

**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  
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SUBJECT: Proposal to Amend the Judicial Article of the California Constitution (Cal. Const., art. VI) (Action Required)

Issue Statement<sup>1</sup>

Making access to justice a reality requires, at a minimum, sound decision making about court budgets, the number of judgeships and associated staff, and court facilities. To this end, the Judicial Council has been considering a proposal to amend article VI, the judicial article of the state Constitution, to promote access to justice, ensure the neutrality and independence of the judicial branch, and create appropriate accountability within the branch for the fair and effective administration of justice.

*Protecting access to justice*

**Court Budgets**

Funding for the judicial branch is determined by a statutory formula that links the courts' baseline budget to increases in the state appropriations limit (SAL). Although the current statutory formula has added a welcome measure of stability to court funding, it does not go far enough to ensure continued equal access to justice in the event of a fiscal crisis or a political disagreement with a court decision that results in elimination of statutory protections.

The proposed amendments would guarantee fiscal stability by placing the courts' funding apparatus in the Constitution.

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<sup>1</sup> This section of the report is based on material that first appeared in J. Clark Kelso, "Why Article VI Needs Work" (Summer 2005) *California Courts Review* 6-9.

## Judgeships

Establishing judgeships should be a process dependent mostly on caseload growth. Unfortunately, for too many years this has not always been the process employed by the other two branches of state government. Instead of steady and stable resource growth, courts experience boom-and-bust cycles, and access to the courts suffers as a result.

The proposed amendments would require the council to report to the Legislature on standards concerning the number of judges needed for full access to the courts and would require the Legislature and Governor to provide a sufficient number of judges to ensure access to the courts.

## Court Facilities

Court facilities are just as important to equal access as appropriate numbers of judges and staff. Although responsibility for court facilities is being transferred by statute to the Judicial Council, the location and quality of government buildings involves decisions and pressures that will continue to attract legislative interest and involvement. Equal access to justice will be better protected by removing some of these foundational decisions from the political world in Sacramento.

The proposed amendments would clarify that it is the Judicial Council that has authority to create, manage, and dispose of court facilities.

## State Bar

Both the Legislature and the courts have long recognized the California Supreme Court's inherent and primary authority over admission and discipline of members of the State Bar. Existing statutory provisions recognize that, throughout its history, the State Bar has provided administrative assistance to the Supreme Court in discharging the court's fundamental authority over admission to the bar and the discipline of attorneys.

The proposed amendments would recognize the Supreme Court's inherent and primary authority over the bar admission and discipline of attorneys, and that the State Bar, in this regard, serves as the administrative arm of the Supreme Court.

## *Protecting neutrality and independence*

Over the last 20 years, there has been a rise in electoral challenges to sitting judges, with elections increasingly having the hallmarks of a political contest. It is difficult to guarantee judicial neutrality and independence in the face of increasingly political and divisive attacks on the judiciary and within judicial elections, and when the level of judicial compensation is determined as part of a political process.

The proposed amendments would strengthen neutrality and independence by creating an incentive for governors to fill a bench vacancy early rather than late, which would give an appointed judge time to build a record before his or her first election.

The proposed amendments would also establish a judicial salary commission. Given the increased politicization of the judicial election process, a more objective, independent, and less political process for setting salaries could, in the long run, ameliorate some of the increasingly negative aspects of choosing a judicial career.

*Creating appropriate accountability within the judicial branch for the fair and effective administration of justice*

The judiciary has a very different structure now compared to 25 years ago, and issues of statewide governance have gained prominence. Twenty-five years ago, there were approximately 200 trial courts, each governed independently of the others and having a decidedly local focus. Today, funding is provided by the state, and the Judicial Council is responsible for numerous statewide budgetary, administrative, and management issues. The Judicial Council's more central role in the governance and operation of the judicial branch requires modification of both the council's membership and its constitutionally mandated role.

Article VI was drafted at a time when the Judicial Council did not have the broad responsibilities it now has over the allocation of trial court resources. The residual clause of this article, i.e., "other functions prescribed by statute," now encompasses a wide range of important matters, from budgets to buildings, and in these matters the council is clearly the policymaking body for the judicial branch.

The proposed amendments would strengthen both the separation of powers among the three branches of government and the independence of the judicial branch by recognizing the judicial branch's fundamental responsibilities for court resources in the state Constitution instead of having them be merely created (or, potentially, eliminated) by state statutes.

Recommendation

The Policy Coordination Liaison Committee, the Administrative Presiding Justices Advisory Committee, the Court Executives Advisory Committee, and the chairs and vice chairs of the Judicial Council advisory committees recommend that the Judicial Council sponsor a legislative constitutional amendment to article VI of the California Constitution that would promote and protect access to justice, ensure neutrality and independence of the judicial branch, and create appropriate accountability of the branch for the fair and effective administration of justice. The Administrative Director of the Courts recommends that the council adopt conditionally on passage of the proposed constitutional amendment, repeal and reenactment of rule 6.4 of the California Rules of

Court to provide for nomination by the superior court presiding judges of four of the superior court members of the council.

The PCLC also recommends that the council add Justice Martin Baxter to the Article VI working group and delegate to that group authority to approve final technical changes to the language of the amendments.

The text of the proposed constitutional amendments is attached at pages 16 - 31.

#### Rationale for Recommendation

The proposed constitutional amendments would promote access to justice, as well as the independence, neutrality, and accountability of the branch, by making the following changes:

#### *Judgeships*

Section 4 of article VI would be amended to

- Require the Legislature to provide a number of judges sufficient for full access to the courts;
- Require the Judicial Council to report on standards for making this determination; and
- Permit the Legislature to delegate the determination of the number of judges to the Judicial Council.

While the Legislature has a duty to prescribe the number of judges in each superior court, there is no standard for the exercise of this authority. For a court system to be fully accessible to all the people of the state, there needs to be assurance that each court will be provided with enough judges to carry out its business. Otherwise cases will either not be heard or not be given enough time for a fair hearing. Under proposed amendments to section 4 of article VI, the Judicial Council is charged with providing the Legislature information to assure that a sufficient number of judges are being provided.

This proposed amendment keeps the authority to specify the number of judges in the Legislature, where it has always existed in this state as well as other states. The language that currently exists in this section of article VI states that the Legislature has a nondelegable duty to determine the number of judges, as shown by the use of the term “prescribe.” The proposed new language uses the term “provide,” which is the term used when a duty is delegable. The proposed new section also states that this authority can be delegated to the Judicial Council, the appropriate body for making judgeship determinations, should the Legislature choose to delegate this responsibility.

#### *Judicial Council: Membership*

Section 6(a) of article VI would be amended to:

- Restore the former provision that explicitly stated that the Chief Justice is chairperson of the council;

- Add one additional superior court judge with a three-year term;
- Add one additional nonvoting court administrator;
- Add two additional judges or justices, each with a one-year term;
- Make legislative members nonvoting;
- Provide that the council establish criteria to guide the State Bar in appointing bar members to the council;
- Provide that the council establish procedures for appointment of council members, including four superior court judges to be appointed from nominations submitted by the superior court presiding judges; and
- Permit the Chief Justice to appoint a vice-chairperson of the council.

Subdivision (a)(1) of the proposed new section 6 adds another trial court judge, in recognition of the increased role of the council in addressing trial court issues and in order to provide broader trial court representation on the council.

