

**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  
Donna S. Hershkowitz, Acting Director, Office of Governmental Affairs,  
916-323-3121, donna.hershkowitz@jud.ca.gov

DATE: November 13, 2007

SUBJECT: 2008 Judicial Council Legislative Priorities (Action Required)

Issue Statement

The mission of the Judicial Council includes providing the leadership for improving the quality of and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying this goal is a commitment to equal and timely justice; public access to an independent forum for resolution of disputes; advocacy for sufficient, stable resources and the infrastructure necessary for the branch to fulfill its mission; high quality throughout the branch; and accountability to the public.

Each year the Judicial Council sponsors legislation in support and furtherance of key council objectives. For the 2008 legislative year, 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 of sponsorship of these proposals in 2008.

Recommendation

The Policy Coordination and Liaison Committee (PCLC) recommends that the Judicial Council approve sponsorship of the following legislative proposals and direct the Office of Governmental Affairs to coordinate council review and approval of individual proposals as needed:

1. Modify the Judges' Retirement System II to provide a defined benefit after 10 years of service on the bench for judges at least age 63. This proposal will be cosponsored with the California Judges Association.

2. Extend the now-expired deadline for the transfer of court facilities to the responsibility of the branch and allow multiple court facilities in a county to transfer under a single transfer agreement. This proposal will be cosponsored with the California State Association of Counties.
3. Create 50 new trial court judgeships to be allocated consistent with the council's 2007 Judicial Needs Assessment.
4. Secure funding to ensure appropriate court security is provided for all individuals who enter the trial courts and enact a structure for appropriate security cost containment and accountability.
5. Exercise the authority to convert 16 vacant subordinate judicial officer positions to judgeships in eligible courts in fiscal year 2008–2009.

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

#### Rationale for Recommendation

##### *Judges' Retirement System II (JRS II) reform*

In order to ensure that the judiciary continues to attract the best and brightest attorneys from ethnically and racially diverse backgrounds and a wide array of public and private sector legal practices and with sufficient legal experience to prepare them for the responsibilities of a trial court judgeship or a position on an appellate court, it is essential that the retirement system be modified.

Under this proposal, a JRS II judge who reaches age 63 and has served 10 years on the bench would 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 the length of service and encourages judges to remain on the bench, as the amount of the benefit will increase each year until a judge has 20 years of service.

##### *Court facility transfer deadline extension*

In 2007, the Judicial Council and the California State Association of Counties (CSAC) cosponsored Senate Bill 145 (Corbett) to extend the deadline for transfer of court facilities from counties to the state from June 30, 2007, to December 31, 2008. The bill was approved by the Senate with no "no" votes, but stalled in the Assembly when the Assembly offered amendments that were opposed by the CSAC and that Administrative Office of the Courts (AOC) staff believed would seriously impede transfers after January

1, 2008. The AOC offered a compromise that was supported by CSAC but was ultimately unsuccessful on the last night of the Legislature's session.

Facility transfers must precede any state-funded courthouse improvement or new construction replacement projects intended for that facility. Allowing multiple facilities to transfer under a single agreement will speed negotiations and reduce administrative redundancy. California's trial court facilities have critical life safety, operational, and security deficiencies that can only be cost-effectively addressed through a statewide capital outlay program. Uniting responsibility for court operations and facilities management increases the judicial branch's fiscal and administrative accountability. These opportunities will be lost if the transfer deadline is not extended.

#### *New judgeships*

In February 2007, the AOC Office of Court Research presented the council with an updated analysis of judicial need. The Office of Court Research found that, even with the infusion of 50 new judicial positions under Senate Bill 56, workload growth in the courts found the branch facing a shortage of 361 judges. The council sponsored Assembly Bill 159 in 2007, authorizing an additional 50 new judgeships.

While the 100 new judgeships created by SB 56 and AB 159 will provide critically needed relief, an urgent need remains to secure legislative enactment of the additional 50 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.

#### *Court security*

Adequate security is critical to ensuring public safety and the appropriate functioning of the courts. In 2007, a special working group that includes members of the Working Group on Court Security, members of the Judicial Council, representatives of the California State Sheriffs Association, and AOC staff, collaborated on a proposal for funding and legislation to (1) address current funding deficiencies and bring courts up to the court security funding standard; (2) adopt a structure for appropriate security cost containment and accountability; and (3) ensure that after the funding deficiencies are addressed, court security costs will be limited by the year-to-year funding increase provided by the state appropriations limit. We were not successful in securing legislative support in 2007; action must be taken in 2008 to get control over the costs and ensure that appropriate court security is provided for all individuals.

#### *Subordinate judicial officer conversion*

AB 159, in addition to authorizing 50 new trial court judgeships, also approved the conversion of 162 subordinate judicial officer positions to judgeships upon vacancy. The

bill capped the number that may be converted at 16 per fiscal year. AB 159 also requires legislative ratification every year, beginning with the 2008–2009 fiscal year, for the council to exercise its authority to convert the 16 positions in any given year. That legislative ratification may be accomplished in a piece of legislation or in the Budget Act.

