Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courtinfo.ca.gov

REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 25, 2010

Title
Judicial Council Meetings: Policy Regarding Voting at Council Business Meetings

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Administrative Office of the Courts
William C. Vickrey, Administrative Director of the Courts
Kenneth L. Kann, Director
Nancy E. Spero, Senior Attorney
Executive Office Programs Division

Agenda Item Type
Action Required

Effective Date
June 25, 2010

Date of Report
June 21, 2010

Contact
Nancy E. Spero, 415-865-7915
nancy.spero@jud.ca.gov

Executive Summary

The Administrative Office of the Courts (AOC) recommends that the Judicial Council adopt a voting policy that council action at a business meeting requires the concurrence of a majority of the voting members. Under the current council policy, a council action requires a concurrence of a majority of a quorum of voting members. The proposed new policy will ensure that sufficient votes have been obtained for council actions at business meetings. The AOC further recommends that the council use this new voting policy to approve a new vote on the proposal for a rule on firearms relinquishment in criminal protective order cases, which was adopted in April 2010 under the current voting policy and will not be effective until July 1, 2010. The new vote will foster certainty and reliability as to the council's action on this matter.

Recommendation

The Administrative Office of the Courts recommends that the Judicial Council, effective June 25, 2010:

1. Adopt the policy that council action at a business meeting requires the concurrence of a majority of the voting members.

2. Approve a new vote under this new voting policy at the June 25, 2010, business meeting on Item H from the April 23, 2010, meeting ("Domestic Violence: Firearms Relinquishment in Criminal Protective Order Cases"), before its effective date of July 1, 2010.

3. Direct the AOC to report back to the Executive and Planning Committee on any other implications of this new voting policy and any further recommendations.

4. Direct the AOC to develop rules of court to memorialize this new voting policy.

Previous Council Action

Rule 10.5 of the California Rules of Court defines business meetings as "council meetings at which a majority of voting members are present to discuss and decide matters within the council's jurisdiction." The council's current voting policy is to take actions on a concurrence of a majority of voting members from the quorum of voting members attending the meeting. The council employed this voting policy in its vote at the April 23, 2010, business meeting on the proposed rule regarding firearms relinquishment in criminal protective order cases.

Rationale for Recommendation

At its April 23, 2010, business meeting, the council voted 8 in favor and 5 opposed to approve the recommendation of the Domestic Violence Practice and Procedure Task Force to adopt, effective July 1, 2010, rule 4.700 of the California Rules of Court to assist courts issuing criminal protective orders by (1) providing procedures for setting and conducting review hearings to determine a defendant's compliance with the court's order to relinquish firearms and (2) providing remedies for noncompliance.[1]

The validity of that vote has been brought into question in light of Government Code section 68508, which provides that "[n]o act of the Judicial Council shall be valid unless concurred in by a majority of its members." This statute is capable of being interpreted in two ways: (1) a majority of all voting council members is required for council action or (2) a majority of the quorum of all voting council members *attending the meeting* is required for council action. With the former interpretation, a minimum of 11 votes is needed out of the 21 voting members for the council to take action. With the latter interpretation, a majority of the voting members of a quorum of at least 11 voting members at the meeting is needed for the council to take action.

[1] The report to the Judicial Council on that item and the transcript of the April 23, 2010, council meeting on that item are Attachments 1 and 2.

While there are 21 voting positions on the council,[2] there were only 20 voting members on the council in April 2010.[3] On April 23, 2010, by the time the vote was called on Item H, only 14 voting members were present in the Judicial Council Board Room. Thirteen votes were recorded on the roll call vote sheet[4] because, as a matter of practice, the Chief Justice, who presides over the council meeting as chair, does not typically vote unless there is otherwise a tie. Six voting members were not in the board room at the time of the vote: three council members were absent[5] and three council members attended the meeting but left before the vote because the meeting was running late[6] due to lengthy consideration of another agenda item and they had flight reservations to return to their home courts. Hence, there were 13 votes on this proposal, 8 in favor and 5 opposed.

