Court. These increases are the result of two factors. First, the number of cases that will have to be handled by appointed counsel has increased significantly. The council estimates that in 1984-85, 6,000 indigent appeals will require counsel, of which 900 will be handled by the SPD. In the current year, an estimated 5,500 cases will require counsel (it is not known how many of these cases will be handled by the SPD).

Second, the Judicial Council is increasing its efforts to improve the quality of appointed counsel in the Supreme Court and the courts of appeal. The council intends to expand to the entire state the system of selecting, assigning, assisting, and evaluating appointed counsel, which is operating currently in the Fourth District.

Concerns with the Proposal. We have several concerns regarding the Judicial Council's proposal for the defense of indigents in appellate cases during the budget year. First, it is not clear how many of the 6,000 total indigent appeals will be handled by private counsel. While the coun-

cil estimates that 900 of these cases will be handled by the SPD, the budget itself contains no estimate of SPD workload. More importantly, the SPD has been unable to prepare an estimate of the number of cases it will handle in the budget year, due to uncertainties regarding the office's future. Depending on the actual number of cases handled by the SPD in the budget year, the amount of funds needed for appointed counsel may be more or less than the amount budgeted.

Second, the Judicial Council's plan to use the Fourth District as the model for a statewide system of indigent defense at the appellate level raises questions that have not, as yet, been answered. The Fourth District is the only district in the state in which the SPD provides *no* legal representation. It is not clear how the Fourth District's approach would work in the other districts where the SPD handles a portion of the cases. The Judicial Council has not specified how it will coordinate its activities with those of the SPD in order to allocate the caseload, avoid duplication of services, and maximize the use of existing capabilities within the SPD's office to provide assistance to appointed counsel.

Another potential problem with the Judicial Council's plan is that it is not clear if there are individuals or organizations with whom the council may contract for comprehensive indigent defense services in other districts. The Supreme Court, for example, has been unsuccessful in its efforts in the current year to implement a contract that would provide it with indigent defense services for capital cases. It is possible that the SPD could provide some or all of the appointed counsel oversight services in lieu of private individuals or organizations. The council advises, however, that it has not examined this option.

We believe that the council is seeking to address the problems with the current system in ways that are consistent with legislative intent. Because of the unresolved issues regarding the council's plans for replicating the Fourth District program statewide, and because the SPD has not provided data projecting its workload for the budget year, however, we are unable to recommend approval of the budget request for appointed counsel at this time. Accordingly, we withhold recommendation on \$8,923,000 requested to pay appointed counsel fees. We recommend that the Judicial Council and the SPD jointly report the following information to the fiscal committees prior to budget hearings:

1. The number of indigent appeals that will be handled by private appointed counsel and by the SPD in the current and budget years.
2. Any difficulties the council anticipates in obtaining qualified individuals or organizations to provide appointed counsel oversight services and how it proposes to overcome those difficulties.
3. The role of the SPD in the statewide system of indigent defense proposed by the Judicial Council.
4. The potential for using the SPD to perform the appointed counsel oversight responsibilities and the costs and benefits of such a proposal.

Coordinated Judicial Proceedings Should Be County Expense

We recommend that legislation be enacted requiring the counties involved in a coordinated civil action to pay the costs of that action, for a potential General Fund savings of \$500,000 annually.

The Judicial Council requests \$500,000 to reimburse counties for the full costs of coordinated proceedings under Ch 1162/72. For the current year, the council requested \$179,000, but now indicates that it will spend approximately \$450,000 for these expenses. (The Budget Bill contains lan-

JUDICIAL—Continued

guage in Item 0420 that would allow the council to use unexpended funds from that item to cover any deficiencies in this program. We discuss this proposal in our analysis of Item 0420.)

Our analysis indicates that the amount requested is documented adequately. We question, however, the need for state reimbursement of these expenses.

Chapter 1162 was adopted to eliminate the unnecessary duplication in civil court proceedings that might otherwise result when suits on related matters are filed in different courts. Specifically, Chapter 1162 permits a litigant or the judge in a case to require the Judicial Council to appoint a "coordination motion judge" who will determine whether or not an action should be coordinated with related actions. If this judge decides to coordinate the actions, the Judicial Council must then appoint a "coordination trial judge" to hear and resolve the coordinated action. The statute requires the state to pay the council's administrative costs in supervising the coordination and to reimburse counties for all of their costs under the chapter.

