

COMMISSION ON UNIFORM STATE LAWS

Item 0180 from the General Fund

Budget p. LJE 11

Requested 1983-84	\$51,000
Estimated 1982-83.....	49,000
Actual 1981-82	46,000
Requested increase \$2,000 (+4.1 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 \$51,000 from the General Fund for support of the commission in 1983-84. This is \$2,000, or 4.1 percent, more than estimated current-year expenditures. Approximately 80 percent of the budget is used to pay the state's annual membership fee. The balance covers travel and per diem expenses for three meetings. The requested increase will cover projected increases in travel costs.

JUDICIAL

Item 0250 from the General Fund and the State Transportation Fund

Budget p. LJE 12

Requested 1983-84	\$44,173,000
Estimated 1982-83.....	39,840,000
Actual 1981-82	32,189,000
Requested increase (excluding amount for salary increases) \$4,333,000 (+10.9 percent)	
Total recommended reduction	\$2,475,000
Recommendation pending	\$2,309,000

1983-84 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
0250-001-001—Judicial Support		General	\$43,878,000
0250-001-044—Judicial Support		Transportation	52,000
0250-101-001—Local Assistance		General	243,000
Total			\$44,173,000

JUDICIAL—Continued

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS	<i>Analysis page</i>
1. Weighted Caseload System. Recommend adoption of supplemental report language directing the Judicial Council to conduct new superior and municipal court weighted caseload studies, because the studies now being used are out-of-date, inaccurate, and reflect a level of productivity that is significantly less than what efficiently managed courts are able to achieve.	11
2. <i>Second Law Clerks. Reduce Item 0250-001-001 by \$1,616,000.</i> Recommend that 39 of 54 proposed law clerks be deleted to provide for a more gradual phasing in of the new positions.	14
3. Appointed Counsel Fees. Withhold recommendation on \$1,654,000 to be transferred from the State Public Defender's office to the Judicial Council, pending the receipt of additional staffing and workload data.	15
4. <i>Expedited Appeal Program. Reduce Item 0250-001-001 by \$56,000.</i> Recommend deletion of one proposed attorney position that is not justified on a workload basis. Further recommend adoption of supplemental report language directing the Judicial Council to submit an evaluation of the program to the Legislature by December 1, 1983.	17
5. <i>Courts of Appeal—Clerks' Offices. Reduce Item 0250-001-001 by \$217,000.</i> Recommend deletion of 7.3 proposed positions that are not justified on a workload basis.	18
6. Courts of Appeal—Libraries. Withhold recommendation on \$655,000 for library materials, pending receipt of additional information.	18
7. <i>Technical Issues: Overbudgeting. Reduce Item 0250-001-001 by \$556,000 and Item 9680-101-001 by \$30,000.</i> Recommend reductions to correct for overbudgeting in various expenditure categories.	19

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 six courts of appeal are entirely state supported. The remaining courts are supported primarily by the counties, although the state (1) pays 85 percent to 90 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 Supreme Court and courts of appeal hear appeals from the trial courts, and have original jurisdiction over certain writs, such as habeas corpus. The Chief Justice of the Supreme Court also 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, which is staffed by the Administrative Office of the Courts, is required by the State Constitution to seek 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 588 positions for state judicial functions in the current year.

ANALYSIS AND RECOMMENDATIONS

The budget proposes appropriations totaling \$44,173,000 from the General Fund (\$44,121,000) and the State Transportation Fund (\$52,000) for the support of judicial functions in 1983-84. This is an increase of \$4,333,000, or 11 percent, over current-year estimated expenditures.

Table 1
State Judicial Functions
Budget Summary
(dollars in thousands)

<i>Expenditures</i>	<i>Actual 1981-82</i>	<i>Estimated 1982-83</i>	<i>Proposed 1983-84</i>	<i>Change from 1982-83</i>	
				<i>Amount</i>	<i>Percent</i>
Supreme Court	\$4,482	\$4,990	\$5,862	\$872	17.5%
Courts of Appeal	18,982	24,092	30,768	6,676	27.7
Judicial Council	6,039	6,906	7,018	112	1.6
Commission on Judicial Performance	267	267	282	15	5.6
Local Assistance	(241)	243	243	—	—
Legislative Mandates.....	2,659	3,342	(2,553)	-3,342	-100.0
Subtotals	\$32,429	\$39,840	\$44,173	\$4,333	10.9%
Less reimbursements	-240	—	—	—	—
Totals.....	\$32,189	\$39,840	\$44,173	\$4,333	10.9%
<i>Personnel-Years</i>					
Supreme Court	75.0	92.4	92.4	—	—
Courts of Appeal	304.4	367.8	455.9	88.1	24.0%
Judicial Council	77.9	85.2	91.2	6.0	4.7
Commission on Judicial Performance	4.8	5.1	5.1	—	—
Totals.....	462.1	550.5	644.6	94.1	17.1%

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The 11 percent increase shown in the budget is actually understated. This is because the budget has transferred approximately \$2.6 million in local mandate reimbursements from this item in the 1982-83 budget to Item 9680 of the Budget Bill. If these expenditures are added to the amount requested in this item, the total judicial budget request for 1983-84 would be \$6,886,000, or 17 percent above estimated current-year expenditures. Furthermore, the amount of the increase will be even larger if the Legislature approves any salary or staff benefit increase for state employees in the budget year.

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

Supreme Court. The budget proposes an appropriation of \$5,862,000 from the General Fund for support of the Supreme Court in 1983-84. This is \$872,000, or 17 percent, above estimated current-year expenditures. Of this amount, \$662,000 is due to a substantial increase in criminal appeal fees, as discussed below. The remaining \$210,000 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 \$30,768,000 in 1983-84. This is an increase of \$6,676,000, or 28 percent, over estimated current-year expenditures for these courts. The increase is largely due to the proposed addition of 71 new positions, as well as to a substantial increase in criminal appeal fees. These requests are discussed later in the analysis. The 28 percent increase shown in the budget document for the appellate courts is understated. This is because salary savings for the courts of appeal, the Supreme Court, and the Judicial Council were budgeted in the courts of appeal item. This unusual budgetary practice results in the budget overstating the increase in expenditures proposed for the Supreme Court and the Judicial Council. We estimate that amount budgeted for support of the courts of appeal is approximately \$460,000 less than the projected cost of the courts in 1983-84. Nevertheless, the overall amount of salary savings for existing positions is budgeted in accordance with Department of Finance guidelines.

