

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

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**Report**

TO: Members of the Judicial Council

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SUBJECT: Proposal to modify Subordinate Judicial Officer Conversion Policy

Issue Statement

At its December 7, 2007, business meeting, the Judicial Council approved a policy delegating to the Executive and Planning Committee (E&P) the authority and responsibility for confirming the conversion of subordinate judicial officer (SJO) positions to judgeships. This memo provides an overview of SJO conversion activity during Fiscal Years 2007-2008 and 2008-2009 and recommends minor modifications to the policy approved at the December, 2007 business meeting.

Recommendation

Staff recommends: 1) extending by three months the time frame during which SJO conversions may be allocated across any of the four court allocation groups and 2) establishing specific criteria for granting courts exemptions from conversions of particular vacant SJO positions. The Executive and Planning Committee, at its meeting on April 1, 2009, voted to support these staff recommendations.

Background on SJO Conversion Policy

During the 1980s and 1990s very few new judgeships were created and trial courts compensated for the absence of new judgeships by creating SJO positions. In the absence of state funding and state policy on the creation of SJO positions, the number of SJO

positions increased unevenly across the state and in some courts SJOs came to represent a significant portion of the bench. Currently, SJOs represent approximately one of every five Authorized Judicial Positions (AJP) statewide but in a number of small courts almost one of every three AJP is an SJO position.<sup>1</sup>

In 2000, the Judicial Council directed the Administrative Director of the Courts to establish a Subordinate Judicial Officer Working Group to make recommendations on several policy issues concerning subordinate judicial officers. In 2002, the Judicial Council approved the report of the SJO Working Group which clarified the scope of case types and duties to which SJOs should be assigned.<sup>2</sup>

On the basis of the report from the SJO Working Group, AOC staff conducted an evaluation of the amount of judicial workload that is appropriate to SJOs in the trial courts and compared this to the number of SJOs actually employed in the superior courts. Using estimates derived from the Judicial Workload Assessment model, staff determined that the workload of 162 existing SJO positions in 25 courts should be handled by judges. These workload estimates served as the basis for legislation sought by the Judicial Council and signed into law in 2007 as Assembly Bill 159.

AB 159 provides for the conversion to judgeships of the 162 SJO positions identified in the evaluation of judicial workload. Under the legislation, only vacant SJO positions may be converted and a maximum of 16 positions may be converted each fiscal year.<sup>3</sup> The statute authorizes the Judicial Council to establish standards for allocating the 16 annual conversions to the courts with SJO positions eligible for conversion based on a factual determination of the relative judicial need for conversion. Given the total of 162 positions to be converted and the limit of 16 conversions per year, the policy should be fully implemented in approximately 10 years, by Fiscal Year 2017-2018.

### SJO Conversions during Fiscal Year 2007-2008 and 2008-09

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<sup>1</sup> In Merced, four of the 12 AJP are commissioners. In the Superior Courts of El Dorado, Marin and Placer greater than 30 percent of their AJP is made up of SJO positions.

<sup>2</sup> See *Subordinate Judicial Officers: Duties and Titles Report of the Subordinate Judicial Officer Working Group* July 2002, [www.courtinfo.ca.gov/reference/documents/sjowgfinal.pdf](http://www.courtinfo.ca.gov/reference/documents/sjowgfinal.pdf).

<sup>3</sup> See Report to the Judicial Council, February 23, 2007, *Update of the Judicial Workload Assessment and New Methodology for Selecting Courts with Subordinate Judicial Officers for Conversion to Judgeships*, [www.courtinfo.ca.gov/jc/documents/reports/022307item9.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/022307item9.pdf) and Government Code 69615 [www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_0151-0200/ab\\_159\\_bill\\_20071014\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0151-0200/ab_159_bill_20071014_chaptered.pdf).

At its October, 2007, business meeting the Judicial Council approved the conversion of the first five SJO positions. At the December, 2007, business meeting the council then approved an allocation plan to distribute SJO conversions among eligible courts and delegated to E&P the authority and responsibility for implementing the allocation plan by confirming the conversion of SJO positions to judgeships.

The allocation plan approved by the council is shown in Table 1. It places the 25 courts with SJOs eligible for conversion into four groupings and allocates the sixteen conversions each year in numbers that are approximately proportionate to the total number of conversions for which the different courts are eligible. For example, the courts in Group 3 are eligible for a combined total of 39 of the 162 total conversions, or 24 percent of all conversions. These same courts are allocated 4 of the 16 conversions each year, or 25 percent of the annual conversions.

