

**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
Hon. Marvin R. Baxter, Chair
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SUBJECT: 2009 Judicial Council Legislative Priorities (Action Required)

Issue Statement

The mission of the Judicial Council includes providing the leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice. Among the guiding principles underlying this goal is a commitment to meeting the needs of the public, which includes ensuring equal and timely justice, advocating for sufficient and stable resources necessary for the branch to fulfill its mission, expecting high quality throughout the branch, and accountability to the public.

Each year the Judicial Council sponsors legislation in furtherance of key council objectives. For the 2009 legislative year, the council's critical legislative proposals include ongoing, multiyear priorities that previously have been approved by the council and proposals in support of the council's commitment to improving the delivery of justice. This report provides an update on these ongoing priorities, where appropriate, and confirms council approval of sponsorship of these proposals in 2009.

Recommendation

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

1. Modify Judges' Retirement System II (JRS II) to provide a defined benefit after 10 years of service on the bench for judges at least age 63. It is anticipated that this proposal will be cosponsored with the California Judges Association.

2. Enact appropriate recommendations for legislative change adopted by the Blue Ribbon Commission on Children in Foster Care (BRC).
3. Establish the third set of 50 new trial court judgeships to be allocated consistent with the council's 2007 Judicial Needs Assessment.
4. Exercise the authority to convert 16 vacant subordinate judicial officer positions to judgeships in eligible courts in fiscal year 2009–10.

The text of proposals for items 1, 3, and 4 is attached at page 6.

The PCLC also recommends that the Judicial Council authorize the chairs of the PCLC and the BRC to designate members of their respective committees as a subgroup to determine the appropriate BRC recommendations to pursue legislatively and to advise and assist the Office of Governmental Affairs on developing and revising language as necessary as it moves through the legislative process.

These proposals represent the key legislative priorities for the council in the near term. At upcoming council meetings, the Policy Coordination and Liaison Committee will provide status information about all proposals for sponsored legislation.

Rationale for Recommendation

Judges' Retirement System II Reform

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

Under this proposal, a JRS II judge who reaches age 63 and has served 10 years on the bench will be able to retire and receive a defined-benefit pension 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 currently 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, practical considerations must be taken into account. Attorneys in many public sector legal positions, such as assistant district attorneys or county counsel, already receive a salary higher than that of a judge and have better or more flexible retirement systems. Attorneys contemplating becoming judges are frequently unwilling to move to the bench because of these financial considerations.

The state's fiscal condition continues to deteriorate. This will make 2009 a difficult year to pursue these changes to JRS II. Nonetheless, the PCLC recommends that the council sponsor legislation to modify JRS II in the manner stated above. This proposal is a modest change that provides a significant improvement in the options available to judges.

Blue Ribbon Commission on Children in Foster Care

On March 9, 2006, Chief Justice Ronald M. George established the California Blue Ribbon Commission on Children in Foster Care and appointed Supreme Court Associate Justice Carlos R. Moreno as its chair. The BRC was charged with providing recommendations to the Judicial Council on ways in which the courts and their partners can improve safety, permanency, well-being, and fairness outcomes for children and families. The BRC issued final recommendations to the Judicial Council on August 15, 2008. The recommendations focus on four areas: (1) efforts to prevent removal and achieve permanency; (2) court reforms; (3) collaboration between the courts and their child welfare partners; and (4) resources and funding. The council directed the BRC to develop for the council's consideration an implementation plan for the recommendations.

Many of the recommendations of the BRC can be implemented with amendments or additions to the California Rules of Court. Others require legislative change. Although the financial condition of the state may make the enactment of changes that require the infusion of funds difficult in 2009, the council may be uniquely positioned to make inroads on the BRC recommendations. Among the members of the BRC are the current speaker of the California State Assembly, and the incoming president pro tempore of the California State Senate. These members were selected because of their historic commitment to this issue and their past leadership in implementing solutions to address the multitude of problems with the current foster care system.

Because the BRC will first bring its implementation plan to the council for approval at an upcoming meeting, the specific legislative proposals have not yet been identified. Therefore, the PCLC recommends that the council authorize, in concept, legislation necessary to implement the recommendations of the BRC, and it also recommends that the council authorize the chairs of the PCLC and the BRC to designate members of their respective committees as a subgroup to determine the appropriate BRC recommendations to pursue legislatively and to advise and assist the Office of Governmental Affairs on developing and revising language as necessary.

