

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Judicial Services Advisory Committee
Hon. Candace D. Cooper, Chair
Retirement Subcommittee
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DATE: October 25, 2004

SUBJECT: Judges' Retirement: Modification of Allowance—Benefit Factor Defined
for Judicial Retirement System II (Gov. Code § 75522(a)) (Action
Required)

Issue Statement

Increases in the average age of new judges in recent years, combined with investment returns that are lower than original planning assumptions, have raised concerns about the ability of the Judicial Retirement System II (JRS II) to attract and retain the best possible judicial officers from all areas of legal practice. JRS II presents fewer career-planning choices than those of other state and local public retirement programs. The solution recommended is to reduce the minimum age for normal retirement from age 65 to age 63 and the minimum required service from 20 to 10 years.

Recommendation

The Policy Coordination and Liaison Committee and the Judicial Services Advisory Committee recommend that the Judicial Council sponsor legislation to amend section 75522 of the Government Code to provide that a judge will be eligible to receive a monthly retirement allowance (defined benefit) or, in the alternative at the judge's option, monetary credits (defined contribution) upon attaining both 63 years of age and 10 or more years of service, in lieu of the current requirement that the judge attain both 65 years of age and 20 or more years of service.

The text of the proposed legislation is attached at page 6.

Rationale for Recommendation

This proposal responds to changes in circumstances that have occurred since enactment of JRS II and appropriately balances the Judicial Council's goal of attracting and retaining the most highly qualified candidates to the bench with the need to provide reasonable options to judges who may no longer be adequately committed to or capable of serving. Under this proposal, a judge who has served at least 10 years and has reached the age of 63 can retire with a defined benefit that is based on the length of time served and appropriately recognizes length of service in its formula. The defined benefit will continue to increase each year until 20 years of service, providing a reasonable incentive for judges to continue serving.

History

A significant unfunded liability for the existing Judicial Retirement System (now known as JRS I to avoid confusion with JRS II) led to the creation in 1993 of the Select Committee on Judicial Retirement led by A. Alan Post, the former state legislative analyst. The Post committee was charged with developing an affordable and actuarially sound retirement plan for new judges that would maintain California's ability to attract the best lawyers to the judiciary, encourage them to continue serving, ensure reasonable financial security in retirement, and allow a measure of choice in retirement options. (Select Com. on Judicial Retirement, *Final Report (1993)* p. 13.)

The Post committee obtained professional actuarial and benefits advice and, after extensive analysis, recommended the adoption of a new, fully funded pension plan for new judges that would provide a hybrid benefit and increase the minimum normal retirement age required by JRS I from age 60 with 20 years of service to age 63 with 20 years of service. With the addition of the age 63 requirement, the plan would achieve a significant cost savings over JRS I, with the added benefit of extended service. (Select Com. on Judicial Retirement, *Final Report (1993)* p. iii.)

The legislation creating JRS II deviated from the Post committee's recommendation, however, and established age 65 as the minimum normal retirement age in order to generate further savings. The PERS board strongly opposed this change to the Post committee recommendation, arguing that the elevated age requirement was unreasonable and was a significantly higher age requirement than that imposed by other state retirement plans. (*CalPERS, 'Public Employees' Retirement System Responses to Legislative Analyst's (1994-95) Budget Analysis* p. 2.)

Need for Proposal

The Post committee had assumed that the average age of new judges was 45.5 based on then-current data. Based on this assumption, the "average" judge would have been

eligible to retire at 65 and receive the full 75 percent of final average pay benefit (3.75 percent X 20 years of service).

The entry age of new judges into JRS II now is approximately 50, not 45.50 years. This is not unexpected in light of the five-year increase in the minimum attorney experience required for judicial appointment that resulted from the elimination of municipal courts when trial courts were unified in the period 2000–2002.

Under JRS II at present, this “average” new judge is required to work until age 70 in order to be eligible for normal retirement and receive an annuity form of pension. Prior to age 70, the “average” judge is eligible to receive only monetary credits with interest, which may be, depending on market performance, a substantially lower benefit that does not have the purchasing power protection of the normal retirement annuity.

The JRS II benefit formula, particularly the significant difference between the payouts for judges who wish to retire before age 65 and payouts for those who stay through the normal retirement age, acts as “golden handcuffs.” Actuaries describe the structure as “back-loaded.” Such extreme back-loading of benefit accruals is not a characteristic of other plans sponsored by the state or other public or private sector employers.