Proposed subdivision (a)(1) also increases the number of advisory, i.e., nonvoting, court administrator members of the council. This would result in increased representation of a significant segment of the judicial branch that is likely to provide useful input in the adoption and implementation of new policies.

Proposed subdivision (a)(1) further adds two one-year judicial positions in order to permit the selection of additional individual appointees or representatives of groups or constituencies that may bring useful perspectives to assist the council in its deliberations.

At the suggestion of members of the Legislature, subdivision (a)(1) is also amended to change the legislative members of the council from voting to nonvoting members, which is appropriate under the principle of separation of powers as provided by article III, section 3 of the Constitution. The communication resulting from the participation of members of the Legislature on the Judicial Council can be of significant value even if these members are nonvoting.

Proposed subdivision (a)(2) adds the provision that the council establish criteria for the State Bar Board of Governors to use in appointing State Bar members of the council. These criteria would be helpful in ensuring the attorney members represent the views of diverse segments of the bar.

The council will establish not only the procedures for selection of council members but the “criteria” for council members as well. In this manner the council can ensure that its members reflect the diversity of the bench and bar in terms of geographic location, size of court or law practice, and type of court or law practice, among other factors. (See Cal. Rules of Court, rule 6.4(a)(1): “The selected nominees should represent diverse backgrounds, experiences, and geographic locations.”)

Proposed subdivision (a)(2) changes the method of appointment of some of the superior court judge members of the council. The council is to establish procedures under which the trial court presiding judges would nominate individual judges for these positions and the Chief Justice would appoint council members from among those nominated. This process would help ensure that the voice of this important segment of the judiciary is heard, while keeping the overall appointment authority and responsibility with the Chief Justice. A proposed rule of court has been prepared to implement this section. The rule appears as Attachment 2 at pages 32 - 34 and is being considered by the Executive Committee of the Trial Court Presiding Judges Advisory Committee on November 28, 2005. Staff will report the Executive Committee's recommendation to the council. (Because the rule involves internal operations of the council, only affects the presiding judges, and is designed for implementation of the proposed constitutional amendment, it is proposed that, pursuant to standard council practice in such cases, the rule not be circulated generally for comment.)

The Chief Justice is the chairperson of the Judicial Council. Language specifying the Chief Justice as the "chairman" of the Judicial Council was removed in 1974 through a nonsubstantive amendment. The subsequent absence of substitute language for "chairman" apparently was a result of a dispute over using the term "chairperson." Subdivision (a)(1) is amended to make explicit again that the Chief Justice heads the Judicial Council, and changes the title to "chairperson." Additional language in proposed subdivision (a)(3) provides that the Chief Justice may appoint a vice-chairperson who will act as chairperson when the chairperson is absent or unable to act or so directs the vice-chairperson. Compare this with existing article VI, section 2, which provides for an acting Chief Justice to perform the functions of the Chief Justice.

*Judicial Council: Purpose, authority*

Section 6(d) would be amended to

- Recognize that the council acts to improve the administration of justice and promote access to the fair and effective administration of justice
- Add to council tasks the following:
  - Budgetary responsibilities
  - Setting of policy relating to the administration of justice for the branch
  - Establishment of standards for performance and accountability
- Clarify that a rule of court is only invalid in the case of a direct conflict between a statute and a rule
- Limit the type of other duties that may be imposed on the council by statute to duties limited to those within the council's constitutional role
- Require that the Chief Justice make an annual "State of the Judiciary" report to the Legislature and Governor

The amendments to subdivision (d) reflect the council’s existing role within the judicial branch concerning matters of judicial administration. This amended subdivision expressly recognizes why the council acts—to improve the administration of justice and to promote access to the fair and effective administration of justice—and that the council, in so acting, sets policy for the judicial branch. The enumeration in the Constitution of tasks to be performed by the council in pursuit of these goals now expressly includes budgetary responsibilities, the setting of policy relating to the administration of justice for the branch, and the establishment of standards for performance and accountability. Budgetary and other responsibilities now included in these proposed amendments already are set forth in statute and in rule.

The language concerning expenditures provides for accountability of the judicial branch. For example, under this provision the council could utilize independent financial audits as part of its reporting.

The language proposed for subdivision (d) is consistent with the purpose behind the establishment of the council. The ballot argument in favor of the proposition creating the Judicial Council stated that the purpose of that constitutional amendment was “to organize the courts ... on a business basis” and to bring about the smooth operation of the courts, with the Chief Justice, as the chairperson of the council, serving as the “real, as well as the nominal, head of the judiciary.” (Amendments to Constitution and Proposed Statutes With Arguments Respecting the Same (1928) Argument in Favor of Senate Constitutional Amendment No. 15, at p. 33.) The council, with the Chief Justice as chairperson, has long been carrying out the responsibilities described in the amendments to subdivision (d). The language has also been clarified so that the policies established by the council are for the branch and relate to access to the courts and the administration of justice. This provision is not intended to infringe upon the policymaking prerogatives of the legislative and executive branches.

Subdivision (d) has also been amended to clarify the rule-making authority of the council. Language has been added to clarify that it is only in the case of a direct conflict between a statute and a rule of court that the rule of court becomes invalid. This establishes a higher standard for determining the invalidity of a court rule in relation to legislation and is designed to ensure that the Legislature does not unintentionally invalidate a rule of court.

Subdivision (d) also has been amended to delineate the types of duties that may be imposed by statute on the Judicial Council. Because the council is the policy- and rule-making authority regarding the administration of justice for the judicial branch, duties imposed on the council should be limited to those within its constitutional role.

The last sentence is added to subdivision (d) to require an annual report, in the nature of a “State of the Judiciary” message delivered by the Chief Justice. The provision is based on

article V, section 3 providing for a “State of the State” message by the Governor and is consistent with current practice.

### *Court facilities*

Section 6.2 would be added to

- Give the council authority to construct, manage and dispose of property used for court facilities;
- Give the council authority to take and hold property by purchase, donation, gift, or any other appropriate manner;
- Require that sales of real property be subject to statutory provisions concerning competitive bidding; and
- Require that title to property be in the name of the State.

Section 6.2 is new language providing authority to the council for the oversight of judicial branch facilities, consistent with the recent enactment of facilities legislation transferring authority from the counties to the state. This section gives the Judicial Council overall authority for court facilities. The authority to acquire is not limited as to means and would include methods of property acquisition such as lease-purchase. The authority for the Judicial Council is similar to and tracks the authority of the Regents of the University of California (see Cal. Const., art. IX, § 9).

### *Budget*

Section 6.5 would be added to

- Provide that the annual appropriation to the judicial branch (courts, Judicial Council, and Administrative Office of the Courts) would be based on the previous year’s appropriation plus an increase based on the percentage change in the state appropriation limit (art. XIII B, § 8(e)(1) and (f));
- Provide that the Legislature may appropriate additional monies for new operations and programs, increased costs necessitated by law, increased costs imposed by local government, and costs resulting from extraordinary circumstances;
- Provide that the council submit the branch’s budget to the Legislature and Governor directly; and
- Permit suspension of the SAL increase provision for one year if needed.

This section will help ensure that the basic operating needs of the courts and the Judicial Council are met in a manner that ensures a predictable fiscal environment, promotes court financial accountability, and ensures provision of sufficient funding to accommodate increased costs. The funding provisions of this section will help ensure that the branch remains independent, provides access to courts statewide, and fulfills its obligations to provide courts that administer fair and impartial justice, protect individual rights, and help assure public safety.