Judicial Council. The budget proposes \$7,018,000 for support of the Judicial Council in 1983-84, including \$6,966,000 from the General Fund and \$52,000 from the State Transportation Fund. The proposed amount is 1.6 percent above the estimated level of 1982-83 expenditures. This increase reflects the proposed addition of six positions to the council's staff (see Table 2), and reductions in certain operating expenses.

Table 2
Proposed Summary of Changes
(dollars in thousands)

	<i>Personnel- Years</i>	<i>Courts of Appeal</i>	<i>Judicial Council</i>	<i>Supreme Court</i>	<i>Total</i>
Program Changes:					
1. Criminal Appeal Fees	—	\$4,022	—	\$662	\$4,684
2. Law Clerks	54	2,238	—	—	2,238
3. Clerks' Offices	9	353	—	—	353
4. Libraries.....	—	242	—	—	242
5. Workload	5	211	—	—	211
6. Expedited Appeal Program	3	165	—	—	165
7. Judicial Council Staff	6	—	\$56	—	56
Total program changes	77	\$7,231	\$56	\$662	\$7,949

Commission on Judicial Performance. The budget requests \$282,000 for the Commission on Judicial Performance, an increase of \$15,000, or 5.6 percent, above current-year expenditures. This increase is due to routine merit salary and price adjustments.

Table 2 shows the program changes proposed in the budget. The table does not include the legislative mandate technical adjustment discussed above, nor does it show price and other minor adjustments.

New Workload Studies Needed for Trial Courts

We recommend that the Judicial Council:

1. *Conduct a new superior court weighted caseload study by February 1, 1984, and a new municipal court study by December 1, 1984.*
2. *Establish workload measures based on the processing time in the five to ten most productive courts.*
3. *Report to the Legislature on the results of the weighted caseload studies, and on procedures used by the most efficient courts for improving case processing time.*
4. *Include in all reports to the Legislature evaluating superior court judgeship needs the number of judicial positions that would be required if data from the 1979 survey were used as the basis for determining staffing requirements, until a new superior court weighted caseload study is adopted.*
5. *Continue to revise these studies on a biennial basis.*
6. *Revise weighted caseload measurements to avoid double-counting vacation and sick leave.*

Background. Workload in the trial courts is measured using a "weighted caseload system." This system provides an objective basis for estimating the number of judicial positions (judges, commissioners, and referees) needed in a particular court. The system is premised on the fact that different kinds of cases vary in terms of complexity and, therefore, the time required to process different kinds of cases will vary. The weights, or workload measures, are obtained by surveying different courts for about two months to determine the actual time needed to process cases in each general category. Thus, a weight of 41 for family law means that, on the average, a family law case (such as a divorce) will take 41 minutes of judicial time to complete. In contrast, the average criminal case has a weight of 282, and accordingly takes 282 minutes, or about 6½ hours to decide.

A judge-year is subsequently determined by multiplying the number of days a judge is expected to work in a year (216) by the time the average judge actually spends on cases, as determined by periodic surveys. By dividing the judge-year factor into the number of weighted filings a given court receives, an estimate is obtained of the number of judicial positions needed to process the court's workload.

In 1976 and 1977, the Administrative Office of the Courts (AOC), staff to the Judicial Council, conducted surveys in 32 superior and 56 municipal courts, respectively. These surveys were subsequently approved by the Judicial Council for use in performing judgeship needs studies. Based on these studies, the average superior court judge in a metropolitan court is assumed to handle 74,000 weighted caseload units annually (approximately 216 5½-hour days); an average metropolitan municipal court judge is

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assumed to handle about 78,000 units annually. In smaller courts, the standards are set at a somewhat lower level, on the basis that judges will be required to spend more time on non-case-related activities, and that larger courts are able to achieve certain economies of scale.

In 1979, the Judicial Council directed the AOC to update the earlier study. In a survey of 42 superior courts, it determined that productivity had increased approximately 10 percent in the preceding three years, and that a superior court judge was then handling 69,000 units in rural courts (216 5½-hour days) and 79,000 units in larger courts (about 216 6-hour days).

This study, however, was rejected by the Judicial Council. Although it rejected the study and decided not to reflect the 10 percent increase in productivity found by the AOC in the weighted caseload system used for budgeting purposes, the council made no formal announcement of its reason for doing so. Instead, the council appointed an advisory committee to review the weighted caseload system. In a report dated April 1982, the committee recommended retaining the system, with certain modifications, some of which are discussed below.

The Current System Perpetuates Inefficiency, Is Out-of-Date, and Inaccurate

A weighted caseload system generally provides the most accurate method for measuring judicial workload and determining the personnel needs of the courts. Our analysis, however, has identified three specific problems with the system currently used by the Judicial Council that should be corrected.

1. *The Current System Perpetuates Inefficiency.* The weighted caseload system, in its present form, does not establish a standard of how many cases a judge or a court *can* handle, or *should* handle (assuming efficient operations). Rather, it measures how many cases courts *are* processing, on the average, at the time of the survey. If a particular task is being performed inefficiently in the individual courts surveyed, that inefficiency is built into the system and, in effect, "accepted" for budgeting purposes. Thus, to the degree that the courts are using inefficient procedures, the use of the weighted caseload system perpetuates these inefficiencies. As a result, the system frequently indicates that additional judges are needed to handle workload when in fact the court's workload could be handled without an increase if internal procedures were improved. This can be seen by examining workload data covering the various courts.

In 1980-81 (the latest year for which data is available from the AOC), five superior courts processed between 86,000 and 118,000 units per judge without allowing backlogs to develop. The fact that these courts (Kern, Monterey, Santa Clara, Stanislaus, and Tulare) demonstrated a productivity that is between 20 percent and 65 percent greater than the standard used by the Judicial Council (and between 9 percent and 49 percent greater than the productivity found by the AOC in the 1979 study rejected by the Judicial Council), and were able to do so without allowing a backlog to develop, demonstrates both the potential for increasing court productivity through improved procedures and the primary weakness of the weighted caseload system.

2. *The Current System is Out-of-Date.* As noted above, the surveys that form the basis for the weighted caseload system as it is now applied by the Judicial Council, were conducted in 1976 and 1977. It is reasonable to assume that the courts have become more productive since then—an

assumption that appears to be borne out by the results of the 1979 study that was rejected by the Judicial Council. As a result, the data presented to the Legislature in support of requests for additional judgeships is not reliable. In fact, on a statewide basis, the equivalent of 50 judgeships that the Judicial Council maintains are needed on the basis of the 1976 standard are not justified using the results of the 1979 survey.

Use of the out-of-date standards can be costly to the General Fund. For example, use of the 1979 survey data would have indicated that no additional judgeships would have been needed to handle workload in 1980-81. Instead, in response to the Judicial Council's recommendations, the Legislature added 14 superior court judgeships during 1981, at an annual state General Fund cost of approximately \$1.7 million. County costs for these positions is approximately \$4 million per year.

