



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: August 27, 2010

Title	Agenda Item Type
Subordinate Judicial Officers: Exception to Policy For the Conversion of SJO Vacancies to Judgeships	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	August 27, 2010
Recommended by	Date of Report
AOC Staff	August 27, 2010
	Contact
	Dag MacLeod, 415.865.7660
	dag.macleod@jud.ca.gov

Executive Summary

AOC staff recommend that the Judicial Council approve a modification to the allocation schedule for Subordinate Judicial Officer (SJO) conversions. The modification will allow the El Dorado Superior court to convert a vacant SJO position to a judgeship in fiscal year 2010-11. The modification will also allow for the completion of all sixteen SJO conversions for the current fiscal year pending enactment of the state budget, which contains language authorizing the conversion of 16 positions in fiscal year 2010-2011.

Staff also summarize the results of three years of implementing the SJO conversion legislation including the following:

- Implementation of the conversion policy has proceeded smoothly. All 48 positions eligible for conversion over the last three fiscal years have been converted;
- Of the 48 positions that have been converted to date, only three remain vacant;
- The appointment of judges to newly converted positions has taken 232 calendar days on average, a little over seven-and-a-half months;

- Trial courts in which conversions have occurred report that they are assigning fewer SJOs to family law and juvenile cases but report a slight increase in the number of SJOs assigned to probate cases.

Recommendation

AOC staff recommend that the Judicial Council approve the transfer of one SJO position for conversion from the allocation group of large courts (Group 3) to the allocation group of small courts (Group 4) for the 2010-2011 Fiscal Year, and confirm the conversion of a vacant commissioner position in the Superior Court of El Dorado.

Previous Council Action

Government Code Section 69615(b)(1)(A) provides for the annual conversion of sixteen Subordinate Judicial Officer (SJO) positions to judgeships with the intent of restoring “an appropriate balance between subordinate judicial officers and judges in the trial courts.” Under this provision of the Government Code, 48 SJOs have been converted and a total of 162 positions will be converted in the 25 courts identified by the Judicial Council as having SJO positions in excess of the workload appropriate to SJOs (primarily workload in family, probate, and juvenile law).

In October, 2007, the Judicial Council approved the conversion of the first seven vacant SJO positions in trial courts with positions eligible for conversion.¹ At its next business meeting, the council adopted an allocation schedule designed to comply with Government Code 69615(b)(2) and to ensure the orderly conversion of vacant SJO positions. The allocation approach divides courts into groups with positions eligible for conversions and allocates to each group approximately the same percentage of the 16 annual conversions as the percentage of total SJO conversions for that group (See Table 1). At that time, the council also delegated to the Executive & Planning Committee (E&P) the authority for confirming future conversions of vacant SJO positions consistent with the allocation policy adopted by the council.²

¹ See “Recommendations on the Conversion of Subordinate Judicial Officer Positions to Judgeships per AB 159,” <http://www.courtinfo.ca.gov/jc/documents/reports/102607itemI.pdf>

² See “Subordinate Judicial Officers: Allocation of Conversions,” <http://www.courtinfo.ca.gov/jc/documents/reports/102607itemI.pdf>

Table 1. SJO Conversion Allocation Groups

	Number of Annual Conversions Set Aside
Group 1:	
Los Angeles	7
Group 2:	
Orange	1
Group 3:	
Alameda, Contra Costa, Riverside, Sacramento, San Diego, San Francisco	4
Group 4:	
El Dorado, Fresno, Imperial, Kern, Marin, Merced, Napa, Placer, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Solano, Sonoma, Stanislaus, Tulare, Yolo	4

At the April, 2009, Judicial Council business meeting, the council approved minor modifications to the delegation of authority to E&P. Specifically, the council allowed for greater flexibility in the allocation of SJO conversions across different court groups and established criteria for granting courts temporary exemptions to SJO conversion.³

Rationale for Recommendation

E&P has already confirmed the conversion of 15 SJO positions that are currently vacant or will become vacant during the current fiscal year. These conversions will become effective either on the date when the position becomes vacant or when the 2010 State Budget is enacted, whichever date is later. (Government Code section 69615 requires that the Legislature annually ratify, in the budget or in separate legislation, the authority to convert positions for that fiscal year. Language is contained in the 2010 budget proposal for the conversion of 16 SJO positions to judgeships in fiscal year 2010-2011.) Two trial courts – El Dorado and Santa Cruz – have informed the AOC of vacant SJO positions that they would like to convert.

Both of these courts belong to allocation Group 4, but the single remaining conversion slot for Fiscal Year 2010-11, is in allocation Group 3. Because El Dorado notified the AOC of its commissioner vacancy first and because Santa Cruz is willing to wait until fiscal year 2011-2012

³ See “Proposed Revision to Judicial Council Delegation of Authority over SJO Conversions,” <http://www.courtinfo.ca.gov/jc/documents/reports/042409itemh.pdf>

to convert its vacant position, staff recommend that the council move the conversion from Group 3 to Group 4 and confirm the conversion of the position that will become vacant in El Dorado.