Proposed subdivision (a)(2) would automatically increase the base budgets of the courts and the Judicial Council based on changes in the state appropriations limit (SAL). Subdivisions (a)(3) and (c) would give discretion to the Legislature and the Governor to increase the judicial branch budget for new programs and mandates. The base budget for the courts also would include funding for the operation, maintenance, and repair of all facilities for the courts and the Judicial Council, but not the costs of new construction.

Subdivision (e) contains no specific test for the one-year suspension of the automatic SAL increase. This treatment is consistent with the provision permitting a one-year suspension of the Education allocation under article XVI, section 8(h).

#### *Supreme Court authority over State Bar*

Section 9 of article VI would be amended to

- Expressly recognize the Supreme Court’s inherent and primary authority over the admission to practice and discipline of attorneys;
- Expressly recognize that the State Bar serves as the administrative arm of the Supreme Court in this role; and
- “Codify” the Supreme Court’s holding in *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 607.

The Legislature has long recognized the Supreme Court’s inherent and primary authority regarding admission and discipline of members of the State Bar. (See Bus. & Prof. Code, §6087 [“Nothing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline members of the bar as this power existed prior to the enactment of Chapter 34 of the Statutes of 1927, relating to the State Bar of California”].) Section 6087 and other provisions recognize that, throughout its history, the State Bar has provided administrative assistance to the Supreme Court in discharging the court’s fundamental authority over admission to the bar and the discipline of attorneys. The Supreme Court explained this relationship in *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 607, as follows: “The State Bar is not an entity created solely by the Legislature or within the Legislature’s exclusive control, but rather is a constitutional entity subject to this court’s expressly reserved, primary, inherent authority over admission and discipline . . . . Statutes [regarding the] disciplinary system are not exclusive—but are supplementary to, and in aid of, our inherent authority in this area.” (See also *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 47–48 [“We have described the bar as a public corporation created . . . as an administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys. In those two areas, the bar’s role has consistently been articulated as that of an administrative assistant to or adjunct of this court, which nonetheless retains its inherent judicial authority to disbar or suspend attorneys”], citations and internal quotation marks omitted.) The new material added to section 9 reflects this constitutional relationship.

## *Judicial elections and vacancies*

To improve the process of judicial elections, section 16 of article VI would be repealed and reenacted to

- Clarify which offices are voted on at which election. The term “general election” as used in the Constitution has two meanings—referring both to the direct primary election (currently held in June of even-numbered years) and the runoff or general election (held in November of even-numbered years). For superior court positions, it is possible (and occurs with some regularity) that no candidate receives a majority of votes at the first election and a runoff is necessary. The normal process is to hold the initial election at the direct primary, with a runoff, if needed, in November. The proposed language makes explicit these two election dates. (Subdivisions (a)(1) and (b)(2).)
- Permit appellate retention elections at any even-numbered year election rather than only at gubernatorial elections. With over 100 appellate justices in California, it is preferable to spread out appellate retention elections to reduce the number of justices appearing on the ballot in any one election. (Subdivision (a)(1).)
- Provide that an appointee to a vacant appellate judicial office will, following a successful retention election, serve a full term of office. Under current law, an appointee who is elected for an unexpired term serves out only the remainder of the unexpired term. In some cases, this means that an appointee’s first retention election is for a four-year or eight-year term, followed by a second retention election. In light of the proposal to permit appellate retention elections at all November general elections, an appointee elected to an unexpired term could serve for as few as two years before being required to stand for a second retention election. It is confusing to voters to have appellate justices running for retention elections with different terms of office (i.e., 4 years, 8 years, or 12 years) when the difference in the length of term is based upon the randomness of the timing of the vacancy and subsequent appointment. (Subdivision (a)(1).)
- Permit an appointee to the Supreme Court or Court of Appeal to serve at least 24 months in office prior to standing for retention election. This provides sufficient time for an appointee to establish a record of performance that the community may assess through the retention election process. (Subdivision (a)(3).)
- Encourage the Governor to make appointments to vacant judicial positions within six months of the vacancy. The court system will not be adversely affected by lengthy vacancies. (Subdivision (b)(5).)

- Permit an appointee to serve at least 24 months in office prior to standing for election if Governor has made the appointment within six months of the vacancy. This provides sufficient time for an appointee to establish a record of performance that the community may assess through the election process. (Subdivision (b)(5)(i).)
- “Codify” the holding of *Stanton v. Panish* (1980) 28 Cal.3d 107 that a vacancy does not occur if a candidate has qualified for the election prior to a judge leaving office.

Place in the Constitution the holding of *Stanton v. Panish* (1980) 28 Cal.3d 107 that a vacancy does not occur if a candidate has qualified for the election prior to a judge leaving office. (Subdivision (b)(4).)

- Rearrange provisions so that they are in a more logical order. The subdivisions within existing section 16 are in a somewhat confusing order. Subdivision (a) and (d) deal with appellate offices, and subdivisions (b) and (c) deal with superior court offices. The new section proposes a complete reordering of this language to make the section clearer. Subdivision (a) would cover terms, elections, and filling of vacancies for Supreme Court and Court of Appeal justices, and subdivision (b) would cover superior court judges. The reordering of the provisions, however, is not intended to fundamentally alter the pattern of superior court contested elections and appellate court retention elections.

#### *Service by judicial officer in public employment*

Section 17 of article VI would be amended to

Section 17 of article VI would be amended to provide that a judicial officer may accept employment in a non-elected position in the public sector by retiring or resigning from the judicial position, rather than having to wait for the expiration of the full length of the term for which the judge was selected. This change provides the same treatment for public employment as exists for public elective office and for private employment.

#### *Judicial salary*

Section 19 of article VI would be amended to

- Continue the existing statutory provision (Gov. Code, § 68203) providing judges and justices with the same general salary increases provided to other state employees;
- Establish a neutral salary-setting commission, based on that used for other state officials (art. III, § 8) to consider other increases as appropriate;
- Recognize the need for an adequate judicial salary to attract qualified judges; and
- Automatically fund any commission action or action by another entity raising judicial salaries.

Section 19 would continue in effect the current statutory language providing judges and justices with the same general salary increases provided to state employees.

The use of a neutral salary-setting commission for state officials generally, set forth in article III, section 8 of the Constitution, provides a means for keeping salaries current and for minimizing the perception that politics affects the salary-setting process for these positions. The proposed provision establishes a separate judicial salary commission. The commission, at least every two years, would consider whether judicial salaries should be increased by an amount greater than the amount required to match state employees.

The establishment of a separate judicial salary commission would enable that commission to consider the specialized issues that affect judicial salary, including the full-time nature of the judicial position, the ethical constraints against most other remunerative activity, the need for adequate salary to attract and retain qualified judges, and the importance of the judicial office in ensuring the effective and efficient administration of justice.

Members of the commission would be appointed by the Legislature (labor and business representatives), the Governor (public members), and the Chief Justice (lawyer members). The appointment authority of the Chief Justice, even though the salary of the Chief Justice is also set by the commission, is consistent with the practice of the state officer commission, whose members are appointed by the Governor even though the commission also sets the salary of the Governor.

The structure and regulation of the commission is similar to that for the state officer salary-setting commission. An additional factor that the commission would consider in setting judicial salaries is a recognition of the need for adequate salary to attract qualified judges. Consideration has been given to including a provision that any person who is a party to litigation in any court in the state is ineligible for membership on the commission. Such a provision has not been included because it might disqualify a large number of potential members who would be unlikely to be affected in their decision making by the existence of pending litigation involving them.