Even if the results of the 1979 study had been incorporated in the weighted caseload system, however, a new study would be needed soon to reflect major changes in the workload and operation of the state's superior courts brought about during the past four years by court decisions, statutory changes, and constitutional amendments (particularly the 1982 Gann Initiative). In fact, by 1980-81, the average workload handled per judge already was 5 percent above the 1979 standard of 79,000.

Although the Judicial Council's advisory committee has recommended that a new survey be conducted, the council has not taken any action to initiate such a study as yet.

3. *The Current System is Based on Inaccurate Data.* Finally, our analysis indicates that a technical error was made in computing the current superior court workload standard. This error results in the need for additional judges being overstated.

In the 1976 study, the AOC inadvertently double-counted sick leave and vacation time taken by judges. Although this error has been corrected in the data used to support the need for municipal court judges, it is still reflected in the data used to justify the need for more superior court judges. The council's advisory committee has acknowledged this problem, and has recommended that it be rectified in the next survey.

How the Weighted Caseload System Can Be Improved. In 1979, the State of Wisconsin contracted for a study to determine its judicial staffing needs. This study recommended use of a weighted caseload system based on a survey of *the 10 most efficient courts* in the state. The caseload weights developed from this survey could then be used to determine staffing needs for *all* courts.

We believe the approach recommended for Wisconsin has considerable merit from California's standpoint. It would provide information to the Judicial Council and the Legislature for use in assessing the need for new judgeships which does not reflect current inefficiencies in court procedures. In addition, it would provide a model which could be used to determine the efficiency of all courts. Also, by focusing attention on the especially productive courts, this approach would put the Judicial Council in a better position to help less efficient courts identify methods used by other courts which have been effective in increasing productivity (a step recommended by the advisory committee).

If such an approach were adopted, the data would have to be kept current. This would require the Judicial Council to update the study every two years.

Improving the Weighted Caseload System Will Avoid Major Costs in the Future. As noted earlier, the use of out-of-date, inaccurate data re-

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flecting current inefficiencies in court procedures results in the approval of new judgeships that are not needed to handle the courts' workload, causing the state to unnecessarily incur major General Fund costs. These costs include not only the state's share of the salaries, benefits, and support provided for judges today, but the cost of the judges' pensions that will have to be paid in the future from an already-underfunded Judges' Retirement Fund, as well. Each additional superior court judgeship costs the state approximately \$120,000 annually, and costs the counties an estimated \$280,000 annually. To the extent that an improved system is used to identify the need for new judgeships, the state and the counties would achieve major cost avoidances.

If the Legislature required that individual courts achieved a minimum level of efficiency before it approved additional judgeships for those courts, the state could achieve major savings. For example, if the three least efficient metropolitan superior courts improved their output to 83,000 units per judge (the average workload handled per judge in 1980-81), these courts could handle the same workload they are handling now with 13 less judges, or handle 20 percent more units without an increase in staffing.

For these reasons, we recommend that the Legislature adopt the following supplemental report language:

"The Judicial Council shall:

"1. Conduct a new superior court weighted caseload study by February 1, 1984, and a new municipal court study by December 1, 1984.

"2. Establish caseload weights based on the average processing time of the five to ten most productive courts (as measured by units per judge and case-time to trial).

"3. Report to the Legislature on the results of the weighted caseload studies, and on procedures used by the most efficient courts for improving case processing time. The report covering superior courts should be submitted by March 1, 1984, and the report on municipal courts should be submitted by January 1, 1985.

"4. Include in any report to the Legislature evaluating superior court judgeship needs the number of judicial positions required on the basis of data produced by the 1979 superior court survey, until a new superior court weighted caseload study is adopted.

"5. Revise these studies on a biennial basis, beginning with a new superior court study by January 1, 1986, and a new municipal court study by January 1, 1987.

"6. In performing the surveys, revise the weighted caseload data methods to avoid double-counting for vacation and sick leave."

Our analysis of the Judicial Council's budget indicates that the cost of these studies can be absorbed within existing resources, as were previous studies, by reallocating resources from lower priority activities.

Law Clerks for the Courts of Appeal

We recommend that 39 of 54 proposed law clerks be deleted so as to provide for a phasing in of the new positions, for a General Fund savings of \$1,616,000.

The budget proposes the addition of 54 law clerks for judges of the courts of appeal, at a cost of \$2,238,000. These new law clerks would be in addition to the 15 law clerks added in the current year, and the eight

provided in the 1978 Budget Act. Approval of this proposal would provide two law clerks (research attorneys) for each of the 77 judges of the courts of appeal.

The budget for 1982-83 proposed the establishment of 29 new law clerks, at a cost of \$1,153,000. The budget stated that this request represented the first part of a two-part plan to add new law clerks, with 40 additional clerks to be requested in 1983-84. The Legislature did not adopt the courts' proposal, and instead approved funding for only 15 new positions, at a cost of \$587,000.

In our analysis of the 1982-83 budget, we recommended that funding for the new law clerks be deleted because they had not been justified on a workload basis. Our review of the 1983-84 budget indicates that the Judicial Council still has not been able to justify the additional attorneys on a workload basis. We have no analytical basis, however, for assessing the courts' claim that the additional attorneys will improve the "quality" of judicial output by raising the staffing ratio per judge above what it has been in recent years.

While we cannot document the need for any additional law clerks in the budget year, we recognize legislative intent to increase the current staffing ratio. On this basis, we recommend approval of 15 additional clerks—the same number of new clerks approved in the current year. This would provide for the additional positions to be phased-in over a longer period (as apparently contemplated by the Legislature in 1982), and allow a General Fund savings of \$1,616,000 (Item 0250-001-001).

Major Increase in Appointed Counsel Fees

We withhold recommendation on \$1,654,000 that the budget proposes to transfer from the State Public Defender's office (Item 8140) to this item for appointed counsel fees, pending the receipt of workload and staffing data.

The budget proposes \$6,810,000 for the courts of appeal and \$953,000 for the Supreme Court to pay appointed counsel in criminal appeals. This is an increase of \$4,022,000 (144 percent) for the courts of appeal, and \$662,000 (227 percent) for the Supreme Court. These increases are the result of two proposed changes, as shown on Table 3. First, the hourly reimbursement rate for appointed counsel has been increased substantially by the Supreme Court. Second, the number of appeals handled by appointed counsel is expected to increase significantly, due to the 50 percent reduction in the staff of the State Public Defender's office which the budget proposes.

