

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Kathleen Howard, Director, Office of Governmental Affairs,
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DATE: November 16, 2006

SUBJECT: 2007 Judicial Council Legislative Priorities (Action Required)

Issue Statement

Central to the Judicial Council's long-standing mission and strategic goals are objectives to:

- Enhance equal access to fair and impartial justice;
- Ensure that the courts have the necessary judicial resources to provide high-quality service to the people of California;
- Attract highly qualified, diverse, and experienced attorneys from all areas of legal practice for service on the bench; and
- Provide incentives to judges for long service while also offering them reasonable retirement options.

Each year the Judicial Council sponsors legislation in support and furtherance of key council objectives. For the 2007–2008 Legislative Session, several of the council's critical legislative proposals are ongoing, multiyear priorities that have previously been approved by the council. The purpose of this report is to provide an update on these ongoing priorities, and to reconfirm council approval for sponsorship of these proposals in the next legislative session.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) recommends that the Judicial Council approve the following legislative proposals and direct the Office of

Governmental Affairs (OGA) to coordinate council review and approval of individual proposals as needed:

1. Create 100 new judgeships to be allocated consistent with the council's judicial needs assessment;
2. Convert eligible subordinate judicial officer positions to judgeships upon vacancy;
3. Make necessary changes to improve and expedite the court facility transfer process;
4. Identify necessary statutory changes and funding to provide appropriate access to interpreters in civil cases;
5. Modify the Judges' Retirement System (JRS) to eliminate a judge's 8 percent contribution after 20 years of service and modify JRS II to provide a defined benefit after 10 years on the bench for judges at least age 63, to attract and retain judicial officers and appropriately recognize long service; and
6. Reduce disparity among local judicial benefit packages throughout the state.

These proposals represent the key legislative priorities for the council in the near and midterm. At upcoming council meetings, the Policy Coordination and Liaison Committee will provide status information about all proposals for sponsored legislation, including the new proposals that the council will separately consider at today's meeting.

Rationale for Recommendation

New judgeships

Trial court judicial positions have not kept pace with population growth. Between 1990 and 2000, California's population grew by over 16 percent while judgeships in the state grew by less than 3 percent. Between fiscal years 1989–1990 and 2002–2003, the growth of judgeships lagged far behind population growth in several large counties.

Subordinate judicial officer conversion

Conversion of subordinate judicial officer (SJO) positions to judgeships in courts that are using SJOs as temporary judges will further public trust and confidence in the court system and allow the courts to move toward an appropriate mix of judgeships and SJO positions within their judicial officer pools. While the conversions will not have a significant effect on the courts' workload because they will not increase the total number of judicial officers in any court, they will complement the objectives advanced by the proposed new judgeships by correcting imbalances that have resulted from the failure to add new judgeships during years of significant population growth.

Court facilities

It is critical that the council seek ways to improve the court facility transfer process and provide additional flexibility where possible. A transfer must precede any state-funded courthouse improvement or new construction replacement project intended for a facility. California's trial court facilities have critical life safety, operational, and security

deficiencies that can only be addressed in a cost-effective way through a statewide capital outlay program. Uniting responsibility for court operations and facilities management increases the judicial branch's fiscal and administrative accountability.

Court interpreters in civil proceedings

Lack of interpreter services jeopardizes the court's ability to identify the crucial issues needed for a determination of a case. These problems are exacerbated by the fact that many of these litigants also lack legal representation. Lack of interpreters has enormous consequences for litigants: in domestic violence cases, respondents do not understand the orders entered against them and all too often violate them; single parents cannot obtain adequate child support awards and must go on public assistance; and extended family members are unable to obtain guardianships, which would allow them to care for children who otherwise are placed into foster care or juvenile hall.

Judges' retirement: key priorities

The judicial branch must be able to attract and retain the highest-caliber judicial officers. The Judges' Retirement System (JRS) and Judges' Retirement System II (JRS II) should be modified to provide stronger incentives for experienced judges to remain in service, while at the same time ensuring that judges are not required to serve longer than they are healthy and fit for service. Judges in JRS and JRS II should also be recognized and compensated for long service; experienced judges are a valuable public resource.