According to the policy adopted by the council, if the total number of vacancies reported to the AOC by any court or group of courts does not reach the number of positions set aside for that court or group of courts by April 1, the remaining positions set aside for conversion would be distributed to any other eligible court on a first-come, first-served basis.

Table 1: Annual Allocation Groups for SJO Conversions

	<b>Number of Conversions Set Aside for Conversion: FY 2008–2009 and Ongoing</b>
<b>Group 1:</b> Los Angeles	7
<b>Group 2:</b> Orange	1
<b>Group 3:</b> Alameda, Contra Costa, Riverside, Sacramento, San Diego, San Francisco	4
<b>Group 4:</b> El Dorado, Fresno, Imperial, Kern, Marin, Merced, Napa, Placer, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Solano, Sonoma, Stanislaus, Tulare, Yolo	4

During the remainder of Fiscal Year 2007-2008, another 11 SJO positions were confirmed for conversion by E&P bringing the total conversions for the year to 16. In 2008-2009, all 16 eligible positions have also been confirmed for conversion by E&P, bringing the total to date to 32 SJO conversions. Table 2 shows all of the conversions that

have occurred to date and the number of remaining conversions for which each court is eligible.

Table 2: Eligible and Converted SJO Positions by Court

	Positions Eligible for Conversion	Conversions		Positions Remaining to Convert
		07-08	08-09	
Alameda	6	0	0	6
Contra Costa	6	3	0	3
El Dorado	2	0	1	1
Fresno	3	0	1	2
Imperial	1	0	0	1
Kern	2	0	1	1
Los Angeles	78	4	5	69
Marin	2	0	0	2
Merced	2	0	1	1
Napa	1	0	0	1
Orange	14	1	2	11
Placer	1	0	0	1
Riverside	6	1	1	4
Sacramento	5	1	2	2
San Diego	7	2	0	5
San Francisco	9	1	0	8
San Luis Obispo	2	1	0	1
San Mateo	2	0	0	2
Santa Barbara	2	0	0	2
Santa Cruz	1	0	0	1
Solano	3	1	2	0
Sonoma	2	0	0	2
Stanislaus	1	0	0	1
Tulare	2	0	0	2
Yolo	2	1	0	1
<b>Total</b>	<b>162</b>	<b>16</b>	<b>16</b>	<b>130</b>

### Rationale for Recommendation

Despite the success of the SJO conversion policy in converting all 32 SJO positions for which the courts are eligible, a number of issues have arisen during the last two years which suggest the need for minor policy modifications. The first issue has to do with the timing for opening up the allocation groups to permit a vacant SJO position to be converted in any eligible court regardless of its allocation grouping. The second issue has to do with exceptions to the conversion policy and establishing criteria for when E&P grants a court an exception and allows it to retain an SJO position rather than convert it to a judgeship.

On the issue of timing, the April 1 date for opening up the allocation groupings and allowing any court to convert a position is too late in the fiscal year to allow for the orderly conversion of SJO positions. SJO vacancies are relatively unpredictable and may not occur in the courts for which the annual conversions have been set aside. While the

groupings do provide some assurance to courts that a position will be available to them for conversion, it introduces unnecessary uncertainty in that a court with a vacancy in a grouping that has already converted the number of positions set aside for the group in the fiscal year must wait up to several months—until April 1—to determine whether its vacancy will be converted or whether it can fill the position.

Another related issue further complicates the timing of SJO conversions: over time, courts will begin falling off of the list as they complete their conversions. Ten of the 25 courts eligible for SJO conversions now have only one position remaining to convert and one court – Solano – has converted all of its eligible positions. As more courts complete the conversion of all of their positions it will become increasingly difficult to find 16 eligible SJO vacancies in the current four groupings each year.

Thus, E&P will need to be mindful not only of the way in which the annual conversions fit into the allocation schedule but also of the way in which the remaining 130 positions will be converted over the course of the next 8 years. Specifically, the Superior Court of Orange will need to convert more than its annual allocation of SJO conversions in a number of years in order to convert all of its positions within the 10-year schedule for conversions. Similarly, in certain years the Superior Court of Los Angeles will need to convert one or two more positions than the number allotted to it in the annual conversion groupings if all of the conversions are to occur on schedule.