Table 3
Proposed Funding for
Appointed Counsel Fees

	Courts of Appeal	Supreme Court	Total
Attorney Fee Increase	\$5,386	\$723	\$6,109
Transfer from Public Defender	1,424	230	1,654
Totals.....	\$6,810	\$953	\$7,763

Attorneys' Fees Increased. In July 1981, the Supreme Court issued guidelines for the payment of appointed counsel fees. In the past, appointed counsel often were paid \$400-\$800 per case, regardless of the actual cost of the defense. Generally, this amount was not sufficient to cover the

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attorneys' expenses. The new guidelines provide for a payment of \$40 an hour (approximately 40 percent of what the Judicial Council maintains is the prevailing hourly rate for private attorneys in California). These guidelines also allow attorneys to be paid at intervals during lengthy cases, rather than have to wait until the case has been concluded (possibly years after the case began).

The courts of appeal project a caseload of 3,625 appeals in the budget year, about 7.6 percent above the estimated current-year level of 3,370. Based on this projection, the \$5,386,000 requested to handle ongoing workload would be sufficient to provide fees for appointed counsel averaging approximately \$1,485 per case, or about 82 percent more than the amount estimated for the current year (\$816 per case).

The increase of \$432,000 requested for the Supreme Court would be used to pay legal fees for appointed counsel in death penalty cases. There are 106 death penalty cases now pending before the court, for which it expects to make partial or full payments by the end of the budget year. Although only \$291,000 was budgeted for the court in the current year, it expects to make over \$700,000 in payments by the end of the year. The additional funds will be redirected from lower priority activities which have not yet been identified. The court also expects another 60 death penalty cases to reach the court during 1983-84. Under the new policy allowing interim payments, some of these cases will require payment in the budget year. Full reimbursement is expected to average about \$20,000 per case.

Our analysis indicates that the court's request for additional funds to pay increased attorneys' fees is adequately documented, and is consistent with the payment policy that has been adopted and implemented by the Supreme Court.

State Public Defender's Office Significantly Reduced. As indicated above, the budget proposes a 50 percent cut in the staff and expenditures of the State Public Defender's office (SPD). The budget specifies that the remaining staff will be directed to focus on capital cases and the most complex noncapital cases.

This reduction is premised on the fact that the average appointed counsel is paid between 45 percent and 70 percent of what it costs the state to provide counsel through the SPD. On this basis, the budget reduced the SPD by \$3.9 million, and transferred \$1,654,000 to the Judicial item to fund additional appointed counsel (\$1,424,000 to the courts of appeal, and \$230,000 to the Supreme Court). The Department of Finance indicates that as a result of this reduction it expects 800-900 cases to be handled by appointed counsel, rather than the SPD.

At the time this analysis was prepared, the SPD had not developed revised workload and staffing data indicating the number of appeals it expects to be able to handle in the budget year. Pending the receipt of this information, we have no basis for estimating the appropriate level of expenditures for this item. Consequently, we withhold recommendation on the proposed \$1,654,000 million increase (Item 0250-001-001).

Courts of Appeal Workload***We recommend approval.***

Three districts of the courts of appeal are requesting five new positions, at a total cost of \$211,000. These positions will provide secretarial support

for the central legal staffs of the Second, Third, and Fourth Districts, and an additional writ attorney for the Third District. Based on our review of the workload and staffing levels in these courts, we believe the requests are justified.

Expedited Appeal Program Results Inconclusive

We recommend deletion of one attorney position that is not justified on a workload basis, for a General Fund savings of \$56,000 (Item 0250-001-001). We further recommend that the Judicial Council report to the Legislature, prior to December 1, 1983, on the effect of the Expedited Appeal Program on costs, time to decision, and attorney workload distribution in the two participating districts.

The budget proposes the establishment of two attorney positions and one clerical position in the Third District to continue the "expedited appeal" program at a cost of \$134,000 in the budget year.

For the current year, the Legislature authorized one attorney position in Third District for the expedited appeal program, with the authorization scheduled to expire on June 30, 1983. The First District is also conducting the program on a pilot basis, using one attorney and one clerk funded by the American Bar Association. For the budget year, the First District proposes to redirect an attorney from central staff and add one clerical position to the program, at a cost of \$31,000.

The expedited appeal program allows litigants to forego lengthy legal briefs, and instead attend a one-judge settlement conference. It has shown itself to be effective in terms of reducing time to decision and case costs for litigants who participate. To date, however, there is little evidence that the program has reduced *state* costs or increased attorney output. In fact, expedited appeal appears to result in more attorney and clerical effort than the regular appeal process. It is possible, however, that savings to the state may be realized in the future if the more routine appeals are shifted from the traditional three-judge panel to a one-judge settlement conference.

Our review of the Third District's current staffing level indicates that a new position is not needed to support the expedited appeal program in the budget year. The attorney position requested for the program could instead be secured by redirecting an existing position from the central staff, as the First District proposes to do.

The Third District currently has a central staff of seven, including one expedited appeal attorney. Approval of the budget request for an additional writ attorney (as we recommend) would add another position. If the district receives the new law clerks requested in the budget, the district's total attorney staff will increase from 15 to 21 positions. On the other hand, any cases handled by the expedited appeal program will necessarily reduce the workload on these attorneys, allowing a position to be redirected to the program without hindering other district activities.

In sum, our analysis indicates that an additional attorney is not justified on a workload basis. As a result, we recommend the elimination of the proposed position, for a General Fund savings of \$56,000 (Item 0250-001-001).

Because of the experimental nature of the program, and its potential for generating savings to the state as well as to litigants, we recommend continuation of the program, using three positions on a limited-term basis until June 30, 1984. We also recommend the adoption of supplemental report language directing the Judicial Council to report on the program's

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effectiveness. This language is as follows:

“The Judicial Council shall report to the Legislature prior to December 1, 1984, on the effect of the expedited appeal program on court costs, time-to-decision for cases included and excluded from the program, and attorney workload distribution.”

Courts of Appeal Propose Reducing Productivity of the Clerks' Offices

We recommend the deletion of 7.3 proposed positions that are not justified on a workload basis, for a General Fund savings of \$217,000 (Item 0250-001-001).

The budget requests nine new positions for the clerks' offices of the courts of appeal. The budget also proposes to make permanent three limited-term positions authorized for the current year.

1. **Background.** Last year, the budget proposed the establishment of 15.5 new positions for the clerks' offices. The request was justified on the basis of workload increases and the establishment of new courts in Santa Ana, Santa Barbara, and San Jose pursuant to Ch 959/81. The workload estimates used to support the need for the new positions were derived from Judicial Council's projection of 16,823 filings in 1982-83.

