

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

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Trial Court Presiding Judges Advisory Committee
Hon. Frederick Paul Horn, Chair
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DATE: August 5, 2004

SUBJECT: Selection and Term of Presiding Judges (amend Cal. Rules of Court, rule 6.602)
(Action Required)

Issue Statement

Rule 6.602 of the California Rules of Court, which provides for the selection and term of office of presiding judges, does not clearly state the number of years for an additional term served by the judge upon the completion of his or her initial term.

Recommendation

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council, effective January 1, 2005, amend rule 6.602 to:

1. Clarify that a presiding judge may serve an additional term of such duration as set by internal local policy or rule;
2. Encourage courts to provide training for the assistant presiding judge to foster an orderly succession to the office of presiding judge; and
3. Delete mandatory secret ballot for the election of the presiding judges, by allowing courts to use open or secret ballot voting, and encourage courts to establish internal local rules or policies on the selection of the presiding judge.

Rationale for the Recommendation

Recognizing the challenges that presiding judges encounter and the amount of time needed to carry out policy initiatives from concept to implementation, the advisory committee explored options for extending the term of the presiding judge. Some presiding judges have expressed willingness to serve an additional year, but reluctance to commit to an additional term of two years. While the rule allows for the presiding judge to serve consecutive terms, subdivision (c) is unclear regarding the specific number of years of the consecutive term. In relevant portion, the rule provides that the presiding judge is to serve a two-year term and “may serve consecutive

terms.” To clarify that the presiding judge may serve a subsequent term or terms of any duration agreed to by the judges of that court, the rule would be amended to state that the presiding judge “may serve additional terms of such duration as set by internal local rule or policy,” thus clarifying that the one-year option may be available.

The committee also proposes that the rule recommend that the assistant presiding judge be trained in the duties of the presiding judge to help ensure a successful succession to the office of presiding judge. Assisting the assistant presiding judge with familiarizing himself or herself with the court’s business would provide a stronger foundation for assuming the office of the presiding judge.

The committee is also proposing amending the requirement that presiding judges be elected by secret ballot by making the provision discretionary rather than mandatory. The committee observed that mandating secret ballot elections in small counties was cumbersome and unnecessary because the voting process was conducted under less formal procedures in those courts. Deleting the mandate from the rule does not prevent a court from choosing to allow secret ballot voting.

The proposed rule is attached at pages 4 and 5.

Alternative Actions Considered

The committee considered extending the initial term of office for the presiding judge. However, extending the term was not proposed because several courts indicated that they would have difficulty recruiting judges to volunteer for the presiding judge position if the initial term is for a minimum longer than the current two years.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2004 invitation to comment process. Twelve individuals submitted comments. Overall, eight respondents agreed with the proposal, four agreed only if the proposal was modified, and none disagreed with the proposal. The comment chart and committee responses are attached on pages 6–11.

Several comments focused on the phrase “internal local rules or policies” with respect to the term of office of the presiding judge. This phrase is included to clarify that the rule applies to courts with formal rules as well as those with less formal policies; some courts have institutionalized the election of the presiding judge by local rule, others have documented it with an administrative order (that is internal local rules), and others operate based on unwritten internal policy. In response to the comments, staff removed the phrase “internal local rules or policies” where it was deemed unnecessary. An advisory committee comment has been added to clarify that “internal local rule” relates only to the internal management of the court and is exempt from the requirements in rule 981.

Two comments objected to the deletion of the secret ballot provision for the presiding judge election. The committee decided to delete that provision in response to requests by smaller courts, where secret balloting is both cumbersome and unnecessary. The secret ballot is

unnecessary in smaller courts because, given the size of the bench, it is clear who voted for which candidate. Courts that wish to retain secret balloting may do so.

Implementation Requirements and Costs

There are no costs associated with the implementation of the proposed amendments.

Attachments

1 Rule 6.602 of the California Rules of Court would be amended, effective January 1,
2 2005, to read:

3
4 **Rule 6.602. Selection and term of presiding judge**

5
6 **(a) [Selection]**

- 7
8 (1) *(Courts with three or more judges)* Each court that has three or more
9 judges ~~shall~~ must select a presiding judge. Selection of the presiding
10 judge may be by secret ballot in accordance with the court's internal
11 polities. The court should establish an internal local rule or policy for the
12 selection of the presiding judge and assistant presiding judge, if any.
13
14 (2) *(Two-judge courts)* In a court having two judges, the selection of the
15 presiding judge ~~shall~~ must conform to Government Code section 69508.5.
16 If selection cannot be agreed upon and neither judge has at least four
17 years of experience, the senior judge ~~shall~~ must hold the office of
18 presiding judge until both judges have at least four years of experience.