Section 19 would also automatically fund any increase in judicial salaries.

#### Alternative Actions Considered

Numerous versions of the proposed amendments have been considered over the last year. (See Attachment 3 at pages 35 - 37, which describes all changes that have been made during the review process to the initial proposal.) The proposal presented here has undergone significant review and revision, and now has the wide support of the judicial branch and the legal community. This proposal will achieve the stated goals of promoting access to justice and the independence, neutrality, and accountability of the judicial branch.

### Comments From Interested Parties

This proposal is the result of months of discussion, review, comments, and response to comments among members of the judicial branch, key legislators and their staff, and the legal community. Polling and focus groups on these issues demonstrated strong support from the public for measures that would strengthen the independence and accountability of the judicial branch.

An initial draft of proposed amendments to article VI was presented at a branch-wide workshop in February 2005. Those attending the workshop included legislative and executive branch leaders; members of the Judicial Council; chairs of council advisory committees and task forces; the administrative presiding justices; the Executive Committee of the Trial Court Presiding Judges Advisory Committee; court executive officers; representatives from the California Judges Association, the Commission on Judicial Performance, and the State Bar; bar leaders, and others. Following the workshop, comments were sought and received from the entire legal community. Numerous revisions to the initial draft were made in response to comments and discussions with presiding judges, administrative presiding justices, advisory committee chairs, the California Judges Association, and bar leaders.

In addition, the Chief Justice appointed a working group consisting of Judicial Council members Justice Richard D. Huffman (chair); Judges Michael T. Garcia, Suzanne Kingsbury, Douglas P. Miller, and Richard E. L. Strauss; and Court Executive Officer Alan Slater. The group sought further input and comment on later versions of the proposed amendments from the presiding judges, the administrative presiding justices, advisory committee chairs and vice-chairs, and the California Judges Association.

During this review process, questions arose as to whether the proposed amendments to Article VI, sec. 6(d), regarding the authority of the Judicial Council, would permit the council to impose a regional administrative structure upon the trial courts. Current statutory law would prohibit this action by the council.

Government Code section 69508(a) states, "The judges of each superior court having three or more judges, shall choose from their own number a presiding judge who serves as such at their pleasure." Section 69508.5(a) states, "In courts with two judges a presiding judge shall be selected by the judges each calendar year and the selection should be on the basis of administrative qualifications and interest." That section then provides that if the two judges cannot agree, the assignment of presiding judge rotates between the two judges.

Government Code section 77001 provides that the council "shall adopt rules which establish a decentralized system of trial court management." The provision requires

council rules that ensure "Local authority and responsibility of trial courts to manage day-to-day operations" (section 77001(a)). In addition, trial courts are to be provided with the authority and responsibility to manage their "[a]nnual allocation of funding" (section 77001(c)(1)), "local personnel plans" (section 77001(c)(2)), and "the means of selecting presiding judges, assistant presiding judges, executive officers or court administrators, clerks of court, and jury commissioners" (section 77001(c)(3)).

These provisions are further developed by rule 6.601 and by rule 6.610(a), which provides that "[a] court may employ an executive officer selected in accordance with procedures adopted by the court."

Therefore, the Office of General Counsel concludes that the Judicial Council does not have authority to impose a court structure in which there would be a presiding judge or court executive officer for more than one county, and there is nothing in the proposed amendments to article VI, section 6(d) or any other section of article VI that would change this.

Suggestions have been made that the council should expressly state its intention not to impose such a multi-county structure on the trial courts by means of a rule or within the comments to article VI, section 6(d). Neither of these actions is appropriate. As indicated above, statutory law and rules adopted pursuant to it expressly preclude the establishment of such a structure. A rule, then, would be only a statement that the law would be followed. These provisions are law and a rule adds nothing to the enforceability of them. In addition, the question of imposition of a multi-county court structure, as discussed above, is not part of article VI, section 6(d). Adding language to the comment to that section would, thus, merely raise an issue that might give rise to confusion in the future. It is not appropriate to include a discussion in a comment on a subject not included within the subject.

The Executive Committee of the Trial Court Presiding Judges Advisory Committee will be meeting on November 28 to take action on the proposal. Staff will report to the council on the committee's recommendation.

Judicial Council advisory committee chairs and vice chairs met on November 15, 2005, and voted unanimously to support this proposal.

The Executive Board of the California Judges Association (CJA) appointed an Article VI subcommittee to consider the proposal and recommend a position to the full Executive Board. The Executive Board is meeting on November 30, 2005, to consider this recommendation. Staff will report to the council on the outcome of that meeting.

Implementation Requirements and Costs  
Unknown.

Attachments

Article VI of the California Constitution would be amended as follows:

### Judgeships

Section 4 of Article VI would be amended to read as follows:

In each county there is a superior court of one or more judges. The Legislature shall ~~prescribe the~~ provide for a number of judges sufficient for full access to the courts and ~~provide~~ for the officers and employees of each superior court. The Judicial Council shall periodically report to the Legislature on standards concerning the number of judges needed for full access to the courts. The Legislature may delegate to the Judicial Council the designation of the number of judges needed. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Comment: While the Legislature has a duty to state the number of judges in each superior court, there is no standard for the exercise of this authority. For a court system to be fully accessible to all the people of the state, there needs to be assurance that enough judges are provided for in each court to carry out the business of the court. Otherwise cases will either not be heard or cases will be not given enough time for a fair hearing. The Judicial Council is charged with providing the Legislature information to assure that a sufficient number of judges are being provided.

This amendment keeps the authority to specify the number of judges in the Legislature where it has always existed in this state as well as other states. Previously the language of this section stated that the Legislature had a non-delegable duty to determine the number of judges as shown by the use of the term “prescribe.” The new language uses the term “provide” which is the term used when the duty is delegable. The section also states that this authority can be delegated to the Judicial Council, the appropriate body for making judgeship determinations should the Legislature choose to delegate this responsibility.

### Judicial Council: Membership, chairperson

Section 6 of Article VI would be amended to read as follows:

(a) (1) The Judicial Council consists of the Chief Justice, who serves as the chairperson of the council, and one other judge justice of the Supreme Court, three judges justices of the courts of appeal, 10 11 judges of superior courts, four members of the State Bar, three two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three year terms; two judges or justices each appointed for a one-year term; and one non-voting member of each house of the Legislature appointed as provided by the house and any other nonvoting members as determined by the voting membership of the council.

(2) The members of each house of the Legislature shall be appointed as provided by the house. The governing body of the State Bar shall appoint the State Bar members pursuant to criteria established by the council. The other members shall be appointed by the Chief Justice pursuant to procedures and criteria established by the council. Pursuant to the procedures established by the council, the presiding judges of the superior courts shall provide nominees for four of the superior court judge positions.

(3) The Chief Justice may appoint from among the judicial members of the Judicial Council a vice-chairperson of the council who shall perform all the duties of chairperson when the chairperson is absent or unable to act or as otherwise directed by the chairperson.

Comment: In this section, as in other sections proposed for amendment, the term “justice” is used to refer to a judicial officer of the Supreme Court and courts of appeal and the term “judge” is used to refer to a judicial officer of the superior courts (trial courts).

Subdivision (a)(1) also adds another trial court judge in recognition of the increased role of the council in addressing trial court issues, and in order to provide broader trial court representation in the council.

Subdivision (a)(1) also is amended to increase the number of advisory court administrator members of the council. This practice results in increased representation of a significant segment of the judicial branch that is likely to provide useful input in the adoption and implementation of new policies.