The primary beneficiaries of the coordinated proceedings program are the counties. The program reduces the number of separate actions that must be handled by the courts, and thereby reduces county expenditures. Under Chapter 1162, however, the state incurs the full cost of the program. If the cost of the consolidated action, instead, was prorated between the courts involved, counties would still realize a net savings compared to the costs of processing separate actions. This approach would have the advantage of distributing the costs of the program among its primary beneficiaries. Accordingly, we recommend that legislation be enacted requiring the counties involved in a coordinated action to pay the costs of that action, for a potential General Fund savings of approximately \$500,000 annually.

Legislative Mandates

We recommend approval of \$4,323,000 requested for three state-mandated local programs.

The budget requests a total of \$5,573,000 in Item 9680 to reimburse counties for four court-related state-mandated local programs. We have concerns about reimbursement for one of these programs, Judicial Arbitration (\$1,250,000), which we describe below. The three remaining programs provide funding to reimburse counties for the costs of (1) appointed counsel and court investigators in connection with guardianship and conservatorship proceedings, as required by Ch 1357/76 (\$4,300,000); (2) judges assigned to another county by the Chief Justice, as required by Ch 1355/76 (\$13,000); and (3) maintaining lists of qualified court interpreters, as required by Ch 158/78 (\$10,000).

The amounts requested for these three programs reflect reasonable estimates of budget-year costs. Therefore, we recommend approval.

Arbitration Program Should Be Made Optional

We recommend deletion of \$1,250,000 budgeted to reimburse counties for costs of the judicial arbitration program (Item 9680-101-001). We further recommend that legislation be enacted to permit, rather than require, courts to conduct arbitration programs, for a potential General Fund savings of approximately \$4.2 million annually.

Chapter 743, Statutes of 1978 (as modified by subsequent statutes),

established an arbitration program in order to provide a cost-effective and expedited method of resolving small civil suits. This program requires certain litigants to present their case to an arbitrator (generally an attorney) in an attempt to resolve the case without a trial being necessary. Specifically, the program requires superior courts with 10 or more judges to submit to arbitration all civil cases in which the amount in controversy is \$15,000 or less (or \$25,000 or less in four specified counties, or in any county where the board of supervisors has so ordered). It also permits other superior and municipal courts to establish arbitration programs by the adoption of a local court rule.

Council Report Does Not Address the Legislature's Concerns. Chapter 743 requires the Judicial Council to submit to the Legislature by January 1, 1984, a comprehensive review of the effectiveness of the program, and to estimate the potential costs or savings of extending the program beyond its January 1, 1986, expiration date. In response, the council has submitted a report that recommends permanently retaining the program on the basis that it reduces costs to litigants and assists courts in managing their calendars. The council, however, was unable to determine whether the program actually reduced any court expenditures, or diverted any cases from going to trial. The council maintains that it could not analyze the costs and savings attributable to their program because it could not conduct an experiment in which similar cases are handled in different ways in different courts. It could not do so because all courts with 10 or more judges are required to participate in the program.

Using Judicial Council data, however, we were able to determine that the program did *not* have an observable effect on the rate at which cases were settled prior to trial. For example, a comparison involving similarly sized courts (with four to nine judges) *not required* to participate in the arbitration program, indicates that during the study period of 1978-79 to 1981-82, the rate at which cases were settled before trial increased by approximately the same magnitude in participating and nonparticipating courts alike. In addition, the data presented in the Judicial Council report indicate that the percentage of cases requiring a trial in the 14 largest superior courts (all of which have arbitration programs) declined 34 percent for motor-vehicle related suits, 12 percent in other injury suits, and 5 percent in other types of suits. In 15 small superior courts without mandatory arbitration programs, the comparable figures are 32, 30, and 9 percent. Hence, the improvement in the rate at which cases are settled prior to trial was greater in these smaller courts that do not use arbitration than it was in those courts with an arbitration program, in two of three categories.