19
20 **(b) [Requisite experience and waiver]** A presiding judge must have at least four
21 years of experience as a judge, unless this requirement is waived by a majority
22 vote of the judges of the court. Nomination and selection of a presiding judge
23 should take into consideration the judge's (1) ~~M~~management and
24 administrative ability; (2) ~~I~~interest in serving in the position; (3) ~~E~~experience
25 and familiarity with a variety of trial court assignments; (4) ~~A~~ability to
26 motivate and educate other judicial officers and court personnel; (5) ~~A~~ability
27 to evaluate the strengths of the court's bench officers and make assignments
28 based on those strengths as well as the best interests of the public and the
29 court; and (6) ~~O~~other appropriate factors.

30
31 **(c) [Term]** A presiding judge in a court with two judges ~~shall~~ must be elected for
32 a term, ~~as established by local rule or policy,~~ of not less than one year. A
33 presiding judge in a court with three or more judges ~~shall~~ must be elected for
34 an initial term, as established by local rule or policy, of not less than two years.
35 The presiding judge may serve ~~consecutive~~ additional terms of such duration
36 as set by internal local rule or policy. A presiding judge may be removed by a
37 majority vote of the judges of the court.

38
39 **(d) [Assistant and acting presiding judge]**

- 40
41 (1) The court may elect an assistant presiding judge.

1 (2) If the court's internal local rule or policy does not provide for the
2 designation of an acting presiding judge to serve if the presiding judge is
3 absent or unable to act, the presiding judge ~~shall~~ must designate one.
4

5 (3) The court should provide the assistant presiding judge with training to
6 foster an orderly succession to the office of presiding judge.
7

8 (e) [**Caseload adjustment**] To the extent possible, the judicial caseload should be
9 adjusted to provide the presiding judge with sufficient time and resources to
10 devote to the management and administrative duties of the office.
11

12 **Advisory Committee Comment (2004)**

13 The internal local rule described in this rule relates only to the internal management of the court,
14 and as such is exempt from the requirements in rule 981. (See rule 981(j).)

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(amend Cal. Rules of Court, rule 6.602)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Kathleen K. Akao Asst. Presiding Judge Superior Court of California, County of Santa Cruz Santa Cruz	A	N	Agree with proposed changes.	
2.	Hon. Brian J. Back Supervising Juvenile Judge Superior Court of California, County of Ventura Ventura	A	N	Agree with proposed changes.	
3.	Hon. Ronald Lawrence Bauer Rules and Forms Committee, Superior Court of California, Orange County of Orange	AM	Y	<p>Agree with proposed changes only if modified.</p> <p>Discussion of this item determined that one of the purposes for the proposed amendment is to clarify that procedures for electing presiding judges in the larger courts should be governed by “internal local rules” rather than “local rule.” The discussion at large and the <i>2004 Drafter’s Notes</i> draws readers’ attention to the provisions of CCR, rule 981(j), concerning the exception of rules relating to the “internal management of the court” from the other provisions of rule 981. In light of the purpose for the amendment stated in the discussion and the <i>2004 Drafter’s Notes</i>, subsection (a)(1) of the proposed rule is unnecessary as presently drafted and, in using the term “internal local rule,” resorts to the use of a concept not contained in rule 981.</p> <p>As a practical matter, courts may only operate by state or local rule, or local operations</p>	<p>Agree in concept. Proposed rule has been amended to remove the phrase “internal local rules or policies” where it is unnecessary.</p>

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				<p>policy. If there is no state rule of court governing the selection of presiding judge, by necessity, the individual courts must act pursuant to local rule or policy. Therefore, subsection (a)(1) is redundant and the present language should simply be deleted.</p> <p>It is also suggested the term “internal local rule or policy” be deleted because it is unnecessary and confusing in light of the provision CCR, rule 981(a)(1) (definition of “local rule”) and rule 981(j) (limitation of rule). It is also submitted that use of the term is inconsistent with the purpose of CCR, rule 981.1. Rule 981.1 was meant to preempt to the Judicial Council rule-making authority concerning certain fields of procedure to provide for statewide uniformity and eliminate the use of “local-local” rules, meaning personal rules enforced by an individual judge. I believe use of the term “internal local rules” hearkens back to rule-making practices of local courts or individual judges which the Judicial Council hoped to curtail when it enacted rule 981.1.</p> <p>Under rule 981(a), the term “local rule” means “every rule, regulation, order, policy, form or standard of general application...to govern practice or procedure in that court...in that judge’s courtroom.” Under rule 981(j), “local rules that relate only to the <i>internal management</i> of the court” are exempted from</p>	