Subdivision (a)(1) further adds two one-year judicial positions that would permit the selection of additional individual appointees or representatives of groups or constituencies who may bring useful perspectives to assist the council in its deliberations.

At the suggestion of members of the Legislature, subdivision (a)(1) is amended to change the legislative members of the council from voting to nonvoting members, which is appropriate under the principle of separation of powers as provided by Article III, Section 3. The communication resulting from the participation of members of the Legislature on the Judicial Council can be of significant value.

Subdivision (a)(2) adds the provision that the council establishes criteria for the State Bar Board of Governors to use in appointing State Bar members of the council. This process would be helpful in ensuring the attorney members represent the views of various segments of the bar.

The council will establish not only the procedures for selection of council members but the “criteria” for council members as well. In this manner the council can ensure that its members reflect the diversity of the bench and bar in terms of geographic location, size of court or of law practice, type of court or law practice, as well as other factors. (See California Rules of Court, rule 6.4(a)(1): “The selected nominees should represent diverse backgrounds, experiences, and geographic locations.”)

Subdivision (a)(2) changes the method of appointment of some of the superior court judge members of the council. The council is to establish procedures so that the trial court presiding judges would nominate individual judge members for these positions and the Chief Justice would appoint council members from among those nominated. This process would be helpful in ensuring the voice of this important segment of the judiciary is heard while keeping the overall authority and responsibility of the Chief Justice.

The Chief Justice is the chairperson of the Judicial Council. Language specifying the Chief Justice as the “chairman” of the Judicial Council was removed in 1974 through a nonsubstantive amendment. The subsequent absence of substitute language for “chairman” apparently was a result of a dispute about using the term “chairperson.” Subdivision (a)(1) is amended to make explicit again that the Chief Justice heads the Judicial Council and changes the title to “chairperson.” Additional language in subdivision (a)(3) provides that the Chief Justice may appoint a vice chairperson who shall act as chairperson in the chairperson’s absence, inability to act, or when so directed by the chairperson. Compare Article VI, Section 2 providing for an acting Chief Justice to perform the functions of the Chief Justice.

(b)–(c) \* \* \*

#### Judicial Council: Purpose, authority

(d) To improve the administration of justice the council shall: ~~survey judicial business and make recommendations to the courts,~~ make recommendations annually to the Governor and the Legislature; make recommendations and establish policies and goals

for the administration and operation of the judicial branch to promote access to the courts and to improve the fair and effective administration of justice; establish standards for performance and accountability of the administrative operations and procedures of the branch and reporting on the accomplishment of these standards; establish fiscal and budget procedures for the courts and the council; allocate appropriations and other funds available to the courts and the council; survey judicial business and provide financial reports to the Legislature and Governor concerning court and council expenditures; adopt procedures for performing its duties; adopt rules for court administration, practice, and procedure; and perform other functions related to the administration of justice as prescribed by statute. The rules adopted shall not be inconsistent with a statute. The Chairperson of the Judicial Council shall report to the Legislature and the Governor each calendar year on the condition of the judicial branch.

Comment: Subdivision (d) has been amended to reflect the council’s existing role within the judicial branch concerning matters involving judicial administration. It expressly recognizes why the council acts—to improve the administration of justice and to promote access to the fair and effective administration of justice—and that the council, in so acting, sets policy for the judicial branch. The enumeration in the Constitution of tasks to be performed by the council in pursuit of these goals now expressly includes budgetary responsibilities, the setting of policy relating to the administration of justice for the branch, and the establishment of standards for performance and accountability. Budgetary and other responsibilities already are set forth in statute and in rule.

The language concerning expenditures provides for accountability of administration operations by the judicial branch. For example, under this provision the council could employ independent financial audits as part of its reporting.

The language proposed for subdivision (d) is consistent with the purpose behind the establishment of the council. The ballot argument in favor of the proposition creating the Judicial Council stated that the purpose of that constitutional amendment was “to organize the courts ... on a business basis” and to bring about the smooth operation of the courts, with the Chief Justice, as the Chairperson of the council, serving as the “real, as well as the nominal, head of the judiciary.” (Amendments to Constitution and Proposed Statutes With Arguments Respecting the Same (1928) Argument in Favor of Senate Constitutional Amendment No. 15, at p. 33.) The council, with the Chief Justice as chairperson, has long been carrying out the responsibilities described in the amendments to subdivision (d). The language has also been clarified so that the policies established by the council are for the branch and relate to access to the court and the administration of justice. This provision is not intended to infringe upon the prerogatives of the legislative and executive branches as policy making entities.

Subdivision (d) has also been modified to clarify the rule-making authority of the council. Language has been added to clarify that it is only in the case of a direct conflict between

a statute and a rule of court that the rule of court is invalid. This establishes a higher standard for determining the invalidity of a court rule in relation to legislation and is designed to ensure that the Legislature does not unintentionally invalidate a rule of court.

Subdivision (d) also has been modified to delineate the types of duties that may be imposed by statute on the Judicial Council. Because the council is the policy- and rule-making authority regarding the administration of justice for the judicial branch, duties imposed on the council should be limited to its constitutional role.

The last sentence is added to subdivision (d) to require an annual report, in the nature of a “State of the Judiciary” message. The provision is based on Article V, Section 3 providing for a “State of the State” message by the Governor and is consistent with current practice.

(e)-(f) \* \* \*

### Court facilities

Section 6.2 would be added to Article VI to read as follows:

Title to court property shall be in the name of the State. The Judicial Council shall be vested with the authority to construct, manage and dispose of the property owned by the state and used for court facilities and the operation of the Judicial Council and shall have the power to take and hold, by purchase or donation or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property to be used for court facilities and for the operation of the Judicial Council or incidental thereto; provided, however, that sales of real property shall be subject to such competitive bidding procedures as may be provided by statute.

**Comment:** Section 6.2 is new language providing authority to the council for the oversight of judicial branch facilities, consistent with enactment of facilities legislation transferring authority from the counties to the state. This section gives the Judicial Council overall authority for court facilities. The authority to acquire is not limited as to means and would include methods of property acquisition such as lease-purchase. The authority for the Judicial Council is similar to and tracks the authority of the University of California Regents (see art. IX, § 9).

### Budget

Section 6.5 would be added to Article VI to read as follows:

(a) Commencing with the 2007-2008 fiscal year, there shall be appropriated to support the courts and the Judicial Council: (1) A base amount equal to the prior fiscal year appropriations, as adjusted; (2) a cost of living and population growth amount computed by multiplying the base amount by the year-to-year percentage change in the State appropriation limit as provided in subdivisions (e)(1) and (f) of section 8 of Article XIII B; and (3) such other moneys as may be appropriated by the regular budget process.

(b) The prior fiscal year appropriations shall be adjusted to remove the cost of expiring and single year programs and reflecting the full year cost of programs implement partially during the prior fiscal year.

(c) The other moneys referred to in subdivision (a)(3) are intended to cover increased costs for new operations or programs, increased costs necessitated by law, increased costs imposed by local government; and costs resulting from extraordinary circumstances.

(d) Prior to the start of each calendar year, the Judicial Council shall submit to the Legislature and the Governor, with an explanatory message, a budget for the ensuing fiscal year for the courts and the Judicial Council.

(e) Subdivision (a) may be suspended for one year when made part of or included within any bill enacted pursuant to Section 12 of Article IV.