Compensation issues for judges: benefits

Consistent with the conceptual proposal approved in 2005, the council should seek to reduce the disparity among local benefit packages throughout the state. While judges' salaries are set in statute and are consistent statewide by court type, the wide range of supplemental benefits offered in individual counties results in a vast disparity among judges in total compensation. The Judicial Council should seek to ensure that current local benefit packages will be maintained, but that judges who do not receive local benefits have the option to receive a judicial benefit package provided by the state. A judge would not be able to receive both.

Alternative Actions Considered

None. These proposals represent ongoing, previously approved council priorities for which the PCLC and staff are seeking reconfirmation of the council's approval.

Comments From Interested Parties

These or similar proposals have been the subject of significant discussion during previous legislative sessions, as well as having been considered by the PCLC and the Judicial Council in approving sponsorship in past years. As part of its review of the proposals once legislative language is drafted, the PCLC will be presented with and consider specific comments from interested parties as they relate to each proposal individually.

Implementation Requirements and Costs

As part of its review of the proposals once legislative language is drafted, the PCLC will be presented with and consider the implementation requirements and costs that relate to each proposal individually.

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Each year the Judicial Council sponsors legislation in support and furtherance of key council objectives. For the 2007–2008 Legislative Session, several of the council's critical legislative proposals are ongoing, multiyear priorities that have previously been approved by the council. The purpose of this report is to provide an update on these ongoing priorities, and to reconfirm council approval for sponsorship of these proposals in the next legislative session.

The proposals are described in concept form; the text of the proposed legislative changes is in development. The Policy Coordination and Liaison Committee (PCLC) requests that as proposals are fully drafted, the PCLC, along with the chairs of the Executive and

Planning Committee and the Rules and Projects Committee, consider each based on the current fiscal, legislative, and policy context.

Rationale for Recommendation

New judgeships

In August 2004 the Administrative Office of the Courts (AOC) Office of Court Research presented the Judicial Council with an analysis of workload (filings by case type) and judicial resources that demonstrated the need for 355 judges statewide. The Judicial Council approved the judicial needs assessment methodology and approved a proposal to pursue the 150 most critically needed judges.

In January 2005 Senate Bill 56 (Dunn) was introduced to authorize 150 new judges, 50 in each of three consecutive years. SB 56 moved through most of the legislative process with strong support in 2005, but was held in the Assembly Appropriations Committee in August of that year. In January 2006, the Governor's proposed budget included \$5.45 million to fund the last month of costs for the first 50 new judges. The funding was approved as part of the fiscal year 2006–2007 Budget Act and provides funding for the last month of fiscal year.

After intense negotiations through the spring and summer, primarily focused on the Legislature's policy interest in increased racial and ethnic diversity on the bench, the Legislature passed legislation on August 31 to create 50 new judges in the trial courts, allocated according to the proposal approved by the council. SB 56 passed both the Senate and Assembly with no "no" votes. SB 56 was amended to include requirements to report on demographic data provided by judicial applicants and existing judicial officers.

While the 50 new judgeships created in SB 56 will provide critically needed relief in 20 trial courts, there is an urgent need to secure legislative enactment of the additional 100 new judgeships that the council approved in 2004. California continues to suffer from a severe shortage of trial court judgeships. The ramifications are serious and far-reaching and include a significant decrease in Californians' access to the courts, compromised public safety, an unstable business climate, and, in some courts, enormous backlogs that inhibit fair, timely, and equitable justice.

Trial court judicial positions have not kept pace with population growth. Between 1990 and 2000, California's population grew by over 16 percent while judgeships in the state grew by less than 3 percent. Between fiscal years 1989–1990 and 2002–2003, the growth of judgeships lagged far behind population growth in several large counties.

The PCLC recommends that the council approve sponsorship of legislation in 2007 to create 100 new judgeships, 50 in 2007–2008 and 50 in 2008–2009. In addition, the

proposal will include the most critically needed appellate judgeships, which is anticipated to be up to 4 new appellate judgeships.