Comments, Alternatives Considered, and Policy Implications

Staff considered waiting until January 1, 2011 to determine if additional SJO vacancies occurred in any of the Group 3 courts. According to procedures adopted by the Judicial Council in 2009, E&P would have the authority at that time to reallocate commissioner conversions across allocation groups.

Staff rejected this option because of the value of providing certainty to trial courts with current or pending SJO vacancies. While adherence to the annual allocation schedule approved by the council is important over time, minor modifications will not undermine the larger goal of providing for the orderly conversion of these positions. Moreover, as more conversions are completed, fewer commissioner vacancies will be eligible for conversion making flexibility a more important factor in considering the allocation of conversions.

Implementation Requirements, Costs, and Operational Impacts

AOC staff and affected trial courts now have almost three years experience in managing the conversion process. The costs of the policy are primarily internal to the AOC and involve staff time in monitoring SJO vacancies, evaluating requests for conversion and requests for exemptions from conversion, and writing reports and recommendations to E&P and to the Governor's office. Trial courts, however, are responsible for making up the difference between the salary and benefits of a commissioner and the salary of a judicial officer.

The following provides a summary of the first three years of this policy focusing on 1) implementation of the conversion policy, 2) the appointment of judges to converted positions, and 3) the policy objectives of commissioner conversions.

Implementation of Conversion Policy

All sixteen SJO conversions for which the courts are eligible have occurred in each of the three years during which this policy has been in effect, making a total of forty-eight SJO conversions that have occurred to date. These conversions have occurred in 18 of the 25 trial courts with positions eligible for conversion. Another 15 positions have been identified and confirmed for conversion by E&P for Fiscal Year 2010-11 for a total of 63 conversions. The 15 positions confirmed by E&P for conversion in this fiscal year await the finalization of the state budget at which time the Legislature is expected to authorize 16 conversions in the Budget Act (See Table 2).

Table 2. SJO Conversions by Court

	Positions Eligible for Conversion	Conversions Confirmed by Executive & Planning Committee				Total Conversions to date
		FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	
Alameda	6	0	0	1	2	3
Contra Costa	6	3	0	1	0	4
El Dorado	2	0	1	0	0	1
Fresno	3	0	1	0	1	2
Imperial	1	0	0	0	1	1
Kern	2	0	1	0	0	1
Los Angeles	78	4	5	7	7	23
Marin	2	0	0	0	0	0
Merced	2	0	1	0	0	1
Napa	1	0	0	0	0	0
Orange	14	1	2	2	2	7
Placer	1	0	0	0	0	0
Riverside	6	1	1	0	0	2
Sacramento	5	1	2	0	0	3
San Diego	7	2	0	0	0	2
San Francisco	9	1	0	1	0	2
San Luis Obispo	2	1	0	0	0	1
San Mateo	2	0	0	0	0	0
Santa Barbara	2	0	0	2	0	2
Santa Cruz	1	0	0	0	0	0
Solano	3	1	2	0	0	3
Sonoma	2	0	0	1	1	2
Stanislaus	1	0	0	0	1	1
Tulare	2	0	0	1	0	1
Yolo	2	1	0	0	0	1
Total	162	16	16	16	15	63

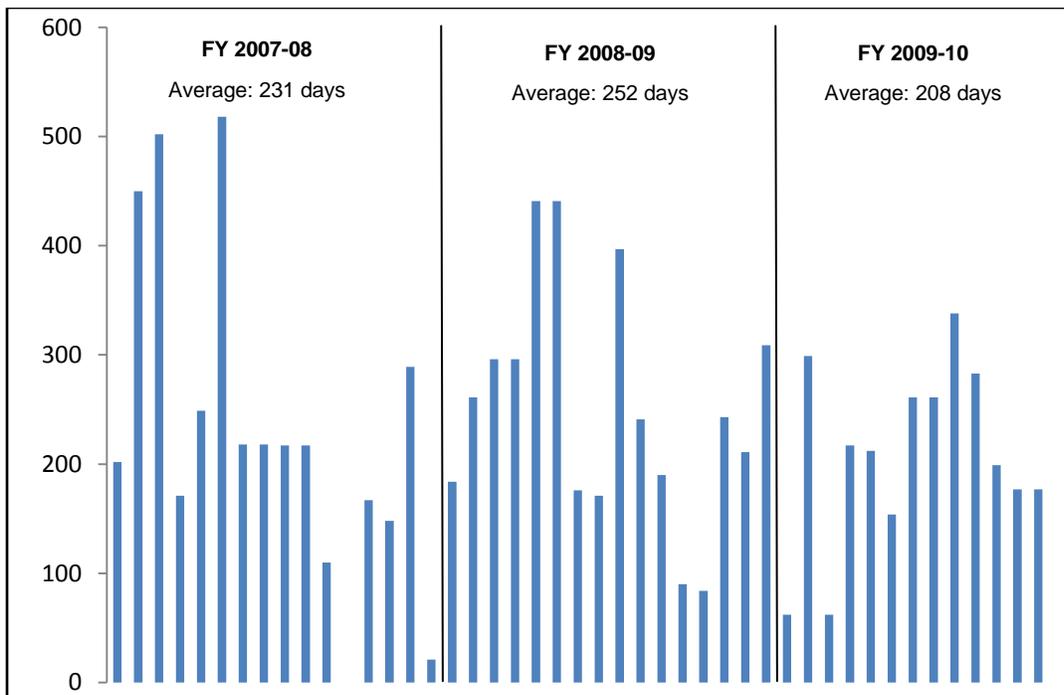
At the current rate of conversions, the policy will be fully executed in Fiscal Year 2017-18. Three courts – Imperial, Santa Barbara and Solano – have completed all of their conversions. Another two courts – Sonoma and Stanislaus – will have completed all of their conversions when the Legislature approves the sixteen conversions for the current fiscal year leaving 20 courts with at least one position to convert.