The Department of Finance performed an extensive review of court data, and determined that the arbitration program had *no* statistically significant impact on the change in the settlement rate between all participating and nonparticipating courts, or among participating courts before and after commencing the program. The department concludes that all available information indicates that the program has not reduced costs to the state or to the counties.

Program Costs. The law that requires certain counties to conduct arbitration programs also requires the state to reimburse those counties for the net costs of the program. According to the Controller's office, county costs for the program from 1978-79 to 1983-84 have totaled \$16,489,000. Because in recent years the amount counties have claimed has exceeded the amount the state has appropriated, the state has reimbursed

JUDICIAL—Continued

counties for only about \$10,212,000 of this amount to date.

In approving the 1983 Budget Act, the Governor reduced the appropriation for the program to \$1,250,000, or one-half of the previous year's appropriation. This is the same amount proposed for county reimbursement in the budget year, in spite of the fact that the amount is unrelated to the costs the state will actually incur for this program. It is likely that county claims in the budget year will reach the current-year level of \$4,157,000. Thus, our analysis indicates that the amount requested in the Governor's Budget amount is insufficient by about \$2.9 million.

Program Should Not be Mandated by State. The state funded the arbitration program as an experiment to determine if the arbitration program could reduce state and local court costs by reducing the number of cases requiring trials. The available evidence indicates that the program has not achieved the Legislature's goal. Because the cost of trial courts borne by the state consists largely of judicially-related expenses (for example, judges' salaries), only a program that reduced the need for judges by reducing the number of cases going to trial would produce savings to the state.

To the extent that benefits result from the program they accrue largely to litigants or the courts themselves in the form of improved calendar management. This is why some municipal courts and superior courts in less-populated counties have voluntarily adopted arbitration programs and have financed the full costs of those programs.

All of this suggests that while the program may be beneficial under certain circumstances, the benefits do not justify ongoing state costs of at least \$4.2 million annually. Moreover, continued state funding of the program would not be a productive use of state resources, given that the program is not accomplishing a major purpose for which it was established—reducing state and local government costs for the trial courts.

Accordingly, we recommend that legislation be enacted to permit, rather than require, courts to conduct arbitration programs, at the board of supervisor's option. If a board of supervisors determines that the program is not beneficial to the county, the board could discontinue the program. If, on the other hand, the board concluded that the program is cost-effective or otherwise beneficial, it could continue the program at county expense. Enactment of this recommendation would permit a General Fund savings of approximately \$4.2 million annually.

Arbitrary Appropriation. As we indicate above, the budget request of \$1,250,000 to reimburse counties for arbitration programs is significantly below the amount likely to be needed for actual reimbursements. It appears that the amount available for the program in the current year, and the amount proposed in the Governor's Budget for 1984-85, bear no relationship to the actual amount the state is obligated to pay under the law.

We generally do not recommend deleting a budget request for a program which the state is required by law to fund. However, because (1) we recommend that legislation be enacted repealing the mandatory provisions of the arbitration program, and (2) the requested amount is arbitrary and bears no reasonable relationship to the actual costs likely to be incurred if the law is not amended, we cannot recommend approval of the requested amount. Accordingly, we recommend deletion of funding for the arbitration program, for a General Fund savings of \$1,250,000.

JUDICIAL—CAPITAL OUTLAY

Item 0250-301 from the General
Fund, Special Account for
Capital Outlay

Budget p. LJE 14

Requested 1984-85	\$421,000
Recommended reduction	335,000
Recommendation pending	86,000

ANALYSIS AND RECOMMENDATIONS

We recommend deletion of \$335,000 requested for office modifications and relocation of a cafeteria because this component of the project has not been justified and would increase costs significantly elsewhere in the budget.

We ~~withhold~~ recommendation on \$86,000 requested to modify office space for two new justices, pending receipt of detailed cost estimates.

The budget proposes an appropriation of \$421,000 from the General Fund, Special Account for Capital Outlay (SAFCO), for remodeling and expansion of the Fifth District State Court of Appeals at the Fresno state office building. The project has two separate components, both involving modifications to the court's space on the fifth floor of the building.