The Legislature approved 11 new positions, three of which were limited to June 30, 1983. The Judicial Council now estimates there will be only 15,877 filings in 1982-83, and 16,562 in 1983-84.

2. **Current-Year Staffing.** During the current year, the courts are authorized a staffing level of 59.3 personnel-years for the clerks' offices, including temporary help positions. In addition, the courts have redirected other funds to support 5.3 personnel-years, to reach an estimated clerical staffing level of 64.6 personnel-years. The result of this redirection (coupled with the lower-than-estimated number of filings) is a staffing level that is significantly higher than what the Legislature approved in the 1982 Budget Act. (This redirection did not require the approval of the Department of Finance or the Legislature.)

3. **Budget-Year Staffing.** The Judicial Council indicates that it proposes to adopt a workload standard of 250 filings per clerk (65 positions) for the budget year. The budget, however, actually proposes a ratio of 242 filings per clerk (68.3 positions) because it proposes adding temporary help to assist the 65 positions.

Data provided by the courts indicates that the average clerk (including temporary help) has handled approximately 279 filings of appeals and original proceedings per year, during the last four years. Thus, the budget is proposing to *reduce* the productivity of the clerk's office by 13 percent (from 279 to 242 filings per clerk). We see no reason to budget for a productivity *decline* in 1983-84. Based on actual workload per clerk in past years, 61 personnel-years should be adequate to meet the courts' workload demands. Accordingly, we recommend that 7.3 proposed positions be deleted, for a General fund savings of \$217,000 (Item 0250-001-001).

Court of Appeal Library Request Has Not Been Justified

We withhold recommendation on \$655,000 requested for library materials, pending receipt of additional justification for the request.

The courts of appeal are requesting \$655,000 for library materials in the budget year. This is 59 percent above current-year estimated expenditures (\$413,000). According to information supplied by the Judicial Council, the

additional funds are required to (1) cover maintenance costs which are projected to increase by approximately 23 percent in the budget year, and (2) standardize and update the court of appeal central law libraries. Additional data prepared by the various courts indicate that the funds also will be used to standardize and improve the office libraries of judges and attorneys.

The council has provided data indicating that some additional funding is justified in the budget year. An increase is needed to fund the purchase of state code supplements, court decisions, and various other volumes. The courts, however, have been unable to document the need for the proposed level of funding.

We have requested additional information from the Judicial Council that would enable us to determine (1) the current complement of the various libraries, (2) what a minimum complement for a library should be, and (3) under what circumstances libraries should be provided materials in addition to the standard complement. The Judicial Council indicates that it is attempting to develop this information, and will present it to the Legislature prior to budget hearings. Accordingly, we withhold recommendation on the \$655,000 proposed for library materials, pending receipt and review of the additional information.

New Judicial Council Positions

We recommend approval.

The Judicial Council requests six new positions, at a total annual General Fund cost of \$172,000. Costs for four of the positions are offset by a reduction of \$116,000 in funds previously expended for budget preparation and personnel consulting services provided by the Department of General Services. We have reviewed the workload of the council relating to the proposed positions and based on that review we recommend that the additional positions be approved.

Overbudgeted Expense Items

We recommend the deletion of \$586,000 requested for various expense items to correct overbudgeting, for a corresponding savings to the General Fund (Items 0250-001-001 and 9680-101-001).

Our review of the detail provided in support of the budget for the judiciary reveals several instances of overbudgeting.

1. **Equipment Purchases.** In preparing the equipment request for the budget year, the Judicial Council correctly deducted from the baseline one-time purchases of equipment for new positions added as a result of Ch 959/81. The council, however, neglected to deduct one-time purchase costs for furniture and equipment for other new positions approved in the 1982 Budget Act. As a result, Supreme Court is overbudgeted by \$32,000, the courts of appeal are overbudgeted by \$31,000, and the Judicial Council is overbudgeted by \$10,000, for a total of \$73,000 in unjustified expenditures (Item 0250-001-001).

2. **Justice Court Judges.** This item, which pays the salaries of circuit justice court judges, has been overbudgeted consistently since 1976. During the past three years, the amount budgeted has been increased, while the amount actually expended has decreased. For the budget year, \$488,000 is requested. Based on the actual expenditures of \$248,000 in 1981-82, and discussions with Judicial Council staff, we recommend approval of \$208,000 for the budget year, or \$280,000 less than the amount budgeted (Item 0250-001-001).

JUDICIAL—Continued

3. *Economic Litigation Project.* The budget (in Item 9680) proposes \$30,000 to fund reimbursements to counties participating in the "economic litigation project" authorized in Ch 960/76. Chapter 1581, Statutes of 1982, however, terminates the project, effective June 30, 1983. The \$30,000 appropriated under this item is therefore unnecessary and can be eliminated (Item 9680-101-001).

4. *Salary Savings.* Although the budget proposes an appropriate salary savings level in 1983-84 for existing positions, no salary savings were budgeted for new positions. In the event the Legislature approves any of these staff increases, we recommend that the amount budgeted for the new positions be reduced by 5 percent to reflect salary savings at the rate prescribed by the Department of Finance. Salary savings for those new positions that we recommend be approved total \$52,000 (Item 0250-001-001).

5. *Communications.* The budget requests \$800 in communications expenses for each of the 71 positions requested by the courts of appeal. Communications expenses for currently authorized employees in the courts, however, average only \$550 per position. Because fixed costs do not increase when new positions are added, the new positions are at least \$250 overbudgeted. The overbudgeting for the 27 positions that we recommend be approved totals \$7,000 (Item 0250-001-001).

6. *Facilities Operations.* Based on information we have received from the Judicial Council and the Department of General Services (DGS), it appears that the facilities operations item, which includes DGS rental charges, privately leased space costs, State Police charges, and other DGS charges, is overbudgeted. The Judicial Council determined the 1983-84 expenditure amount by adding 5 percent to the 1982-83 baseline, after subtracting one-time costs. This method results in overbudgeting for the Judicial Council, the Supreme Court, and the courts of appeal, because the rent component of this item (about 90 percent of the total) will rise by between 0 and 2.9 percent, rather than 5 percent as proposed in the budget. Based on current-year expenditures and adjusting for the additional space required pursuant to Ch 959/81, our analysis indicates that the Supreme Court, the Judicial Council, and the courts of appeal are overbudgeted by \$54,000, \$29,000, and \$61,000, respectively, for a total of \$144,000 (Item 0250-001-001).