For personal and professional reasons, judges may need or wish to retire before qualifying for normal retirement. A judge may lose a reelection challenge. A judge may recognize that he or she has lost the energy, patience, or temperament needed for successful performance of judicial duties and is willing to retire early if it is economically possible. A judge’s obligations to a spouse, significant other, or dependents may militate in favor of leaving judicial office.

So that the branch may be sure that the judges sitting in California’s courts are committed to the position and capable of fully performing the duties, it is important that those who want to separate before normal retirement be able to do so. Most, if not all, other defined benefit pension plans in the state allow workers to separate at an earlier, normal retirement date than JRS II in return for taking a pro rata share of their “normal retirement” annuity that reflects the duration of service actually performed that is, payable when they otherwise would have attained normal retirement, and that does not impose the financial penalty now existing with by the mandatory payment of the monetary credits (defined contribution) payout.

It must be noted that the Post committee was charged with developing a retirement plan that would seek to retain judges on the bench for the remainder of their full-time, professional careers. This proposal does not deviate from that goal but simply responds to the recognition that, in large part due to changed circumstances, the choices presented to members of JRS II are much harsher than originally intended and operate as a

disincentive for judges to consider health and other factors in deciding when to leave the bench.

Description of proposal

Now that the effects of the hybrid payout formula have been recognized, the Judicial Services Advisory Committee recommends that the minimum requirements for normal retirement be reduced from age 65 to age 63 (as originally contemplated by the Post committee) and from 20 years to 10 years of judicial service.

Under this proposal, the “average” new judge mentioned above who went onto the bench at age 50 could retire at age 63 with a pension reflecting 13 years of actual service (13 X 3.75 percent = 48.75 percent of final pay versus 75 percent of final pay for a pension after 20 years of service). That judge then could decide at age 63 if he or she had the energy and interest to keep serving to age 70 or some portion thereof (or even past age 70), but the “golden handcuffs” created by the current plan’s extreme back-loading would not enter into that decision. The mature, experienced judges who remain on the bench would be there for the right reasons, and those judges whose productive years were behind them could retire at age 63 (with 10 years of service) with reasonable financial security.

Alternative Actions Considered

The committee considered reducing the minimum normal retirement age to age 60 (as in JRS I), but did not adopt this alternative because it would impose substantially higher costs on the state and is inconsistent with the Post committee’s recommendation. Other alternatives were to reduce the minimum age but not the minimum years of service; this was not adopted as it would provide no relief to judges who join at the current median age (age 50) and would then still have to work until age 70 to accrue 20 years of service. Reducing only the minimum years of service and leaving the minimum retirement age at age 65 would afford no relief to the many judges who were age 44 or younger when they first assumed judicial office; it also aligns JRS II with the recommendations of the Post commission, which recommended age 63 as the threshold for normal retirement.

Comments From Interested Parties

This proposal has been developed through ongoing consultation with CalPERS, which administers JRS II. CalPERS staff have indicated that they have no objection to the proposal. The Administrative Office of the Courts and the Judicial Services Advisory Committee have also worked cooperatively with the California Judges Association (CJA) in developing this proposal. The CJA board of directors voted to support the proposal on August 6, 2004.

Implementation Requirement and Costs

Based on the most current cost information supplied by actuaries at CalPERS (using the June 30, 2001, valuation), it is projected that the cost of this change will be \$4.79 million per year, including \$4.31 million for currently accrued obligations (“normal cost”) and

\$476,000 to amortize the additional accrued liability for past service. The normal cost component will rise incrementally over time as additional judges join the JRS II system and also as active judges receive pay increases. Stated in terms of percent of payroll cost, the cost of the recommended change would add 5.537 percentage of payroll to the existing employer cost based on the most current available cost information from CalPERS.

From its inception, JRS II has been adequately funded. As of its last valuation date (June 30, 2003), JRS II was 91.43 percent funded, which is quite reasonable for a relatively new plan, such as JRS II, and given recent stock market volatility.

Attachment

Government Code section 75522(a) would be amended to read:

1 **§ 75522**

2

3 (a) A judge is eligible to retire pursuant to this section upon attaining both ~~65~~ 63 years
4 of age and ~~20~~ 10 or more years of service, or upon attaining 70 years of age with a
5 minimum of ~~five~~ 5 years of service.

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7 (b)-(f)***