The proposed allocation of the 100 trial court judgeships will be brought to the council in February 2007. Consistent with the requirements in SB 56,¹ the AOC's Office of Court Research is in the process of updating the judicial needs assessment based on the prior three years' filings information. That analysis will be referenced in the proposed text of the judgeship legislation for 2007. Consistent with the approach taken in SB 56, the proposal will include funding for the last month of each fiscal year, in recognition of the time needed to complete the judicial appointment process for each new set of judgeships for the trial and appellate courts.

Subordinate judicial officer conversion

In 2000 the Judicial Council, in conjunction with the National Center for State Courts (NCSC), studied the use of court commissioners and referees in California. That study noted that commissioner and referee positions were created and funded at the county level to address courts' need for judicial resources when new judgeships were not created through the legislative process. In the 10-year period from 1989 to 1999, the total number of judges in California increased by 1 percent (from 1,460 to 1,479), while the total number of commissioners and referees increased by 60 percent (from 250 to 401).

When courts do not have enough judges, they must assign commissioners and referees to act as temporary judges; in that capacity commissioners and referees exercise the full power of judges, rather than the more limited duties within their statutorily defined scope of authority. Commissioners and referees act as temporary judges so often that, as stated in the NCSC's report to the council, they are "simply judges under a different title." In response to these findings, the council in 2000 adopted a policy emphasizing that the primary role of subordinate judicial officers (SJOs) is to perform subordinate judicial duties, as delegated by the courts and described by statute. At the same time, the council adopted a policy supporting the conversion of SJO positions to judgeships in courts that use SJOs as temporary judges because of a shortage of judges. The council's policy is based on the principle that full public accountability requires the courts to provide judges to hear the serious and complex matters that are reserved to them by law.

¹ Government Code section 69614(c) states: "The Judicial Council shall report to the Legislature and the Governor on or before November 1 of every even-numbered year on the factually determined need for new judgeships in each superior court using the uniform criteria for allocation of judgeships described in subdivision (b), as updated and applied to the average of the prior three calendar years' filings." Note that although the first statutorily required reporting date is November 2008, the AOC will complete an analysis in the next few months. Thus, the 100 judgeships that are requested for the next two fiscal years will reflect the most up-to-date filings and workload information that is available.

Since that time, the council has acted several times to approve sponsorship of legislation to convert specified SJO positions to judgeships consistent with the policy described here. Last year, SJO conversion provisions were initially included in SB 56, but those provisions were subsequently removed.

The policy basis for converting eligible SJO positions has generally been well received in discussions with legislative leaders, and SJO conversion remains an important part of ensuring sufficient judicial resources for the courts to serve the people of California. Therefore, the PCLC recommends that the council approve sponsorship of legislation in 2007 to allow the conversion of up to 161 eligible SJO positions to judgeships whenever an eligible position becomes vacant.

Consistent with previously approved legislation, the positions would be identified as eligible for conversion based on an analysis of each court's SJO workload. Those courts that have SJO positions in excess of their appropriate SJO workload will be eligible to convert a specified number of positions to judgeships upon any SJO vacancy. The analysis that will provide an updated list of SJO positions eligible for conversion will be completed as part of the update on judicial need. The council will review the SJO conversion proposal, which will include the list of courts and the number of conversion-eligible positions, at its meeting in February 2007.

This proposal will further public trust and confidence in the court system and allow the courts to move toward an appropriate mix of judgeships and SJO positions within their judicial officer pools. While the conversions will not have a significant effect on the courts' workload because they will not increase the total number of judicial officers in any court, they will complement the objectives advanced by the proposed new judgeships by correcting imbalances that have resulted from the failure to add new judgeships during years of significant population growth.