#### 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

As noted above, 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 will 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 will 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 2008 legislative year, 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 of sponsorship of these proposals in 2008.

The proposals are described in conceptual form; the text of the proposed legislative changes is in development. When the proposals are fully drafted, the Policy Coordination and Liaison Committee (PCLC), along with the chairs of the Executive and Planning Committee and the Rules and Projects Committee, will consider each based on the current fiscal, legislative, and policy context.

Rationale for Recommendation

*Judges' Retirement System II (JRS II) reform*

Enacted in 1994, JRS II has both defined-benefit and defined-contribution 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 to about 51. This means that many judges will not be eligible for retirement with a defined benefit until reaching age 70.

In order to ensure that the judiciary continues to attract the best and brightest attorneys from ethnically and racially diverse backgrounds and a wide array of public and private sector legal practices and with sufficient legal experience to prepare them for the responsibilities of a trial court judgeship or a position on an appellate court, it is essential that the retirement system be modified. 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 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 would 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 the length of service and encourages judges to remain on the bench, as the amount of the benefit will increase each year until a judge has 20 years of service.

JRS II is a disincentive to judicial service. Although any attorney who seeks to become a judge is primarily motivated by the desire to perform a public service, there are practical considerations that must be taken into account in reviewing JRS II. A judge's compensation package 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 judges and a better retirement system. Attorneys in public sector employments are members of retirement systems that provide defined-benefit options that vary by county but include formulas such as 2 percent per year of service 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.

Both the Senate and Assembly Budget Subcommittees heard testimony in 2007 on the negative impact of JRS II on bringing diversity to the bench. Although both

subcommittees appeared sympathetic to the arguments and issues raised, no action was taken.

The state is expected to be in a worse fiscal condition in 2008 than it was in 2007. Additionally, the report of the Public Employee Post-Employment Benefits Commission, due to the Governor and the Legislature by January 1, 2008, is expected to recommend changes to public employment pensions that may affect pension benefits. These factors may make 2008 a difficult year to pursue these changes to JRS II. Nonetheless, the council and CJA are committed to advocating for these important changes. This proposal is a modest change that provides judges with reasonable retirement options.

#### *Court facility transfer deadline extension*

In 2002, the Trial Court Facilities Act (Sen. Bill 1732, Escutia) was enacted. The act provides for the shift of responsibility for trial court facilities from county to state governance, under the direction of the Judicial Council. In 2003, building-by-building negotiations began among courts, counties, and the Administrative Office of the Courts (AOC). Many issues proved more difficult than anticipated, including the issues arising in shared-use facilities, the calculation of the required county facility payment (CFP), and the poor seismic rating of many courthouses.

Subsequent legislation, Senate Bill 10 (Dunn), enacted in 2006, revised the Trial Court Facilities Act to allow the transfer of buildings with a seismic “Level V” rating to the state so long as liability for all earthquake-related damage remains with the counties to the same extent as if the court facilities had not transferred.

As a result of the collaborative approach to resolving the issues around the seismic ratings of courthouses and the enactment of SB 10, there was renewed momentum in the transfer of court facilities, with 119 of the 451 court facilities transferring by the statutory deadline of June 30, 2007.

In 2007, the Judicial Council and the California State Association of Counties (CSAC) cosponsored SB 145 (Corbett) to extend the deadline for transfer of court facilities from counties to the state from June 30, 2007, to December 31, 2008. In support of her legislation, Senator Corbett convened a court-county working group on court facility transfers to identify and recommend additional amendments to the Trial Court Facilities Act that would improve the transfer process. SB 145 was intended to be the vehicle for any amendments recommended by the working group. In its final report to Senator Corbett the working group stated: “An extension of the June 30, 2007, transfer deadline is needed, but the rate of transfers will not be increased—and could be slowed—by additional legislative changes.”

SB 145 passed out of the Senate with no amendments and with no “no” votes. In response to concerns that the county facility payments (CFPs) are not adequate to operate

and maintain the facilities that have transferred, the Assembly Judiciary Committee amended the bill to require the counties to pay, beginning on June 30, 2008, in addition to the CFP, an inflationary amount that is determined by the U.S. Bureau of Economic Analysis and is the basis for yearly adjustments made by the Department of Finance to the budgets of various state-funded entities including the Administrative Office of the Courts, Supreme Court, and Courts of Appeal. This adjustment is referred to as “price” and has historically been between two and four percent per annum. Counties agreed to this amendment, and the bill was passed to the Appropriations Committee and placed on that committee’s “suspense file.” When the bill passed off the suspense file in late August, it was amended to require the price increase to begin on January 1, 2008, and it established an additional, larger CFP increase beginning on July 1, 2008. CSAC opposed these amendments, and AOC staff, believing that the new, higher CFP would seriously impede transfers after January 1, 2008, offered a compromise that would have allowed the facilities to transfer without higher CFP payments until June 30, 2008, with the larger increase still taking effect on July 1, 2008. This compromise was added to Assembly Bill 1491 (Benoit) and was supported by CSAC, but was ultimately unsuccessful on the last night of the Legislature’s session.