**Comment:** This section will help ensure that the basic operating needs of the courts and the Judicial Council are met in a manner that ensures a predictable fiscal environment, that promotes court financial accountability, and that ensures sufficient funding is provided to accommodate increased costs. The funding provisions will help ensure that the branch remains independent, provides access to courts statewide, and fulfills its obligations to provide courts that administer fair and impartial justice, protect individual rights, and help assure public safety.

Subdivision (a)(2) would automatically increase the base budgets of the courts and the Judicial Council based on changes in the State Appropriation Limit (SAL). Subdivisions (a)(3) and (c) would give discretion to the Legislature and the Governor to increase the budget for new programs and mandates.

Further, it is contemplated that consistent with existing statutes, the judicial branch's budget proposal would be submitted directly to both the Legislature and the Governor.

The base budget for the courts also would include funding for the operation, maintenance, and repair of all facilities for the courts and the Judicial Council, but not the costs of new construction.

Subdivision (e) contains no specific test for the one-year suspension of the automatic SAL increase. This treatment is consistent with the provision permitting a one-year suspension of the Education allocation under article XVI, section 8(h).

Technical note: A corresponding change in subdivision (d) of Section 12 of Article IV should be made as follows:

“No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools and for the courts and the Judicial Council under subdivision (b)(1) of Section 6.5 of Article VI, are void unless passed in each house by roll call vote entered in the journal, two thirds of the membership concurring.”

### Supreme Court authority over State Bar

Section 9 of Article VI would be amended to read as follows:

The Supreme Court of California has inherent and primary authority over the admission and discipline of attorneys licensed to practice law in this State.

The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge or justice of a court of record.

The State Bar serves as the administrative arm of the Supreme Court in the court’s discharge of its responsibilities concerning the admission and discipline of attorneys.

Comment: The Legislature has long recognized the Supreme Court’s inherent and primary authority regarding admission and discipline of members of the State Bar. (See Business and Professions Code section 6087 [“Nothing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline members of the bar as this power existed prior to the enactment of Chapter 34 of the Statutes of 1927, relating to the State Bar of California.”].) Section 6087 and other provisions recognize that, throughout its history, the State Bar has provided administrative assistance to the Supreme Court in discharging the court’s fundamental authority over admission to the bar and the discipline of attorneys. The Supreme Court explained this relationship in *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 607, as follows: “The State Bar is not an entity created solely by the Legislature or within the Legislature’s exclusive control, but rather is a constitutional entity subject to this court’s expressly reserved, primary, inherent authority over admission and discipline . . . . Statutes [regarding the] disciplinary system are not exclusive—but are supplementary to, and in aid of, our inherent authority in this area.” (See also *Lebbos v. State Bar* (1991) 53

Cal.3d 37, 47–48 [“We have described the bar as a public corporation created . . . as an administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys. In those two areas, the bar’s role has consistently been articulated as that of an administrative assistant to or adjunct of this court, which nonetheless retains its inherent judicial authority to disbar or suspend attorneys.”], citations and internal quotation marks omitted.) The new material added to Section 9 reflects this constitutional relationship.

### Judicial elections and vacancies

Section 16 of Article VI would be repealed and reenacted to read as follows:

~~(a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.~~

~~(b) Judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.~~

~~(c) Terms of judges of superior courts are six years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.~~

~~(d) (1) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.~~

~~(2) The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A~~

~~nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.~~

~~(3) Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.~~

(a) (1) Justices of the Supreme Court shall be elected at large. Justices of the courts of appeal shall be elected in their districts. Elections shall be held at the November general election in even-numbered years. The terms of Supreme Court and court of appeal justices are 12 years, beginning the Monday after the January 1 following the election, except that the Legislature, in creating a new court of appeal district or division, shall provide that the initial terms of the new justices are 4, 8, and 12 years.

(2) Within 30 days before the August 16 preceding the expiration of the justice's term, a justice of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the justice. If the declaration is not filed, the Governor shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate who is not elected may not be appointed to that court but later may be nominated and elected.

(3) The Governor shall fill vacancies in the Supreme Court and courts of appeal by appointment. An appointee shall appear on the ballot for a full 12-year term at the first November general election after the justice has served two years in office.

(4) A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

(b) (1) Judges of superior courts shall be elected in their counties except as otherwise necessary to meet the requirements of federal law. In the latter instance the Legislature, by two-thirds vote of the members of each house, with the advice of the judges within the affected court, may provide for their election by the system prescribed in subdivision (6) or by any other system.

(2) Elections for superior court judges shall be held in even-numbered years at the primary election at which candidates for the November general election are selected. If a candidate receives a majority of the votes cast, the candidate is elected. If no candidate receives a majority of the votes cast, the two candidates receiving the most votes shall be candidates at the November general election. A term of a superior court judge is 6 years beginning the Monday after January 1 following the election.

(3) The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

(4) A vacancy occurs when a judge leaves office before the end of his or her term at a time at which the election process has not begun for the next term of that office. The election process shall be deemed to have begun if at least one person, other than the judge, has qualified for election for the next term of that office.

(5) The Governor may fill vacancies in the superior court by appointment. An election for a 6-year term shall be held at the next general election following the occurrence of the vacancy, except:

(i) If the vacancy has been filled by appointment within six months of its occurrence, the election shall not be held until after the judge has served at least two years in office; and

(ii) If the vacancy has not been filled by appointment within six months of its occurrence, the election shall not be held until after the judge has served at least eight months in office.

(6) Electors of a county, by a majority of those voting and in a manner the Legislature shall provide, may make the following procedure applicable to the election of judges of the superior court in that county. Within 30 days before the August 16 preceding the expiration of the judge's term, a judge may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected. If the judge does not file a declaration of candidacy and the Governor does not nominate a candidate, a vacancy shall occur in the office upon the expiration of the judge's current term.

Comment: Section 16 is amended to improve the process of judicial selection.

The subdivisions within Section 16 are in a somewhat confusing order. Subdivision (a) and (d) deal with appellate offices, and subdivisions (b) and (c) deal with superior court offices. The amendment proposes a complete reordering of the language of the section to make it clearer. Subdivision (a) would cover terms, elections, and filling of vacancies for Supreme Court and court of appeal justices and subdivision (b) would cover superior court judges. The reordering of the provisions, however, is not intended to fundamentally alter the pattern of superior court contested elections and appellate court retention elections.