Court facilities

Continued progress on court facilities transfer and funding are an urgent priority in the council's legislative program. The Judicial Council recently approved nine capital projects for fiscal year 2007–2008. Legislation passed in 2006 will assist in accelerating the transfer process, but further improvements may require additional legislative change. The impending June 30, 2007, deadline for the transfer of court facilities² requires the

² The Trial Court Facilities Act provides: "The Judicial Council, in consultation with the superior court of each county and the county shall enter into agreements concerning the transfer of responsibility for court facilities from that county to the Judicial Council. The agreements shall be negotiated between July 1, 2003, and June 30, 2007, inclusive. Transfer of responsibility may occur not earlier than July 1, 2004, and not later than June 30, 2007." (Gov. Code, § 70321.)

council and other interested stakeholders to work quickly to determine what statutory changes are needed to ensure progress in the court facilities program.

In 2005–2006, the Court-County Working Group, with active state Department of Finance participation, met for more than a year to consider options to address the barriers to transferring court facilities with Level V seismic ratings. The result of this work, Senate Bill 10 (Stats. 2006, ch. 444), will take effect January 1, 2007. SB 10 revises the Trial Court Facilities Act to allow buildings with a Level V seismic rating to transfer to the state as long as counties retain liability for earthquake-related damage, replacement, injury, and loss to the same extent that they would have been liable if responsibility for the court facilities had not transferred to the state.

The signing of SB 10 represents great progress in improving the transfer process and is expected to facilitate significant numbers of transfers between now and the transfer deadline. However, the Court-County Working Group has formed subcommittees to review two additional areas where legislation may be necessary to implement reforms to improve the transfer process. One subcommittee is reviewing general process improvement, and another is studying the methodology for calculating the CFP (county facility payment).

The PCLC recommends that the Judicial Council support a conceptual proposal for legislation in 2007 to further improve the court facility transfer process and to provide additional flexibility where possible. A transfer must precede any state-funded courthouse improvement or new construction replacement project intended for a facility. California's trial court facilities have critical life safety, operational, and security deficiencies that can only be addressed in a cost-effective way through a statewide capital outlay program. Uniting responsibility for court operations and facilities management increases the judicial branch's fiscal and administrative accountability.

Court interpreters in civil proceedings

Current law does not provide for certified or registered interpreters for non-English-speaking civil litigants, who are generally unable to use professional interpreters unless they can pay for the costs of these services. Yet the issues at stake in child custody, child support, and other civil cases can be as critical as the issues involved in criminal cases where the law now provides for interpreters.

Lack of interpreter services jeopardizes the court's ability to identify the crucial issues needed for a determination of a case. These problems are exacerbated by the fact that many of these litigants also lack legal representation. Lack of interpreters has enormous consequences for litigants: in domestic violence cases, respondents do not understand the orders entered against them and all too often violate them; single parents cannot obtain adequate child support awards and must go on public assistance; and extended family

members are unable to obtain guardianships, which would allow them to care for children who otherwise are placed into foster care or juvenile hall.

Assembly Bill 2302, authored by Assembly Member Dave Jones, would have required that the court provide an interpreter whenever needed in any civil matter, including family law and probate, or in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration. The bill specified the priority for use of funding and interpreters provided for civil matters and limited the amount of funding that could be provided in fiscal year 2007–2008 for this purpose to \$10 million. The Judicial Council supported AB 2302 if funded outside the state appropriations limit (SAL) funding process. AB 2302 was vetoed by the Governor.

Consistent with the Judicial Council’s goal to ensure that civil litigants with limited English proficiency will have equal access to the courts and equal ability to participate in court proceedings, and will be treated in a fair and just manner, OGA staff recommend that the Judicial Council direct them to continue to work with the Governor and Legislature to identify appropriate statutory changes and to provide funding for interpreters in civil cases. This goal directly supports the council’s strategic goal number I, Access, Fairness and Diversity, and also addresses access and fairness concerns identified in the 2005 public trust and confidence survey.

Staff recommend that the proposal address the specific operational complexities associated with providing interpreters in civil proceedings, including the following:

- An analysis of the case management approaches that are currently used in the courts that do provide interpreters in civil matters. The case management issues would include issues such as calendaring cases by language need so that an interpreter for a specific language can be available at a set time each week, or as needed. From this analysis, best practices could be recommended statewide.
- Recommendations for prioritizing civil case types to receive interpreter services. A priority system will be needed in many courts, where there are an insufficient number of interpreters available to handle both the criminal and civil cases.
- A phased-in implementation plan, so that courts that can more quickly provide both the interpreter and administrative services for the program could begin implementation sooner. A phased-in implementation plan would also allow for a smaller funding request to be made during the years that the program is developed and implemented, and would recognize that the number of interpreters also needs to increase for full implementation.