Space for New Justices. The first component involves modification to approximately 2,300 square feet of space occupied by the court in the building's northwest corner. This area will be modified at a cost of \$86,000, to house the two new justices that were added to the Fifth Appellate Court by Chapter 959, Statutes of 1981. This act expanded the court from six to eight members. The proposed modifications will provide office space for the justices, their research attorneys, and secretaries, that is comparable to what is provided for other members of the court.

Our analysis indicates that this component of the project is warranted by the expansion in the court's membership. At this time, however, we are not able to advise the Legislature as to whether the funding level proposed for this component is appropriate because adequate cost estimates have not been submitted. Consequently, we withhold recommendation pending receipt of detailed cost estimates.

Conversion of Cafeteria to Office Space. The second component (\$335,000) of the Fresno project would permit the court to take over space presently occupied by the building's cafeteria and convert this space to additional offices and an expanded library. This would allow the court to become the sole occupant of the fifth floor.

The Judicial Council has indicated that the proposed modifications are needed because (1) the existing library and office space is inadequate and (2) there is a need to improve security for the court on the fifth floor.

Based on our analysis, we have a number of concerns regarding this component of the project. On the one hand, additional space has already been provided to the court. In December 1983, the expenditure of \$14,800 was authorized by the Department of Finance under Section 6.00 of the 1983 Budget Act to provide the court with additional space on the fifth floor. Specifically, 613 square feet of space previously occupied by the cafeteria was made available to the court for additional staff offices in order to meet a portion of the court's space needs. In addition, four offices

*recommend
approval
of \$86,000*

JUDICIAL—CAPITAL OUTLAY—Continued

on the second floor of the building recently have been made available to the court, thereby providing additional space.

On the other hand, the fiscal implications of moving the building's cafeteria, though considerable, are not addressed in the proposed project. The Department of Rehabilitation's business enterprise program, which operates the cafeteria, has indicated a willingness to relocate elsewhere in the building. At present, however, there is no space available for it. The Office of Space Management has indicated that relocating the cafeteria to another floor will be the most costly aspect of the proposed project. If another state office is displaced in order to make room for the cafeteria, it will have to move into leased space.

Finally, there is no evidence that relocating the cafeteria and giving the court the entire fifth floor will improve significantly the court's security. Six justices already are located on a secure portion of the floor that requires a key for entry. The other two justices will be housed in the office space modified by the first component of this project. This space is also located in a securable area. Security is further enhanced because at present a state police officer is assigned to the court when it is in session. Our analysis indicates that moving the cafeteria may decrease the flow of traffic on the fifth floor, but it will not provide a significant amount of additional security.

For these reasons, we recommend that the \$335,000 requested for the second component of the project be deleted, for a corresponding savings to the SAFCO in the General Fund.

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND

Item 0390 from the General
Fund

Budget p. LJE 15

Requested 1984-85	\$17,362,000
Estimated 1983-84.....	15,396,000
Actual 1982-83	15,624,000
Requested increase	
\$1,966,000 (+12.7 percent)	
Total recommended reduction	None

1984-85 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
0390-001-001—Supreme and Appellate Court			
Judges			
—Budget Act Appropriation		General	\$846,000
—Government Code Section 75101		General	567,000
0390-101-001—Superior and Municipal Court			
Judges		General	9,547,000
—Budget Act Appropriation		General	
—Government Code Section 75101		General	6,402,000
Total			\$17,362,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS*Analysis
page*

1. Normal Costs. Recommend Legislature act promptly to eliminate the current shortfall in funding for the "normal cost" of the Judges' Retirement System.

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GENERAL PROGRAM STATEMENT

The Judges' Retirement Fund (JRF) provides benefits for those municipal, superior, appellate and supreme court judges, and their survivors, who are members of the Judges' Retirement System (JRS). This system is administered by the Public Employees' Retirement System (PERS).

The primary revenues to the fund include (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) direct General Fund appropriations needed to keep the fund solvent on a year-to-year basis. Expenditures from the fund are primarily for retirement and survivor benefits.

In the current year, the fund will receive contributions from about 1,260 active judges, and will pay benefits to about 490 retired judges and about 280 survivors.