JUDICIAL—CAPITAL OUTLAY

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

Budget p. LJE 18

Requested 1983-84	\$695,000
Recommended reduction	695,000

ANALYSIS AND RECOMMENDATIONS

The budget proposes an appropriation of \$695,000 from the General Fund, Special Account for Capital Outlay for three capital outlay projects for the courts. Table 1 summarizes the request.

Table 1
Judicial Capital Outlay
1983-84
(in thousands)

<i>Item</i>	<i>Project</i>	<i>Location</i>	<i>Budget Bill Amount</i>
0250-301-036			
(1)	Remodeling, Supreme Court.....	San Francisco	\$479
(2)	Remodeling and facilities expansion	Fresno	191
(3)	Remodeling, Library and Courts Building	Sacramento	25
Total			\$695

NO JUSTIFICATION PROVIDED FOR PROPOSED PROJECTS

We recommend deletion of the funds requested for capital outlay, a reduction of \$695,000, because no justification for the proposed projects has been provided. We further recommend that the savings be transferred from the Special Account for Capital Outlay to the General Fund, in order to increase the Legislature's flexibility in meeting high-priority needs statewide.

At the time this analysis was prepared, the Department of Finance advised us that no information was available to support the request for capital outlay funds that was included in the budget for the judiciary. Consequently, we have no basis to evaluate the need for or the cost of the proposed projects, and we recommend deletion of the funds.

Approval of this reduction would leave an unappropriated balance of tidelands oil revenues in the Special Account for Capital Outlay, which would be available only to finance programs and projects of a specific nature. Leaving unappropriated funds in special purpose accounts limits the Legislature's options in allocating funds to meet high-priority needs. So that the Legislature may have additional flexibility in meeting these needs, we recommend that any savings resulting from approval of our recommendation be transferred to the General Fund.

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND

Item 0390 from the General Fund

Budget p. LJE 23

Requested 1983-84	\$15,333,000
Estimated 1982-83.....	14,973,000
Actual 1981-82	10,769,000
Requested increase \$360,000 (+2.4 percent)	
Total recommended reduction	None

1983-84 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
0390-001-001—Supreme and Appellate Court Judges		General	\$691,000
—Government Code Section 75101		General	514,000
0390-101-001—Superior and Municipal Court Judges		General	8,103,000
—Government Code Section 75101		General	6,025,000
Total			\$15,333,000

GENERAL PROGRAM STATEMENT

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

Primary receipts of 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 the payment of retirement and survivor benefits.

In the current year, the fund will receive contributions from about 1,230 active judges, and will pay benefits to about 470 retired judges and about 280 survivors.

ANALYSIS AND RECOMMENDATIONS

We recommend approval.

The budget proposes four General Fund appropriations totaling \$15,333,000 as the state's contribution to the Judges' Retirement Fund in 1983-84. This is an increase of \$360,000, or 2.4 percent, over estimated current-year expenditures. The \$15.3 million includes \$6.5 million as the employer's statutory contribution (8 percent of judges' salaries) and \$8.8 million to keep the fund solvent during 1983-84. The latter amount is needed because the projected receipts of the retirement system will fund only about 70 percent of the anticipated benefit payments to be made in 1983-84.

Revenues and expenditures of the Judges' Retirement Fund for the prior, current and budget years are shown in Table 1.

Table 1
Judges' Retirement Fund
Fund Condition
(in millions)

	<i>Actual</i> 1981-82	<i>Estimated</i> 1982-83	<i>Proposed</i> 1983-84	<i>Changes</i>	
				<i>Amount</i>	<i>Percent</i>
Beginning Resources.....	\$3.2	\$0.8	\$1.5	\$0.7	88%
1. State contributions					
a. Statutorily required.....	5.9	6.1	6.5	0.4	7
b. Budget Act appropriations	4.8	8.8	8.8	—	—
Totals, State Contributions	\$10.7	\$14.9	\$15.3	\$0.4	2%
2. Other Receipts					
a. Judges' contributions.....	\$5.7	\$5.8	\$6.3	\$0.5	9%
b. Filing fees	3.7	3.8	3.9	0.1	3
c. Other receipts ^a	0.8	0.9	0.7	-0.2	-22
Totals, Other Receipts	10.2	10.5	10.9	0.4	4
Grand Totals, Receipts	20.9	25.4	26.2	0.8	3
Total Resources	\$24.1	\$26.2	\$27.7	\$1.5	6%
Disbursements					
1. Benefits and refunds	\$23.8	\$25.0	\$27.4	\$2.4	10%
2. Assignments	-0.6	-0.5	-0.5	—	—
3. Other disbursements ^b	—	0.3	—	-0.3	-100
Total Disbursements	\$23.2	\$24.8	\$26.9	\$2.1	8%
Ending Resources (accrual basis)	\$0.8	\$1.5	\$0.8	-\$0.7	-47%

^a Consists of interest income on temporary cash flow, county contributions (as employer) and other miscellaneous contributions.

^b Includes retroactive disability payments and cost-of-living adjustments per *Olson v. Cory*.

As shown in Table 1, there was a substantial increase in the size of the state's contributions to the fund between 1981-82 and 1982-83. Part of the increase merely reflects the fact that there was \$3.2 million in the Judges' Retirement Fund at the beginning of 1981-82. Use of this surplus to pay benefits reduced the amount of new money needed from the General Fund in 1981-82. As a result, the state's contribution was less than would have been required otherwise.

The \$360,000 increase in expenditures projected for 1983-84 represents the statutory contributions for the 31 new judgeships authorized in 1982-83 for the budget year. These judgeships are in addition to the 50 judgeships established during the current year. Table 2 shows the allocation of these new judgeships among the various courts, as well as the projected growth in the number of retired judges and survivors.

Table 2
Membership Changes in the Judges' Retirement System

<i>Type of</i> <i>Judge</i>	<i>Actual</i> 1981-82	<i>Estimated</i> 1982-83	<i>Increase</i> <i>over</i>		<i>Increase</i> <i>over</i> <i>Previous</i> <i>Year</i>
			<i>Previous</i> <i>Year</i>	<i>Projected</i> 1983-84	
Supreme	7	7	—	7	—
Appellate	59	77	18	77	—
Superior	628	642	14	657	15
Municipal	488	506	18	522	16
Retired and Survivors.....	707	749	42	775	26
Totals.....	1,889	1,981	92	2,038	57

CONTRIBUTIONS TO THE JUDGES' RETIREMENT FUND—Continued

Increased contributions from these new judgeships and an estimated \$1.5 million in funds remaining from the 1982-83 appropriation will help to finance the cost of meeting the system's obligations in 1983-84.