The Policy Coordination and Liaison Committee requests that when this proposal is fully drafted, the PCLC, along with the chairs of the Executive and Planning Committee and the Rules and Projects Committee, consider it based on the current fiscal, legislative, and policy context.

Judges' retirement: key priorities

The judicial branch must be able to attract and retain the highest-caliber judicial officers. The Judges' Retirement System II (JRS II) should be modified to provide stronger incentives for experienced judges to remain in service, while at the same time ensuring that JRS II judges are not required to serve longer than they are healthy and fit for service. Judges in JRS and JRS II should also be recognized and compensated for long service; experienced judges are a valuable public resource.

Consistent with prior actions, the PCLC recommends that the Judicial Council cosponsor legislation with the California Judges Association in 2007 to:

- Modify the JRS II retirement formula to allow judges to receive a defined-benefit pension if they have served for at least 10 years and have reached age 63; and
- Provide an incentive for JRS judges to remain in service after they have served for 20 years but have not yet reached the age of 60. Staff recommend that an actuarial analysis be conducted before this proposal is introduced.

Modification of JRS II Retirement Formula: At Least Age 63 With 10 years of Service
Enacted in 1994, the JRS II has both defined-benefit and defined-contribution retirement options. While lower-than-projected market performance has made JRS II's defined-contribution option less appealing, under the current plan only judges who serve for at least 20 years and reach age 65 can receive the defined-benefit option. The average age at appointment has increased significantly since the unification of the municipal and superior courts. Municipal court judges could be appointed with 5 (rather than 10) years of post-bar experience. Now that all judges must have at least 10 years of experience as an attorney, the average age of a judge at appointment has increased from 45.5 to about 50. This means that many judges will not be eligible for retirement with a defined benefit until reaching age 70 or older.

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 judges with reasonable retirement options.

Under this proposal, a JRS II judge who reaches age 63 and has served 10 years on the bench will be able to retire and receive a defined benefit based on the following formula: 3.75 multiplied by the number of years of service multiplied by the judge's last annual salary. This formula appropriately recognizes length of service, and the benefit will continue to increase each year until 20 years of service.

In order to ensure that the judiciary continues to attract the best and brightest attorneys from diverse backgrounds, it is essential that the retirement system be modified. The JRS

II is a strong disincentive to judicial service. Although any attorney who seeks to become a judge is primarily motivated by public service, there are practical considerations that must be taken into account in reviewing the JRS II. A judge's compensation package (salary and retirement) must be reasonably attractive to both public and private sector attorneys. Attorneys in many public sector legal positions, such as assistant district attorneys or county counsel, already receive salaries that are higher than that of a judge. The increases in judicial salaries received in 2006 will reduce the disparity in many counties, but the fact remains that many judges will continue to earn less than even the public sector attorneys who appear before them. The retirement system presents a far more stark contrast. Attorneys in public sector employment are members of retirement systems that provide defined-benefit options that vary by county and include formulas such as 2 percent per year at age 50 or 2.7 percent at age 55. Attorneys contemplating becoming judges are frequently unwilling to make the move to the bench. Many have stated that they are not willing to work for another 20 years in order to secure a defined-benefit retirement for their service as a judge.

This proposal to allow a defined-benefit retirement after 10 years of service and reaching at least age 63 is a modest change that provides a significant improvement in options for judges. Those who begin judicial service comparatively later in life, at age 53, for example, should have reasonable retirement options after serving for 10 years.

Modification of JRS II Program: Incentive for JRS Judges to Remain in Service
In addition to the JRS II proposal, the council has earlier approved in concept a proposal for JRS judges that would eliminate a judge's 8 percent contribution to retirement after 20 years of service, regardless of the judge's age. Staff recommends that an actuarial analysis be conducted on this proposal.