New Judgeships

In February 2007, the AOC Office of Court Research presented the council with an updated analysis of judicial need. Based on that analysis, in 2007 the council sought and secured the second set of 50 new judgeships authorized by Assembly Bill 159 (Jones; Stats. 2007, ch. 722). In 2008, the council sponsored Senate Bill 1150 (Corbett) to secure the third set of new judgeships. Initially, funding for the second set of new judgeships would have allowed

appointments to begin starting June 2008. Because of budget concerns, the funding was delayed 13 months, until July 2009. This allowed the state to move the fiscal impact from FY 2007–08 to FY 2009–10.

At its October 25, 2008, meeting, the council approved the 2008 update of the Judicial Workload Assessment. At the same time, the council confirmed the need for the Legislature to create the remaining third set of 50 judgeships, completing the initial request for 150 new judgeships, based on the allocation list approved by the Judicial Council in 2007. Because of the continuing budget situation, coupled with the fact that the Legislature and Governor have moved funding for the second 50 judgeships to FY 2009–10, Office of Governmental Affairs staff do not believe there will be support for funding the third sets of judgeships in FY 2009–10 and recommends requesting the judgeships upon appropriation in FY 2010–11.

The PCLC recommends that the council approve sponsorship of legislation in 2009 to create 50 new judgeships upon appropriation in FY 2010–11.

Subordinate Judicial Officer Conversion

Existing law allows the Judicial Council to convert a total of 162 subordinate judicial officer positions, upon vacancy, to judgeships. The statute caps at 16 the number that may be converted each year and requires the council to seek legislative ratification for the council to exercise its authority to convert positions in any given year. For conversions in the current year, the following language was included in the 2008 Budget Act (Assem. Bill 1781, ch. 268):

The Judicial Council is authorized to convert up to 16 subordinate judicial officer positions to judgeships in the 2008–09 fiscal year in the manner and pursuant to the authority described in subparagraph (B) of paragraph (1) of subdivision (b) of Section 69615 of the Government Code.

As of the writing of this report, the council already has converted 11 of the 16 positions authorized for 2008–2009. In addition, the council converted the full 16 positions authorized in 2007–08 (the first year in which the conversions were permitted).

The PCLC recommends that the council approved seeking legislative ratification for conversion of 16 subordinate judicial officer positions, upon vacancy, in FY 2009–10.

Alternative Actions Considered

None. These proposals represent 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. In the case of the proposal regarding recommendations of the Blue Ribbon Commission on Children in Foster Care, the August report to the council included a chart detailing the 130 comments received during the public comment period and public hearings on the recommendations.

Implementation Requirements and Costs

Funding will be required for the new judgeship and JRS II proposals. With regard to the SJO conversions, as detailed in prior council reports on this subject, an SJO typically receives 85 percent of a judge's salary. Upon conversion of an SJO to a judgeship, courts will be responsible for absorbing the salary differential, which may be offset by a reduction in the cost to the courts of provided benefits. As part of its review of the proposals on the dependency system, once legislative language is drafted, the PCLC will be presented with and consider the implementation requirements and related costs.

Attachment

JRS II

Government Code section 75522(a) would be amended to read:

1 **75522**

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3 (a) A judge is eligible to retire pursuant to this section upon attaining both ~~65~~ 63 years
4 of age and ~~20~~ 10 or more years of service, or upon attaining 70 years of age with a
5 minimum of five years of service.

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7 (b)–(f) ***

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10 **New Judgeships**

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12 Government Code section 69614.4 would be added to read:

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14 **69614.4**

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16 Upon appropriation by the Legislature in the 2010–11 fiscal year, there shall be 50
17 additional judges allocated to the various county superior courts, pursuant to the uniform
18 criteria described in subdivision (b) of Section 69614, as approved by the Judicial
19 Council on February 23, 2007.

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22 **Subordinate Judicial Officer Conversion**

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24 Budget bill language would be added to read:

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26 The Judicial Council is authorized to convert up to 16 subordinate judicial officer
27 positions to judgeships in the 2009–10 fiscal year in the manner and pursuant to the
28 authority described in subparagraph (B) of paragraph (1) of subdivision (b) of Section
29 69615 of the Government Code.