OVERVIEW OF THE BUDGET REQUEST

The budget proposes four General Fund appropriations totaling \$17,362,000 as the state's contribution to the Judges' Retirement Fund for 1984-85. This amount is \$1,964,000, or 13 percent, more than estimated current-year expenditures. The \$17.4 million consists of \$7 million as the state's statutory contribution (equivalent to 8 percent of the judges' salaries) and \$10.4 million as a Budget Bill appropriation to keep the fund solvent during 1984-85. This latter amount is needed because the fund's projected receipts will finance only about 60 percent of the anticipated benefit payments to be made during 1984-85, and under current law, such a deficit must be financed by the state General Fund.

Table 1 shows the annual receipts to the JRF, by source, for the past, current, and budget years.

Table 1
Judges' Retirement System
Total Receipts to the Judges' Retirement Fund
1982-83 through 1984-85
(in millions)

	<i>Actual 1982-83</i>	<i>Estimated 1983-84</i>	<i>Proposed 1984-85</i>
<i>State Contributions</i>			
Statutory 8 Percent	\$6.1	\$6.5	\$7.0
Budget Act (deficiency)	9.5	9.0	10.4
Subtotals	(\$15.6)	(\$15.5)	(\$17.4)
<i>Nonstate Contributions</i>			
Member Contributions	\$6.1	\$6.2	\$6.6
Filing Receipts & Other	4.1	4.1	4.1
Subtotals	(\$10.2)	(\$10.3)	(\$10.7)
Total Receipts	\$25.8	\$25.8	\$28.1

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND—Continued**ANALYSIS AND RECOMMENDATIONS****Magnitude of the Funding Problem**

In our *Analysis of the 1983-84 Budget* (p. 24), we discussed the nature and scope of the funding problem facing the Judges' Retirement Fund (JRF). Basically, there are two main problems:

- **"Normal Costs" Are Not Being Funded.** The normal cost of JRS benefits (that is, the cost of funding retirement benefits being *earned* in a given year) exceeds the annual revenues to the JRF. As Table 3 indicates, the normal cost of the system in 1979-80 (the last year for which complete information is available) was 34 percent of payroll, while total income to the fund amounted to only a little more than 30 percent. Thus, as of 1980, normal costs were underfunded by an amount equal to 3.7 percent of payroll.
- **The System Has a Large Unfunded Liability.** Because the JRS has been funded on a "pay-as-you-go" rather than a "reserve" basis, it has a large unfunded liability (that is, the cost of benefits earned in prior years that are not covered by current assets). Based on the latest actuarial valuation (1980), the system's unfunded liability is more than one-half billion dollars. As Table 3 shows, it would take annual payments equal to 42 percent of total salary for the next 30 years to eliminate this unfunded liability.

Table 3
Receipts and Funding Requirements
of the Judges' Retirement System
As of 1979-80 Fiscal Year

<i>Receipts</i>	<i>Percent of Payroll</i>
Judges' Contributions.....	8.0% ^a
State Statutory Contribution	8.0 ^a
Filing Fees	4.7
State (deficiency) Contribution	9.6
Total Receipts	30.3%
<i>Funding Requirements</i>	
Normal Costs	34.0%
Annual Cost of Amortizing Accrued Unfunded Liability Over 30 Years	42.1
Total (full) Funding Requirements.....	76.1%

^a Statutorily fixed rate.

Recommend Legislative Action to Fully Fund Normal Costs

We recommend that the Legislature act promptly to eliminate the current shortfall in funding for the normal cost of the JRS.

In *Perspectives and Issues* (Part III), we discuss some of the basic issues confronting the Legislature with regard to funding for the state's retirement systems. In that discussion, we recommend that the Legislature give the highest priority to eliminating any shortfall in funding for a system's normal costs.

In past years, most of the discussion concerning the JRS' funding problem has centered around the system's large unfunded liability. This un-

funded liability, indeed, is a problem. In our judgement, however, the more serious problem is the shortfall in funding for the normal costs of JRS benefits. It is this shortfall that brought about the unfunded liability in the first place. Failure to fully fund normal costs, moreover, will cause the unfunded liability to grow. Accordingly, we encourage the Legislature to eliminate the shortfall in funding normal costs as soon as possible, and before attempting to address the unfunded liability.