In addition, other changes proposed to the section include:

(1) Clarify which officers are voted on at which elections. The term “general election” as used in the Constitution has two meanings—referring both to the direct primary election (currently held in June of even-numbered years) and the runoff or general election (held in November of even-numbered years). For superior court positions, it is possible (and occurs with some regularity) that no candidate receives a majority of votes at the first election and a runoff is necessary. The normal process is to hold the initial election at the direct primary, with a runoff, if needed, in November. The proposed language makes explicit these two election dates. (Subdivisions (a)(1) and (b)(2))

(2) Provide that retention elections for appellate justices occur at those general elections that occur in November of even-numbered years, rather than only at gubernatorial elections, which occur at four-year intervals. With over 100 appellate justices in California, it is preferable to spread out appellate retention elections to reduce the number of justices appearing on the ballot in any one election. (Subdivision (a)(1))

(3) Provide that an appointee to a vacant appellate judicial office will, following a successful retention election, serve a full term of office. Under current law, an appointee who is elected for an unexpired term serves out only the remainder of the unexpired term. In some cases, this means that an appointee’s first retention election is for a four-year or eight-year term followed by a second retention election. In light of the proposal to permit appellate retention elections at all November general elections, an appointee elected to an unexpired term could serve for as few as two years before being required to stand for a second retention election. It is confusing to voters to have appellate justices running for retention elections with different terms of office (i.e., 4 years, 8 years, or 12 years) when the difference in the length of term is based upon the randomness of the timing of the vacancy and subsequent appointment. (Subdivision (a)(1))

(4) Permit an appointee to the Supreme Court or court of appeal to serve at least 24 months in office prior to standing for retention election. This provides sufficient time for an appointee to establish a record of performance that the community may assess through the retention election process. (Subdivision (a)(3))

(5) Encourage the Governor to make appointments to vacant positions within six months of the vacancy so that the court system will not be adversely affected by lengthy vacancies. (Subdivision (b)(5))

(6) Permit an appointee to serve at least 24 months in office prior to standing for election if the Governor has made the appointment within six months of the vacancy. This provides sufficient time for an appointee to establish a record of performance that the community may assess through the election process. (Subdivision (b)(5)(i))

(7) Place in the Constitution the holding of *Stanton v. Panish* (1980) 28 Cal.3d 107 that a vacancy does not occur if a candidate has qualified for the election prior to a judge leaving office. (Subdivision (b)(4))

### Judges—Restrictions, Other Employment, and Benefits

Section 17 of Article VI would be amended to read as follows:

A judge or justice of a court of record may not practice law and ~~during the term for which the judge was selected~~ is ineligible for public employment or public office other than judicial employment or judicial office, except: (1) a judge or justice of a court of record may accept a part-time teaching position that is outside the normal hours of his or her judicial position and that does not interfere with the regular performance of his or her judicial duties while holding office; (2) a judge or justice may retire or resign from office and accept other public employment; and (3) a ~~A judge or justice of a court of record may, however,~~ become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

A judicial officer may not earn retirement service credit from a public teaching position while holding judicial office.

**Comment:** Under current law a judicial officer may leave office by retirement or resignation for employment in the private sector. However, if the judge wants to serve in another non-elected position in the public section, he or she cannot serve until the full length of the term for which the judge was selected has expired. This distinction prevents the public sector from obtaining the services of a judge who wishes to serve in a capacity other than a judge and, thus, is being removed. No similar provision applies to other public official.

### Judicial salary

Section 19 of Article VI would be amended to read as follows:

~~The Legislature shall prescribe compensation for judges of courts of record.~~

(a) Beginning 2007, on July 1 of each year the salary of each judge and justice shall be increased by that amount which is produced by multiplying the then-current salary of each judge or justice by the average percentage compensation increase for the current fiscal year for California State employees; provided, that in any fiscal year in which the

Legislature places a dollar limitation on compensation increases for state employees, the same limitation shall apply to judges and justices in the same manner applicable to state employees in comparable wage categories. As used in this subdivision, the salary of each judge or justice as of July 1, 2007, is the salary as determined by the law in effect on June 30, 2007. The Legislature may provide for a method of determining the salary increases provided for by this subdivision.

(b) The California Judicial Salary Commission, created by this section, may provide an increase in the salary of judges and justices in addition to that increase provided by subdivision (a). The commission shall take into account the increase provided by subdivision (a).

(c) If the percentage increase in judicial salaries under subdivision (a) together with any commission-ordered increase under subdivision (b) is greater than the percentage increase in the change in the cost of living component of the annual state appropriation limit, there shall be added to the base funding for the courts under Section 6.5 of this article an amount to make up the difference.

(d) The commission shall consist of the following persons:

(1) Three public members, all appointed by the Governor, one of whom has expertise in the area of salary and particularly salary of members of the legal profession, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, or have been a candidate for elective public office.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation that ranks among the largest private sector employers in the State based on the number of employees employed by the corporation in this State, who is appointed as provided by the Senate, and one of whom is an owner of a small business in this State, who is appointed as provided by the Assembly.

(3) Two members who are officers or members of a labor organization, one of whom is appointed as provided by the Senate and the other of whom is appointed as provided by the Assembly.

(4) Two members who are members of the State Bar of California, both of whom are appointed by the Chief Justice. The Chief Justice shall strive to appoint bar members who reflect the diversity of bar members in terms of geographic location, and type and size of practice.

(e) Each appointing authority shall appoint commission members not later than 30 days after the effective date of this section. At the first meeting of the commission the members shall select one member as chairperson and the members shall draw lots to determine the initial term of each member. The terms of three of the initial appointees shall expire on December 31, 2008, three on December 31, 2010, and three on December 31, 2012. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the appointing authority shall appoint a person to serve the unexpired portion of the term.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

(g) The commission shall meet at least every two years to consider increasing the salary of judges and justices pursuant to subdivision (b). The commission may adjust the annual salary of judges and justices by a single resolution adopted by a majority of the membership of the commission, and filed with the Secretary of State. The salary adjustment shall be effective on the first day of July following the adoption of the resolution unless otherwise specified in the resolution.

(h) In making its determination the commission shall consider the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a judge or justice.

(2) The amount of the annual salary for other elected and appointed officers and officials in this state, and, to the extent practicable, for the private sector, including members of the bar in both public and private practice, recognizing, however, that (i) judges and justices do not receive, and do not expect to receive, salary at the same levels as individuals in the private sector with comparable experience and responsibilities, (ii) the salary for judges and justices represents a significant factor in the ability of the state to attract and retain qualified candidates for judicial positions, and (iii) the ethical limitations for judicial officers on receiving other remuneration

(3) The responsibility and scope of authority of the entity in which the judge or justice serves.

(4) The amount of any increases in salary received by judges or justices under subdivision (a) of this section.

(i) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political

Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

(j) The Judicial Council shall provide staff and services to the commission as needed for the performance of its duties and shall be responsible for the compensation and expenses of the members of the commission.

(k) “Judge or justice” or “judge and justice” as used in this section, means justices of the Supreme Court and the courts of appeal, and judges of the superior courts.

(l) A judge or justice of a court of record may not receive the salary for the judicial office held by the judge or justice while any cause before the judge or justice remains pending and undetermined for 90 days after it has been submitted for decision.

**Comment:** Subdivision (a) continues in effect the current statutory language providing judges and justices with the same general salary increases provided to state employees.

The use of a neutral salary-setting commission for state officials generally, set forth in article III, section 8 of the Constitution, provides a means for keeping salaries current and for minimizing the perception that politics affects the salary-setting process for these positions.

Subdivision (b) establishes a separate judicial salary commission. The commission, at least every two years, would consider whether judicial salaries should be increased by an amount greater than the amount specified in subdivision (a).

The establishment of a separate judicial salary commission would enable that commission to consider the specialized issues that affect judicial salary including the full-time nature of the judicial position, the ethical constraints against most other remunerative activity, the need for adequate salary to attract and retain qualified judges, and the importance of the judicial office in ensuring the effective and efficient administration of justice.

Members of the commission would be appointed by the Legislature (labor and business representatives), the Governor (public members), and the Chief Justice (lawyer members). The appointment authority of the Chief Justice, even though the salary of the Chief Justice is also set by the commission, is consistent with the practice for the state officer commission whose members are appointed by the Governor even though the commission also sets the salary of the Governor.