Nature and Scope of the Funding Problem

Since its establishment in 1937, the Judges' Retirement Fund has operated on a "pay-as-you-go," rather than on a "reserve-funding" basis. Under the "pay-as-you-go" method, the fund's annual revenues are used to pay the benefits owed to retired judges and their survivors. No revenues are set aside as reserves to pay for the cost of benefits being earned by active judges.

1. *Annual pay-as-you-go deficits.* So long as the fund's annual income from contributions covered benefit payments, the "pay-as-you-go" system was self-supporting on a year-to-year basis. Beginning in the late 1960's, however, the combination of sharp increases in judges' salaries and costly benefit improvements increased cash requirements to where they could no longer be met solely through annual contributions, resulting in annual deficits. The law requires the state General Fund to cover these deficits.

Additional benefit improvements and a significant increase in the ratio of retired-to-active-judges accelerated the growth in the size of the annual deficit during the 1970's. The deficit has grown from \$1 million in 1973-74 to an estimated \$8.8 million in the current and budget years.

2. *The unfunded liability problem.* The absence of reserve funding has led to a large "unfunded liability" in the Judges' Retirement System. By "unfunded liability", we mean the excess of accrued benefits over the value of the system's assets at a given point in time.

In 1980, the unfunded liability stood at \$448 million, over four times what it was only six years ago. Increases in judges' salaries and the absence of any reserve capable of producing interest revenues to the fund together are causing the unfunded liability to increase by an estimated \$30 million per year. According to the most recent actuarial valuation (1980), *annual contributions equal to 76 percent of the judicial payroll would be required to fully fund the Judges' Retirement Fund by the year 2002*—the deadline established by the Legislature in Section 75110 of the Government Code.

Table 3 shows that \$62.2 million would be required in 1983-84 to fully fund the system by the year 2002, based on current projections of the judicial payroll. This compares with projected receipts in 1983-84 of \$27.7 million.

Table 3
Funding Requirements of the Judges' Retirement Fund as a
Percent of Judicial Payroll
(in millions)

	<i>1983-84 Costs^b</i>	<i>Percent</i>
Full funding by 2002 ^a	\$62.2	76.1%
Projected 1983-84 receipts.....	-27.7	-22.9
Total	\$34.5	42.2%

^a Annual cost of amortizing the existing unfunded liability and maintaining normal retirement program costs.

^b Based on the projected 1983-84 payroll for all authorized judgeships.

Table 3 shows that an additional contribution representing over 42 percent of judges' payroll, or \$34.5 million, would be required in 1983-84 to provide the amount needed in the first year to fund the system by 2002. The required funding would have to increase further in each of the subsequent years until 2002, because of increases in judges' salaries and the absence of investment earnings.

SALARIES OF SUPERIOR COURT JUDGES—SUPPORT AND REVERSION, AND BLOCK GRANTS FOR SUPERIOR COURT JUDGESHIPS

Items 0420, 0420-495, and 0440
from the General Fund

Budget p. LJE 25

Requested 1983-84	\$45,674,000
Estimated 1982-83.....	45,329,000
Actual 1981-82	40,963,000
Requested increase (excluding amount for salary increases) \$345,000 (+0.7 percent)	
Total recommended reduction	\$178,000

1983-84 FUNDING BY ITEM AND SOURCE

Item	Description	Fund	Amount
0420-101-001—Judges' salaries		General	\$36,194,000
0440-101-001—Block grants		General	9,480,000
Total			\$45,674,000

SUMMARY OF MAJOR ISSUES AND RECOMMENDATIONS

Analysis page

1. Use of Commissioners and Referees. Recommend that the Judicial Council report to the Legislature by November 1, 1983, on the appropriate use of superior court commissioners and referees, and on the methods that could be adopted by the state to increase the use of such officials. 27
2. County Population Estimates. Recommend legislation be enacted requiring use of more accurate county population estimates. (General Fund savings: \$40,000 annually). 28
3. *Health Benefits Overbudgeted. Reduce Item 0420-101-001 by \$178,000.* Recommend reduction to eliminate overbudgeting of judges' health benefits. 29

GENERAL PROGRAM STATEMENT

The state pays 85 percent to 91 percent of the salaries and the full cost of health benefits provided to 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. These amounts have not changed since 1955. The state pays the balance of each judge's salary, which is now set at \$63,267. The state also provides retirement benefits for judges.

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

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

ANALYSIS AND RECOMMENDATIONS

The budget proposes an appropriation of \$36,194,000 from the General Fund to cover the state's share of superior court judges' salaries and benefits, as displayed in Table 1. This is an increase of \$225,000, or 0.6 percent, above estimated current-year expenditures. The increase results from the addition of six new judgeships authorized in 1982. The increase above 1982-83 will be larger than 0.6 percent to the extent that the Legislature approves any salary or benefit increase for existing judges in the budget year, or approves any additional judgeships prior to July 1, 1984.

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, including 14 judgeships approved during the 1982 legislative session (see Table 1). This is an increase of \$120,000, or 1.3 percent, over estimated current-year expenditures. The budget proposes that these block grants be funded at a level of \$57,455 per judgeship, rather than the traditional \$60,000 amount. This reduction was made so that block grants can be provided for seven new judgeships approved in 1982, without increasing the level of expenditures. Although these seven judgeships are the same type of judgeships that usually qualify for a block grant, the Legislature specified that block grants would not be provided in these cases.

The budget also indicates that the companion bill to the Budget Bill will contain a provision deleting the block grant prohibition for these seven judgeships.

The budget does not propose block grant funding for a judgeship in San Joaquin County approved last year to replace an existing referee position. It has been state policy not to fund such judgeships, in order that no incentive is provided to the counties to convert referee or commissioner positions to judgeships.

Because there is no analytical method of establishing the amount of the block grant for superior court judgeships, we have no basis for recommending any change in the amount budgeted.

Table 1
Salaries, Health Benefits, and Block Grants
for Superior Court Judgeships
(dollars in thousands)

<i>Expenditures</i>	<i>Actual</i> <i>1981-82</i>	<i>Estimated</i> <i>1982-83</i>	<i>Proposed</i> <i>1983-84</i>	<i>Change from</i> <i>1982-83</i>	
				<i>Amount</i>	<i>Percent</i>
Salaries (Item 0420)	\$31,450	\$34,814	\$34,834	\$20	0.1%
Health benefits (Item 0420)	993	1,155	1,360	205	17.8
Totals, Item 0420	(\$32,443)	(\$35,969)	(\$36,194)	(\$225)	(0.6%)
Block grants (Item 0440)	8,520	9,360	9,480	120	1.3
Totals.....	\$40,962	\$45,329	\$45,674	\$345	0.7%

The State's Current Policy Toward Subventions Provides Disincentives to Hiring Commissioners

We recommend the adoption of supplemental language directing the Judicial Council to report by November 1, 1983, on the appropriate use of superior court commissioners and referees, and on what alternatives are available to the state for increasing the use of these officials.