As noted above, the latest data available indicate that there is a shortfall in funding for the normal costs of the JRS equal to 3.7 percent of payroll. Given that the judges' payroll now stands at \$87 million, it would take an increase of about \$3.2 million in the annual contributions to the system to eliminate the shortfall, assuming no change in the benefit structure.

Generally, there are three options open to the Legislature if it wishes to fully fund normal costs. It can: (1) increase the employee's (judge's) contribution rate, (2) increase the employer's (state's) contribution rate, and/or (3) adjust—on a prospective basis—the retirement benefit structure.

Total Compensation: A Guide to Selecting Funding Options

In *Perspectives and Issues*, we note that the provision of retirement benefits is only one method of compensating employees for their service to the state. Accordingly, we recommend that the Legislature—in choosing among the options for funding normal costs of the JRS—make its decision taking into account the *total compensation* provided to judges. In other words, the Legislature should view the state's contribution to the JRS as one aspect of the employee's overall compensation, along with salary, other fringe benefits and the general working environment, and set total compensation offered to judges at the level needed to hire new and keep existing judges.

Once the Legislature determines what the appropriate compensation level is, it is much easier to determine who should pay for the shortfall in funding for normal costs:

- If, on the one hand, the Legislature concludes that the level of compensation provided to judges is *inadequate* (as manifested by problems in attracting and retaining capable people for the bench), the state should pick-up part or all of the shortfall.
- If, on the other hand, the Legislature concludes that the level of compensation provided to judges is *adequate* (or more-than-adequate), as evidenced by a lengthy waiting list of competent individuals seeking judgeships, the state would want to maintain (or perhaps even reduce) its current contribution to the system.

Options for Eliminating the Funding Gap Other Than An Increase in State Contributions

If the Legislature concludes that judges are already compensated adequately (we do not presume that this is the conclusion the Legislature will reach), it would have four basic options for addressing the funding shortfall for normal costs:

Increase Judges Contribution Rates. The Legislature could require the judges to pick-up all or part of the cost involved in eliminating the shortfall. The judges' contribution rate currently is set at 8 percent (where it has been since 1964), while the state's contribution rate is about 20 percent (up from 8 percent in 1964). Section 75103.1 of the Government code specifically authorizes the Legislature to adjust these rates. In a 1976

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND—Continued

opinion, however, Legislative Counsel cautioned that any increase in the judges' contribution rate should be applied only to those judges who joined the JRS *after* 1959.

Salary and Retirement Benefit Trade-Off. Alternatively, the state could pay the additional amounts needed to fully fund normal costs and, at the same time, reduce judges' salaries by a comparable amount.

Reduce—On a Prospective Basis—Retirement Benefits. In lieu of adjusting contribution rates, the Legislature could eliminate the normal cost shortfall by modifying the JRS benefit structure. This could be accomplished by reducing—*on a prospective basis only*—the retirement benefits earned by the judges, thus bringing them in line with *existing* contribution levels. A legal cloud, however, hangs over this alternative. The Second District Court of Appeals, in an October 1983 decision (*Pasadena City Police Officers Association v. City of Pasadena*) ruled that even a prospective change in retirement benefits is not in keeping with prior California Supreme Court decisions. The specific issue of prospective changes, however, has never been considered by the Supreme Court. The Pasadena case is on appeal.

Close Existing System to New Judges. Finally, the Legislature might conclude that, the state's *existing* contribution rate is too high. Under these circumstances, the Legislature could close off the existing JRS to *new* judges, and provide alternative compensation to judges—at a lower state cost—through: (1) a "second-tier" retirement plan, (2) an employee noncontributory plan, (3) a state defined contribution plan, or (4) an upward adjustment in salary, in the event the state decided to provide no specific retirement benefit.

To summarize, we recommend that the Legislature take action to eliminate the normal cost funding shortfall, and that it select a means for doing so that reflects its conclusions regarding the adequacy of the total compensation now provided to judges.