The AOC recommends that the council take the more conservative approach to the issue: adopt a prospective policy that requires a majority of the voting members for council action. This policy will foster certainty and reliability as to council actions. It will avoid the possibility, as under the current policy, that a relatively few voting members—as few as 6 in the event of significant absences and a quorum with the minimum number of 11 voting members in attendance—would be sufficient to take action. And, based on the historical record, it is rarely difficult to have a majority of the voting council members reach concurrence on a vote.

A difficulty of having such a policy, however, arises if several voting members are absent from the meeting. If the attendance of voting members at a meeting is minimal, perhaps only a quorum or a few more, obtaining sufficient votes to take action could be challenging. However, typically the great majority of voting members are present for council meetings.

---

[2] The 21 constitutionally created voting positions on the Judicial Council are the Chief Justice, who serves as chair; one other justice of the Supreme Court; 3 justices of the Court of Appeal; 10 judges of the superior courts; 4 members of the State Bar; and 2 members from the Legislature. The State Bar members are named by the bar's Board of Governors. The legislators are named by the Senate President pro Tem and the Speaker of the Assembly. The Chief Justice appoints the judicial members as well as nonvoting advisory members. Advisory positions can be added by the Judicial Council. (Cal. Const., art. VI, §6; Cal. Rules of Court, rule 10.2(a)(1).)

Over the years, the council has created advisory positions for court administrators, a subordinate judicial officer, the president of the California Judges Association, the chair of the Trial Court Presiding Judges Advisory Committee, and, most recently, to add several more trial court judges to the council's deliberations. Effective September 15, 2010, there will be 11 advisory positions on the council.

[3] Voting council member Judge Terry B. Friedman retired in late February 2010. Judge Friedman's successor was announced on June 1, 2010, but his appointment, like nine others announced on that day, is effective on September 15, 2010, which is traditionally the start of the council year. (Cal. Rules of Court, rule 10.2(d).) Judge Friedman was appointed to an advisory, nonvoting council position on April 13, 2010.

[4] The roll call vote sheet is Attachment 3.

[5] The two legislators who sit as council members, as a practical matter, rarely are able to attend council meetings in San Francisco because of the press of legislative business and their legislative calendars in Sacramento.

[6] The April 23, 2010, agenda had anticipated a 12:50 p.m. completion.

The AOC further recommends that the council vote under the new policy on the firearms relinquishment rule proposal at this June 25, 2010, meeting. This will foster certainty and reliability as to the council's action on this proposal before its effective date of July 1, 2010.

The AOC also recommends that it report to the Executive and Planning Committee on any other implications of this new voting policy and any further recommendations as to council action. It recommends that the AOC be charged with developing rules of court to memorialize this new voting policy. By this approach, council actions will not be subject to challenge.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment due to the impending effective date, July 1, 2010, of the firearms relinquishment rule that the council approved in April 2010 with the 8 to 5 vote.

An alternative would be to continue with the current policy by which the council takes action with a majority of the voting members from the quorum attending the meeting. Some deference is due to this interpretation, which has consistently been used by the council. Rule 10.5 states that business meetings are "council meetings at which a majority of voting members are present to discuss and decide matters within the council's jurisdiction." By implication, decisions at such meetings would be made by a majority of the quorum attending. Continuing this approach would take into account practical considerations. For a governing board composed of members with busy calendars from the reaches of the state and that meets five to seven times per year, sometimes on short notice, it is a practical necessity for it to be able to take action when several members are unable to attend meetings.

On balance, however, the AOC recommends the more conservative policy based on the experience that such occasions rarely arise and certainty is desirable. Should this policy result in the inability of the council to take action on more than rare occasions, the AOC may further review the issue and return with further recommendations.

Implementation Requirements, Costs, and Operational Impacts

Costs and operational impacts if these recommendations are approved will be negligible. The AOC is able to implement these four recommendations without significant impact.

Attachments

1. "Domestic Violence: Firearms Relinquishment in Criminal Protective Order Cases," Item H on the April 23, 2010, Judicial Council business meeting agenda.
2. Unofficial transcript of the portion of the April 23, 2010, Judicial Council business meeting regarding Item H.
3. Roll call vote sheet for Item H, April 23, 2010, Judicial Council business meeting.