This proposal addresses a strong disincentive to long service for some JRS judges. Judges do not receive any additional retirement benefit after 20 years, but they are required to continue contributing 8 percent of their salary to the retirement system. While the Extended Service Incentive Program is available for judges who are eligible to retire (having already reached age 60 with 20 years of service), there is a significant gap that affects a relatively small number of JRS judges who were first appointed or elected before age 40.

An actuarial analysis will assist in determining the feasibility of this proposal. There is a relatively small number of judges who are affected, and there is a clear benefit to the state in providing an incentive for JRS judges to remain in service longer. In addition to the benefit of keeping experienced judges, there is a possible cost savings that may be realized by having the JRS judge serve longer and thereby delaying the time the state must pay the salary of a newly appointed JRS II judge. A full actuarial analysis will determine the fiscal effects of this proposal.

A proposal to eliminate the 8 percent contribution is consistent with the goal of retaining experienced judges and rewarding long service. Instead of providing an incentive to leave the bench as soon as the judge is eligible, the JRS should seek to keep experienced judges serving longer.

Background on JRS II Reform Efforts

The Judicial Council has made significant efforts over the last several years to improve both JRS and JRS II. Discussions of JRS II issues were initiated by the AOC with then-Governor Gray Davis in 1999, and the council's Policy Coordination and Liaison Committee considered a legislative proposal that year but deferred action pending a cost analysis. Discussions about the need for JRS and JRS II modifications have continued in recent years. Other retirement-related legislation—the Extended Service Incentive Program (ESIP)—was enacted in 2000. ESIP provides financial incentive for JRS judges to remain in service once they are fully eligible to retire. The program requires JRS judges to serve for at least an additional three years, after which a judge can receive an incentive payment upon retirement of 20 percent of salary for each additional year of service.

The Judicial Service Advisory Committee, in collaboration with the California Judges Association (CJA), considered a variety of changes to the JRS II defined-benefit program. After receiving actuarial analyses of all of them, and weighing various factors such as the cost of the change and the interest in balancing the need to have judges serve as long as professionally able with the desire to provide judges with reasonable financial options, the advisory committee and CJA recommended that JRS II be modified to provide a defined benefit at the rate of 3.75 percent per year after 10 years of service and reaching age 63.

Outlook for 2007

The Governor and some legislators have continued to discuss possible changes that would eliminate defined-benefit pensions for public employees and rely solely on defined-contribution plans. This fact, together with the anticipated budget slowdown, may make 2007 a difficult year to pursue these changes to JRS and JRS II. Nonetheless, the council and CJA are committed to continuing the education process and advocating these important changes in discussions with the Legislature and the Governor.

Compensation issues for judges: benefits

Consistent with the conceptual proposal approved in 2005, the council should seek to reduce the disparity among local benefit packages throughout the state. While judges' salaries are set in statute and are consistent statewide by court type, the wide range of supplemental benefits offered in individual counties results in a vast disparity among judges in total compensation. The Judicial Council should seek to ensure that current local benefit packages will be maintained, but that judges who do not receive local

benefits have the option to receive a judicial benefit package provided by the state. A judge would not be able to receive both.

Judicial compensation is a critical factor in attracting and retaining judges. There are many challenges that create barriers to attracting highly qualified attorneys to the bench. Offering a reasonable total compensation package is essential in order to ensure that attorneys from all areas of legal practice, from diverse racial and ethnic backgrounds, and from all geographic regions of the state are interested in pursuing a judicial career.

The Policy Coordination and Liaison Committee suggests that when this proposal is fully drafted, the PCLC, along with the chairs of the Executive and Planning Committee and the Rules and Projects Committee, consider it based on the current fiscal, legislative, and policy context.

Alternative Actions Considered

None. These proposals represent ongoing, previously approved council priorities for which the PCLC and staff are seeking reconfirmation of the council's approval.

Comments From Interested Parties

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Recommendation

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These proposals represent the key legislative priorities for the council in the near and midterm. At upcoming council meetings, the Policy Coordination and Liaison Committee will provide status information about all proposals for sponsored legislation, including the new proposals that the council will separately consider at today's meeting.