SALARIES OF SUPERIOR COURT JUDGES AND BLOCK GRANTS FOR SUPERIOR COURT JUDGESHIPS

Items 0420-0440 from the General Fund

Budget p. LJE 16-17

Requested 1984-85	\$48,547,000
Estimated 1983-84.....	46,891,000
Actual 1982-83	45,643,000
Requested increase (including partial funding for salary increases) \$1,656,000 (+3.5 percent)	
Total recommended reduction	422,000

1984-85 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
0420-101-001—Judges' Salaries and Benefits		General	\$39,067,000
0440-101-001—Block Grants		General	9,480,000
Total			\$48,547,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

Analysis
page

1. *Salaries Double-budgeted. Reduce Item 0420-101-001 by \$382,000.* Recommend reduction to eliminate double-budgeting for certain judges' salary increases. 28
2. *County Population Estimates. Reduce Item 0420-101-001 by \$40,000.* Recommend reduction to reflect the impact of recent legislation. 28
3. *Budget Bill Language.* Delete proposed language that would fund possible deficiencies in another item, because the language is unnecessary. 29

GENERAL PROGRAM STATEMENT

The state pays 86 percent to 92 percent of the salaries and the full cost of health benefits for the state's 657 superior court judges.

Currently, counties contribute \$5,500, \$7,500, or \$9,500 per year toward each judge's salary, depending on the county's population. The state pays the balance of each judge's salary, which is now set at \$67,063. The counties' share has not changed since 1955.

Most judges receive salary increases equal to the average increase granted state employees. As a result of a 1982 court decision (*Olson v. Cory*), however, 131 judges currently receive salary increases which differ from those received by the other superior court judges. These judges receive salary increases equal to the increase in the California Consumer Price Index in 1983. Because of this quirk in the law, those judges affected by the *Olson v. Cory* decision now receive salaries of \$66,190. This two-tier salary structure will exist until January 1, 1985, at which point all superior court judges will receive the same salary.

OVERVIEW OF THE BUDGET REQUEST

Table 1 summarizes expenditures for superior court judges' salaries and health benefits as well as for block grants in the past, current, and budget years.

Table 1
State Expenditures for
Salaries, Health Benefits, and Block Grants
for Superior Court Judgeships
1982-83 through 1984-85
(dollars in thousands)

Expenditures	Actual 1982-83	Estimated 1983-84	Proposed 1984-85	Change From 1983-84	
				Amount	Percent
Salaries (Item 0420)	\$35,182	\$36,930	\$38,371	\$1,441	3.9%
Health benefits (Item 0420)	1,101	1,617	1,617	—	—
Salary savings (Item 0420)	—	-1,136	-921	215	18.9
Totals, Item 0420	(\$36,283)	(\$37,411)	(\$39,067)	(\$1,656)	(4.4%)
Block grants (Item 0440)	\$9,360	\$9,480	\$9,480	—	—
Totals	\$45,643	\$46,891	\$48,547	\$1,656	3.5%

SALARIES OF SUPERIOR COURT JUDGES AND BLOCK GRANTS FOR SUPERIOR COURT JUDGESHIPS—Continued

The budget proposes an appropriation of \$39,067,000 from the General Fund to cover the state's share of superior court judges' salaries and benefits. This amount is \$1,656,000, or 4.4 percent, more than estimated current-year expenditures for salaries and benefits. The increase is attributable to two factors: (1) the salary increase granted all state employees, including judges, for the last six months of the current year, and (2) the cost of salary increases in 1984-85 for those judges' salaries affected by the *Olson v. Cory* decision. Any further increase above the 1983-84 salary levels will be funded from Item 9800 (Employee Compensation).

The budget also proposes an appropriation of \$9,480,000 from the General Fund to provide block grants on behalf of 165 superior court judgeships. This is the same amount appropriated for the current year. No new judgeships were approved by the Legislature in 1983.

ANALYSIS AND RECOMMENDATIONS

Judges' Salary Increases Double-budgeted

We recommend a General Fund reduction of \$382,000 to avoid double-budgeting for judges' salary increases (Item 0420-101-001).

As a result of the 1982 *Olson v. Cory* court decision, judges whose terms began after January 1, 1980, receive a salary of \$67,063, and are granted annual salary adjustments equal to the average increases provided to state employees. Judges whose terms began prior to January 1, 1980 receive a salary of \$66,190. These judges will be granted an increase, effective July 1, 1984, equal to the increase in the California Consumer Price Index during 1983. Once these judges' terms expire on January 1, 1985, all superior court judges will receive the same salary (\$67,063), and annual increases for all judges will be based on the increase granted to state employees.