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				<p>most of the other provisions of rule 981. The term “internal local rule” used in the proposed amendment to rule 6.602 is different from, and could be construed to be broader than, the type of local rule referred to in subsection (j) relating to the “internal management” of the court. Therefore, it is suggested the proposed rule be modified where pertinent as follows:</p> <p>Subsection (a)(1) – Delete the present language entirely. It should read as follows:</p> <p><i>“(Courts with three or more judges) The selection and term of the presiding judge, assistant presiding judge, and acting presiding judge are matters relating to the internal management of the court, except as otherwise provided in this rule.”</i></p> <p>Subsection(c) – Delete from the first and second sentences the phrase “...as established by internal local rule or policy.” Delete from the third sentence the words “...of such duration as set by internal local rule or policy.” If this language is deleted, it becomes clear that the Judicial Council is concerned with setting a minimum term of office for all presiding judges and allowing for additional terms. Modify subsection (c) as follows:</p> <p>[Term] A presiding judge in a court with two judges must be elected for a term of not</p>	

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				<p>less than one year. A presiding judge in a court with three or more judges must be elected for a term of not less than two years. The presiding judge may serve additional terms. A presiding judge may be removed by a majority vote of the judges of the court.”</p> <p>Subsection (d)(2) – Delete the phrase “the court’s internal.” The section should read instead “If local rule or policy does not provide for the designation of an acting presiding judge to serve if the presiding judge is absent or unable to act, the presiding judge shall designate one.”</p> <p>There is also a type at 6.602(b): the word “management” at item (1) in the body of the rule should be in lower case.</p>	
4.	Hon. John E. Dobroth Judge Superior Court of California, County of Ventura Ventura	A	N	Agree with proposed changes.	
5.	Hon. Arturo F. Gutierrez Judge Superior Court of California, County of Ventura Ventura	A	N	Agree with proposed changes.	
6.	Hon. Donna Alyson Little Judge Superior Court of California, County of San Francisco	A	N	Agree with proposed changes.	

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	San Francisco				
7.	Hon. Patrick J. Mahoney Judge Superior Court of California, County of San Francisco San Francisco	A	N	Agree with proposed changes.	
8.	Ms. Sandra Mason Director of Civil Operations San Luis Obispo	A	N	Agree with proposed changes.	
9.	Hon. Ronald Evans Quidachay Judge Superior Court of California, County of San Francisco San Francisco	AM		Agree with proposed changes only if modified. <ol style="list-style-type: none"> 1. Secret Balloting is essential. It permits each judge to express their opinion of the candidate(s) for presiding judge and provides some buffer from repercussions. 2. CRC uniformity is important. If we are a state court then we should abide by statewide not local rules. 3. Because the Presiding Judges authority is akin to a monarchy contrary to the principles our nation was founded, the Presiding Judges term should be limited. While not opposed to one elected successive 2 year term or one 3 year term, there should be a term limit. 	Disagree. Secret balloting is not disallowed and may be used by local rule or policy where necessary. However, secret ballot is not necessary in small courts. Disagree. Some issues must be left to local control. Disagree. Presiding Judge will need to be reelected for additional terms, to limit terms.
10.	Hon. Rebecca S. Riley	A	N	Agree with proposed changes.	

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	Judge Superior Court of California, County of Ventura Ventura				
11.	Hon. John R. Smiley Assistant Presiding Judge Superior Court of California, County of Ventura Ventura	AM		Agree with proposed changes only if modified. Under subsection “c”, “of such duration” not clear at all. I suggest that “or policy” be eliminated in the entire paragraph and substitute the line “of such duration as set by internal local rule or policy” with “including an additional term of less than two years as set by internal rule”.	Disagree.
12.	Hon. Kay Tsenin Judge Superior Court of California, County of San Francisco San Francisco	AM	N	Agree with proposed changes only if modified. A secret ballot is essential even for small jurisdiction.	Disagree. Secret ballot is <i>pro forma</i> in small courts, as it is often self-evident who voted for who. Any court that wishes secret ballot may do so.