The structure and regulation of the commission is similar to that for the state official salary setting commission. An additional factor that the commission would consider in

setting judicial salaries is a recognition of the need for adequate salary to attract qualified judges. Consideration has been given to including a provision that any person who is a party to litigation in any court in the state is ineligible for membership on the commission. Such a provision has not been included because it might disqualify a large number of potential members who would be unlikely to be affected in their decision making by the existence of pending litigation involving them.

The language in subdivision (c) automatically funds any commission or other action raising judicial salaries.

Technical change to conform to judicial salary setting commission

Section 4 of Article III would be amended to read as follows:

(a) \* \* \*

(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. ~~The Legislature~~ California Judicial Salary Commission established by Section 19 of Article VI may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws, including actions of the California Judicial Salary Commission, setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law.

**Comment:** This amendment to subdivision (b) conforms the language concerning the setting of salaries of judges to the new California Judicial Salary Commission proposed above in Section 19 of Article VI.

**Rule 6.4. Nominations and appointments to the Judicial Council**

**(a) [Nomination Authority]**

- (1) The Executive and Planning Committee assists the Chief Justice in selecting council members by submitting a list of at least three nominees for the following positions:
  - (A) Three justices of the courts of appeal;
  - (B) Seven of the 11 judges of the superior courts;
  - (C) Three non-voting court administrators; and
  - (D) Other non-voting members subject to the Chief Justice's appointment authority.
  
- (2) The presiding judges of the Superior Courts assist in the selection of council members by submitting to the Executive and Planning Committee a list of at least five nominees for four of the 11 judges of the superior courts appointed for three-year terms as follows:
  - (A) The presiding judges of superior courts with six or fewer judges shall submit a list of at least five nominees from among the judges of superior courts with six or fewer judges;
  - (B) The presiding judges of the superior courts in the First and Sixth Appellate Districts with seven or more judges shall submit a list of at least five nominees from among the judges of those superior courts who are not the presiding judge of the court;
  - (C) The presiding judges of the superior courts in the Second and Fourth Appellate Districts with seven or more judges shall submit a list of at least five nominees from among the judges of those superior courts who are not the presiding judge of the court;
  - (D) The presiding judges of the superior courts in the Third and Fifth Appellate Districts with seven or more judges shall submit a list of at least five nominees from among the judges of those superior courts who are not the presiding judge of the court;

- (E) No more than two judges of any single court may be included in any group of nominations made pursuant to subparagraphs (A)-(D) above;
  - (F) Subparagraphs (A) and (B) initially apply to two superior court positions that become vacant in 2007 and to the successors to be appointed to those two positions. Subparagraph (C) initially applies to a superior court position that becomes vacant in 2008 and to the successor to be appointed to that position. Subparagraph (D) initially applies to a superior court position that becomes vacant in 2009 and to the successor to be appointed to that position.
  - (G) The Executive and Planning Committee submits at list of at least three of the nominees from the Presiding Judges to the Chief Justice.
- (3) When a vacancy occurs in or the term ends for a position subject to a nomination authority specified in this rule, the nomination authority that initially submitted the list of nominees for that position submits the list of nominees for the successor to that position.

**(b) [Nomination procedure]**

- (1) Each nominating authority must publicize vacancies and solicit nominations.
- (2) The Executive and Planning Committee must solicit nominations for the court administrator advisory member positions from the Court Executives Advisory Committee and the Appellate Court Clerk Association, and for other advisory members from appropriate bodies.
- (3) The nominees for each type of vacancy should (i) represent diverse areas of service, (ii) come from diverse backgrounds, experiences, geographic locations, and demographics, and (iii) not represent a specific constituency but should be willing to act in the best interests of the public and the entire court system. The nominating authorities give added consideration to persons who have served on Judicial Council advisory committees or task forces.
- (4) If the Chief Justice is a member of the Executive and Planning Committee, the Chief Justice does not participate in discussions relating to nominations.

(c) **[Appointing order]** The Chief Justice makes appointments to the council by order. The Chief Justice makes appointments to positions under the nomination authority of the Superior Court presiding judges, specified in subdivision (a)(2) from among the nominees submitted.

**Summary of Changes to Initial Discussion Draft of Feb. 14, 2005<sup>2</sup>**

- **Article III, Section 4** [judicial salaries] modified to conform to changes in Article VI, Section 19.
- **Section 1** [judicial branch] amendment defining judicial branch and judicial branch agencies removed.
- **Section 4** [judgeships] amended to require:
  - Legislature to provide a sufficient number of judges in each superior court to provide access to the courts.
  - Judicial Council to establish standards regarding sufficiency of number of judges.
  - Legislature may delegate the specification of the number of judges to the Judicial Council.
- **Section 6(a)** [council membership] amended as follows:
  - Court administrators kept non-voting and increased to three.
  - Selection proceedings include nominations by presiding judges of four superior court positions.
  - Additional one-year-term judge added to council.
  - Clarified language providing for council ensuring diversity of membership.
  - Changed provision involving State Bar appointees to clarify appointments come from Board of Governors pursuant to criteria set by council.
  - Commentary rearranged so that it follows the language of the provision.
  - Language clarified and simplified.
- **Section 6(d)** [council duties and responsibilities] amended as follows:
  - Permit council to set both policies and goals but ensure that these are only for the administration and operation of the judicial branch.
  - Require the council to establish standards for accountability and performance for administrative operations.
  - Modify the rule making power to require conflict with “a” statute to invalidate a rule.
- **Subdivision 6(e)** [judgeships] removed and replaced with amended section 4.
- **Section 6(h)** [fees] deleted.

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<sup>2</sup> All references are to Article VI except where expressly indicated otherwise.

- **Section 6.2** [facilities] added express authority to construct new facilities.
- **Section 6.5** [budget] added and amended as follows:
  - Provide for automatic judicial branch budget limited to increase in state appropriation limit.
  - Provide for discretionary judicial branch budget subject to adoption by Legislature and Governor.
  - Provide that judicial branch budget becomes part of the Governor’s proposed budget and not automatically part of the approved budget.
  - Specifically exclude new construction from being included in the base budget.
- **Section 9** [State Bar] amended to more closely reflect the language of *In re Attorney Discipline System* (1998) 19 Cal.4th 582.
- **Section 16** [elections and term of judges] amended as follows:
  - Removed provision extending superior court term from six to ten years
  - “Open” (end-of-term) elections retained.
  - Make local option superior court retention elections more closely conform to appellate court retention election procedure.
  - Removed superfluous reference to length of terms of superior court judges.
  - Clarified language that a vacancy does not occur when an election has started.
  - Holding of *Stanton v. Panish* (vacancy occurring after election process begins does not stop election) expressly made part of Constitution.
  - Rewritten and reorganized so that language clarified and simplified.
- **Section 17** [other employment] amended to permit a judge to retire or resign from office in order to accept other public employment.
- **Section 18** [discipline] removed. Provision, prior to removal, provided:
  - Suspension without pay.
  - Restitution.
  - Education and treatment.
- **Section 19** [judicial salaries] amended as follows:
  - Remove references to compensation to make it clear that commission only deals with issues of salary.
  - Require commission to consider any changes to salaries made by provision concerning increases based on average of state employees.
  - Remove requirement that corporation among the largest employers in this state be incorporated in this state.

- Removed reference in commentary to benefits.
  - Make appointment language for commission internally consistent.
- **Section 20** [judicial benefits] removed from draft because Legislature is to retain authority over judicial benefits.
- **Article VII, section 4** technical change removed as unnecessary because no amendment being made to Article I, Section 1 concerning definition of judicial branch.