

REPORT OF THE TRCP 300-30 SUBCOMMITTEE VISITING JUDGE PEER REVIEW

The subcommittee met via conference call on Thursday, August 22, to discuss the Judicial Council's revised draft of proposed Rule of Judicial Administration 13, entitled "Visiting Judge Peer Review." Those participating in the conference call were Chief Justice John Cayce, Judge David Peeples, Ralph Duggins, Wendell Hall, Stephen Tipps, and the subcommittee chair, Sarah Duncan.

The subcommittee first discussed whether any process of visiting judge peer review is a "good thing" or a "bad thing." Initially, several subcommittee members questioned whether the proposed rule would have any significant impact. Ultimately, however, the members unanimously concluded that some type of visiting judge peer review would be a "good thing" for at least four reasons:

- the power of the judiciary derives in large measure from public confidence in its integrity and competence; and it is hoped public confidence in the judiciary would increase if there were a process for reviewing the "unelected" judiciary;
- even if a visiting judge peer review process had only a limited positive impact, any level of positive impact would be better than none; and it might be that the positive impact of a visiting judge peer review process would increase as the process became institutionalized; and
- a visiting judge peer review process would afford a presiding judge political "cover" to refuse to appoint a visiting judge who lacks the requisite competency, judicial temperament, etc.

The subcommittee next addressed the text of proposed Rule 13, as well as the questions articulated in the footnotes of the revised draft. A redlined version of the proposed rule, incorporating the subcommittee's recommended resolution of these questions, is attached. The only issue that split the committee is whether the presiding judge should be bound by the peer review committee's recommendation. The subcommittee members unanimously agreed the proposed rule should at least require the presiding judge to consider the peer review committee's recommendation. Three subcommittee members also believe that either the presiding judge should be bound by the peer review committee's recommendation or the presiding judge should be bound by the peer review committee's recommendation except for good cause stated in the record. These members reason that unless the recommendation is binding the peer review process will be ineffective. Chief Justice Cayce and Judge Peeples believe the presiding judge should have discretion to disregard the committee's recommendation.