There is a particular danger for Los Angeles in falling behind because of the large number of conversions allocated to this court. If other courts complete their conversions within the next several years and Los Angeles does not, the Superior Court of Los Angeles will quickly find itself in a position where as many as ten or more conversions need to occur annually in that court to fully effectuate the purposes of the statute. Thus, it is critical that E&P manage the conversion process with an eye toward the out years to avoid having Los Angeles become the sole remaining court with positions eligible for conversion.

Finally, a number of courts have requested and E&P has granted exceptions to conversions of particular SJO vacancies. Exemptions to the conversion of SJO vacancies have generally been sought on the basis of the hardship that a conversion might impose on the court given the length of time that it may take for a new judge to be appointed and other factors affecting the judicial workload in a court.

In making decisions about whether to grant courts an exception to the conversion policy, E&P has sought to strike a balance between the immediate needs of courts to fill vacant SJO positions and the long-term policy objective of achieving a more appropriate balance between the number of judges and SJOs in the trial courts. E&P may be assisted in its SJO conversion work if the Judicial Council adopts specific criteria to use in making decisions regarding exceptions to conversion policy. Establishing clear criteria to help guide E&P decisions will become more important moving forward as the number of courts with positions available for conversion declines, providing fewer options for courts seeking to retain particular SJO positions at the time of a vacancy.

### Recommendations to Modify Current Policy for SJO Conversions

#### *Recommendation 1:*

To address the challenge of timing SJO conversions, E&P recommends that the April 1 date for opening up the allocation groups be moved forward by three months to January 1. An additional three months during which the allocation groups are opened up will diminish the likelihood of reaching the end of the Fiscal Year without having filled all 16 eligible slots while still providing courts with some certainty regarding the availability of conversion slots within their grouping.

#### *Recommendation 2:*

To provide clear criteria to use in evaluating court requests for exceptions to the conversion policy, E&P recommend the following factors be considered in descending order of importance:

- The first criterion should be whether an exception to the policy would result in the conversion of fewer than the 16 positions eligible for conversion every year. If granting an exception to the conversion policy would mean that fewer than 16 vacant positions are converted, then the request for an exception should not be granted;
- The second criterion should be whether the court has already converted positions and is on schedule to convert all of its eligible SJO positions within the established 10-year timeframe for implementation of the policy. Courts that are not on schedule to convert all of their positions should not be granted exceptions.
- The third criterion should be whether converting an SJO position would constitute a hardship for the court. Hardship considerations should include an evaluation of the following:

- Assessed Judicial Need in the court;
- Vacancies and anticipated vacancies of judicial officers;
- Workload growth in the court.

#### Alternative Actions Considered

One alternative to Recommendation 1 would be to leave the current policy as is and continue waiting until April 1 until the SJO positions in the allocation groups are opened to all courts. Staff rejected this alternative for the reasons discussed in the body of this report. Specifically, because waiting until April 1 leaves insufficient time to ensure that all available SJO conversions are completed, this alternative was rejected.

Another alternative to Recommendation 1 would be to move the date for opening up the allocation groups forward even further. In the extreme, moving the date up to the beginning of the fiscal year would effectively eliminate the groups because all courts would be eligible for all SJO conversion slots throughout the entire year. Again, for reasons discussed in the body of the report, staff rejected this alternative. Specifically, because of need to ensure the orderly conversion of positions over time, the allocation groups remain useful as rough guidelines for the number of conversions that should occur across the different court groups.

One alternative to Recommendation 2 would be not to establish criteria for evaluating requests for exemptions to the conversion policy and to allow E&P to make decisions regarding these requests on an ad hoc basis. Staff rejected this alternative because there is a value to the courts in understanding the rationale behind E&P decisions as well as for evaluating the likelihood that they will receive an exemption to the conversion policy.

Another alternative to Recommendation 2 would be to establish different criteria from those adopted for granting exceptions to the conversion policy. Staff selected the criteria in the recommendation, however, so that they are consistent with the policy objectives of SJO conversion. As a result, staff did not consider criteria other than those contained in Recommendation 2.

#### Comments From Interested Parties

No comments from interested parties were considered in the development of this proposal.

Implementation Requirements and Costs

There are no implementation requirements or costs to this proposal beyond those already incurred in the implementation of the SJO conversion policy.