In preparing the budget, the Department of Finance included sufficient funds to provide salary increases for *all* superior court judges in the Budget Bill appropriation for employee compensation (Item 9800). In addition, however, the department included funds in Item 0420 to provide salary increases for those judges whose terms began prior to January 1, 1980. Based on data from the department and the Controller's office, we estimate that the amount included in this item for salary increase adjustments is \$382,000. In order to avoid double-budgeting for judges' salary increases, we recommend that \$382,000 be deleted from this item, for a corresponding savings to the General Fund.

Budget Does Not Reflect Impact of Recent Legislation

We recommend deletion of \$40,000 to reflect the effect of recent legislation which revised the method of determining the county's share of a judge's salary (Item 0420-101-001).

A county's share of the costs of a superior court judge's salary is based on the county's population. Counties with populations under 40,000 pay \$5,500 for each judge; counties with a population of 40,000 to 250,000 pay \$7,500; counties with populations over 250,000 pay the maximum of \$9,500.

Chapter 323, Statutes of 1983, revised the method for determining a county's population for purposes of calculating the county's share of a judge's salary. Under prior law, a county's population was deemed to be the number of registered voters within the county during the last general election, as determined by the Secretary of State, multiplied by two. Under Chapter 323, each county's population is estimated by the Department of Finance's population research unit.

As a result of this change, five counties will pay a greater share, and two counties will pay a lesser share of their judges' salaries, than they paid under the previous system. In the budget year, this will result in a \$40,000 savings to the General Fund. The budget totals, however, do not reflect the savings from this adjustment. Accordingly, we recommend a General Fund reduction of \$40,000 because state expenditures for superior court judges' salaries will be less than the budgeted amount.

Delete Inappropriate Budget Bill Language

We recommend the deletion of proposed Budget Bill language (Item 0420) that would allow unexpended funds in this item to be used to cover deficiencies in Item 0250, because the language is premature and inappropriate.

The Budget Bill includes language that would permit the Judicial Council to use funds appropriated in this item which are unexpended because of greater-than-anticipated salary savings to cover costs incurred under the civil coordination program. This program establishes a procedure by which civil suits pending in different courts may be consolidated into a single court action. (We discuss this program in our analysis of the Judicial budget, Item 0250.)

The Judicial Council received an appropriation of \$179,000 in the current year for this program. It now anticipates, however, that current-year expenditures may reach approximately \$450,000. The council has not yet requested a deficiency appropriation or an allocation from the reserve for contingencies or emergencies to cover this shortfall.

For the budget year, an appropriation of \$500,000 is proposed for the coordinated action programs. The council believes that the larger appropriation and the proposed Budget Bill language would provide adequate funds to cover the full cost of the program in the budget year.

The council maintains that the proposed language is similar to language included in previous Budget Acts which permits the use of unexpended amounts in this item to pay the expenses of judges assigned by the Chief Justice pursuant to her constitutional authority to expedite judicial business and equalize judicial workload.

Our review indicates, however, that this language is not analogous to that proposed for the civil coordination program. The Chief Justice often assigns additional judges to a court because of judicial vacancies on that court. Under these circumstances, there is a direct relationship between the salary savings resulting from vacancies and the additional expenditures resulting from temporarily filling those vacancies. There is no such relationship between judicial vacancies and the coordination program.

We can find no justification for allowing excess funds in one item to cover a shortfall in another, unrelated item. Doing so serves only to weaken legislative control of appropriations. If the Judicial Council has reason to believe the amount requested in the budget is not sufficient to cover the costs of the program, additional funds should be requested. Alternatively, if the amount appropriated in the budget turns out to be insufficient to cover the costs of the civil coordination program, the Judicial Council may seek a deficiency appropriation, or an allocation from the reserve for contingencies or emergencies. In either event, the proposed Budget Bill language is unnecessary and undesirable from the Legislature's standpoint. Accordingly, we recommend that the proposed language be deleted.