Staff believes that the Legislature continues to support the policy goal of transferring court facilities to the state. The adequacy of the CFP will continue to be an issue for some in 2008, and staff will need to negotiate appropriate language to garner the support of the Legislature while at the same time ensuring that the proposal encourages the continued transfer of court facilities to the state.

Facility transfers must precede any state-funded courthouse improvement or new construction replacement projects intended for that facility. Allowing multiple facilities to transfer under a single agreement will speed negotiations and reduce administrative redundancy. California’s trial court facilities have critical life safety, operational, and security deficiencies that can only be cost-effectively addressed through a statewide capital outlay program. Uniting responsibility for court operations and facilities management increases the judicial branch’s fiscal and administrative accountability. These opportunities will be lost if the transfer deadline is not extended.

### *New Judgeships*

In August 2004 the 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 additional judges statewide. The Judicial Council approved the judicial needs assessment methodology and approved a proposal to pursue the 150 most urgently needed new judgeships.

In January 2005 SB 56 (Dunn) was introduced to authorize 150 new judges, 50 in each of three consecutive years. 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. With the funding

provided, and after intense negotiations primarily focused on the Legislature's policy interest in increased racial and ethnic diversity on the bench, the Legislature passed SB 56, authorizing 50 new superior court judgeships.

The process began again in 2007, with the Judicial Council approving pursuing legislation to establish the second set of 50 new judgeships. The Governor again provided one month of funding in the 2007–2008 budget, and AB 159 was introduced to authorize the new judgeships.

In February 2007, the AOC Office of Court Research presented the council with an updated analysis of judicial need. The Office of Court Research found that, even with the infusion of 50 new judicial positions under SB 56, workload growth in the courts found the branch facing a shortage of 361 judges. The Office of Court Research proposed, and the council approved, an allocation of the second and third sets of 50 new judgeships based on the updated analysis. AB 159 incorporated that allocation by reference. Intense negotiations with the Legislature occurred again in response to the Legislature's continuing stated policy concern over the lack of racial and ethnic diversity on the bench and in the Governor's recent appointments. The Legislature eventually passed, and the Governor signed, AB 159, authorizing the second set of 50 new judgeships.

While the 100 new judgeships created by SB 56 and AB 159 will provide critically needed relief, an urgent need remains to secure legislative enactment of the additional 50 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.

### *Court Security*

Adequate security is critical to ensuring public safety and the appropriate functioning of the courts. In 2007, a special working group that includes members of the Working Group on Court Security, members of the Judicial Council, representatives of the California State Sheriffs Association, and AOC staff collaborated on a proposal for funding and legislation to:

- Address current funding deficiencies and bring courts up to the court security funding standard;
- Adopt a structure for appropriate security cost containment and accountability; and
- Ensure that after the funding deficiencies are addressed, court security costs will be limited by the year-to-year funding increase provided by the state appropriations limit.

This proposal was endorsed by the Department of Finance and was included in the Governor's "May Revise" budget proposal. However, following the long budget impasse and given the specific concerns the Legislature raised about cost containment, the proposal was not enacted in 2007.

The joint legislative and budget proposal drafted by the special working group is underpinned by the following five principles:

1. *Adequacy of court security.* Courthouses and courtrooms must be operated and managed in a secure, safe, and efficient manner to ensure the safety of all participants and to ensure that the public maintains confidence in the courts. The courts and sheriffs jointly recognize the critical need for the state to provide adequate resources to protect public safety and to maintain the courts as a neutral, safe harbor for the resolution of disputes in California.
2. *Clear standards.* The courts and sheriffs jointly benefit from clear statewide standards for court security services. Court security services should be provided in a consistent and stable manner to promote the efficient and cost-effective use of state and local court security resources. The courts and sheriffs will jointly determine how the security standards will be met locally.
3. *Accountability.* Courts and sheriffs will be accountable for providing the required level and type of court security services. Courts and sheriffs will provide regular reports to the state demonstrating compliance with appropriate budget management requirements and cost controls.
4. *Predictability.* Clear court security standards and accountability measures will enhance the state's ability to effectively plan and allocate funds for court security, and will enhance each sheriff's ability to deploy resources appropriately. This predictability will improve the overall fiscal management of state and local resources.
5. *Efficiency.* The courts and sheriffs are jointly responsible for managing the delivery of court security services in a way that promotes cost-effective and efficient practices that will include necessary cost controls and result in long-term economic savings for the state. Efficient cost management recognizes the state's need to appropriately manage the growth in court security costs.

After reconvening the special working group on October 29, 2007, AOC staff is preparing a revised legislative proposal that includes appropriate modifications to address cost containment in response to the legislative concerns noted above.

*Subordinate judicial officer conversion*

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#### Alternative Actions Considered

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#### Recommendation

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