1. **Background.** As discussed above, the state, in addition to paying for most salaries and benefits, provides block grants for most judgeships created after January 1, 1973. However, the Legislature generally has chosen *not* to provide block grants for new judgeships that replace existing commissioner or referee positions, on the basis that these positions require support costs that are similar to what judgeships require.

If the Legislature provided a block grant in those cases where new judgeships are in lieu of commissioner/referee positions, it would encourage counties to convert these positions to judgeships. This would increase costs to the taxpayers, since referees and commissioners generally receive only 70 percent to 85 percent of a judge's salary (depending on the county). It would do so, moreover, without necessarily improving the level of service provided to the public.

Under the constitution, commissioners and referees may act as judges in any matter if all parties agree, or "stipulate," to them having such powers. Commissioners request and receive such stipulation about 30 percent of the time. If the parties do not stipulate, commissioners and referees may still preside at a hearing, but any action they take is subject to approval by a judge. Commissioners and referees in superior courts predominantly hear matters involving family law, probate, and juvenile law.

2. **Fiscal Incentives to Use Judges.** Although it has been the intent of the Legislature not to increase the number of judgeships at the expense of the commissioners and referees, our review of Judicial Council statistics, supplemented by discussions with local court and Judicial Council staff, indicates that this may in fact, be happening because of current fiscal incentives. Specifically, by providing block grants for new judgeships and paying 85 percent to 91 percent of a judge's salary, the state encourages counties to seek new judges, rather than establish new commissioner or referee positions warranted by judicial workload. In contrast to the \$113,767 to \$117,767 (plus the cost of health and retirement benefits) that a county receives annually for each new judgeship created, no state support is available for newly created commissioners or referees. The county must bear the full cost of these positions.

According to the Judicial Council, filings in areas where commissioners and referees are used most often (family law and probate) increased noticeably from 1971-72 to 1980-81, while juvenile filings declined slightly. Other categories of civil filings also increased significantly, with the rate increase ranging from 18 percent to 128 percent. During that period, however, the use of commissioners and referees *declined* by 5 percent, while the number of judges rose by one-third.

Our analysis of Judicial Council data indicates that civil filings accounted for about 480 positions (with family, probate, and juvenile law accounting for about 215 of them). If only 50 percent of family, probate, and juvenile law filings were handled by commissioners and referees, instead of by judges, the counties would need 107 commissioners and referees. If 50 percent of *all* civil filings were handled by commissioners and referees, the state would need 240 such positions. Instead, there were only 98 commis-

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

sioners and referees in 1980-81, and seven of these positions have since been converted (or are authorized to be converted) into judgeships.

By using judges instead of commissioners or referees to handle these filings, state costs (as well as government costs) generally are increased unnecessarily. For this reason, we recommend that the Legislature direct the Judicial Council to report on the current and potential use of commissioners and referees in superior courts. Specifically, we recommend the adoption of the following supplemental report language:

“The Judicial Council shall report to the Legislature, prior to November 1, 1983, on the use of commissioners and referees in superior courts. This report shall at a minimum, provide information on (a) whether the use of these officers can be increased as an alternative to additional judgeships, (b) any legal complications that would limit the opportunities to use these officers in place of judges, (c) what methods can be used by the state to effect such an increase, and (d) potential state and local savings and cost avoidances from using commissioner and refereeships in lieu of judgeships. In addition, the report should include the council’s recommendations regarding this matter.”

Population Estimate Inaccurate

We recommend enactment of legislation requiring the use of Department of Finance population estimates in determining each county’s share of superior court judges’ salaries, for a potential General Fund savings of \$40,000 annually.

A county’s share 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 from 40,000 to 250,000 pay \$7,500; counties with populations over 250,000 pay the maximum of \$9,500. Under the Government Code, county populations are determined for this purpose by multiplying the number of registered voters within the county during the last general election, as determined by the Secretary of State, by two. These estimates are then used by the Controller until the next general election.

The Department of Finance’s population research unit currently estimates the population of counties and cities semi-annually. These estimates are used for various purposes, such as allocating revenues from motor vehicle license fees. Data supplied by that unit indicates that use of the current method for establishing a county’s proper share of a superior court judge’s salary results in seven counties paying more or less than they would have if direct population estimates had been used for this purpose. For example, Monterey County’s population is estimated by the Secretary of State to be 241,000, while the Department of Finance estimates the county’s population to be 299,000. In 1983-84, this will result in a \$16,000 “overpayment” to the county.

Based on the most recent population estimates and number of approved judgeships, the counties are “underpaying” their share of judicial salaries by \$40,000. To avoid overpayments to counties in the future, we recommend enactment of legislation specifying that the Controller use Department of Finance estimates to determine a county’s share of its superior court judges’ salaries.

Health Benefits for Judges Overbudgeted

We recommend reducing funding for health benefits for judges to eliminate overbudgeting, for a General Fund savings of \$178,000.

The budget requests \$1,360,000 for health benefits provided to superior court judges. According to the Controller's office, this amount was derived by determining current-year expenditures to date, adjusting for additional judgeships approved for 1983-84, and adding 15 percent for inflation. This adjustment, however, is contrary to the Department of Finance's guidelines, which specify that such an adjustment should not be included in individual budgets. If increased benefits for state employees (including judges) are granted, they will be funded from Item 9800 of the Budget Bill. Therefore, we recommend a reduction of \$178,000 to correct for this overbudgeting (Item 0420-101-001).

Reversion of Unneeded Funds

We recommend approval.

Item 0420-495 proposes to revert to the General Fund the unencumbered balance of an appropriation made by Ch 1233/80, which authorized an additional superior court judge in Sacramento County. Costs for this new judgeship were funded from salary savings in the Budget Act appropriation for judges' salaries. Therefore, this appropriation (\$47,415) will not be needed, and we recommend that the proposed reversion be approved.

NATIONAL CENTER FOR STATE COURTS

Item 0460 from the General Fund

Budget p. LJE 26

Requested 1983-84	\$14,000
Estimated 1982-83	14,000
Actual 1981-82	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 to cover California's membership fee in the National Center for State Courts. This is the same amount appropriated for the current year. Members of the center include all 50 states, four territories, and the District of Columbia. The \$14,000 fee is approximately 8 percent of California's actual assessment (which is based on the state's population), and amounts to approximately 1 percent of the membership fees collected by the center from all states. Membership in the center 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.