Appointment of Judges to Converted Positions

Of the 48 positions that were confirmed for conversion by E&P prior to the current fiscal year, only three have not yet been filled. For the 45 positions that have been filled, these positions are left vacant for an average of 232 calendar days before the Governor appoints a judge to fill the converted position: a little more than seven and a half months. The maximum time that it has taken to fill a judicial vacancy created by the conversion of an SJO position is 518 calendar days; the minimum amount of time that a position has been vacant is zero days.

Figure 1 shows the number of days that each of the 45 positions was vacant prior to appointment. While the average time that positions were vacant in the first year of the policy was 231 days, this period was marked by the longest and shortest periods of vacancy making the average somewhat misleading. The average number of days that positions remained vacant increased in Fiscal Year 2008-09 to 252 days. Conversions that occurred in the most recent year were vacant for the shortest period of time, only 208 days on average. This number could change when the final three positions from the Fiscal Year 2009-10 conversions are appointed.

Figure 1. Number of Days from SJO Conversion to Judicial Appointment



During the time between when the position is converted and filled, courts have been granted authorization from E&P to backfill the vacancies with retired commissioners or, when eligible, to draw on the resources of the AOC’s assigned judges program to fill the vacancies.

Policy Objectives of Commissioner Conversions

The express goal of Government Code Section 69615(b)(1)(A) is to restore “an appropriate balance between subordinate judicial officers and judges in the trial courts.” The identification of courts with SJOs in excess of the caseload appropriate to SJOs was based primarily on two studies. Policy recommendations regarding appropriate case types for SJOs were taken from the 2002 report of the Subordinate Judicial Officer Working Group.⁴ These policy recommendations

⁴ See “Report by the Subordinate Judicial Officer Working Group,” 2002, <http://www.courtinfo.ca.gov/reference/documents/sjowgfinal.pdf>

were then compared to workload estimates and SJO complements across the superior courts using the weighted caseload methodology of the judicial workload study.⁵ Family law (excluding AB 1058), juvenile and probate cases were given particular attention as areas where the conversion policy should limit the use of SJOs and increase the number of judges hearing these cases.

For a number of reasons it is somewhat more difficult to evaluate the impact of SJO conversions than it is to summarize the implementation process or the appointment of new judges. To begin, baseline data about the allocation of SJOs is limited. In addition, assignments of judges and SJOs to new calendars occur as part of the normal management of the courts and many courts appear to be holding SJO positions vacant as part of cost-cutting efforts. Thus, we should be careful in attributing changes that we see in the allocation of commissioners exclusively to the implementation of this policy.

With these caveats in mind, it is possible to evaluate the allocation of SJOs across case types in 13 courts that converted positions during the first two years of the policy.⁶ This evaluation is based on current estimates provided by the trial courts and compared to data collected in 2001 on the allocation of SJOs. Drawing on these documents, we can see declines in the number of SJOs allocated to Juvenile Delinquency in every single court that converted SJO positions during the first two years of the policy and seven of these courts now report no SJOs assigned to Delinquency. The number of SJOs allocated to Juvenile Dependency cases declined in all but three of the courts with three courts reporting zero SJOs assigned to dependency. The number of SJOs allocated to Family Law cases declined in all but four of the courts. In contrast, the total number of SJOs assigned to probate varied across courts with the total allocation across the 13 courts actually increasing slightly.

Additional information will need to be collected from the courts to determine whether the changes in the number of SJOs hearing juvenile, family law and probate cases is the result of the SJO conversion policy. However, these preliminary indicators suggest that SJO conversions are beginning to restore the appropriate balance between judges and SJOs in the trial courts in juvenile and family law cases.

⁵ See "Update of the Judicial Workload Assessment and New Methodology for Selecting Courts with Subordinate Judicial Officers for Conversion to Judgeships," 2007, <http://www.courtinfo.ca.gov/jc/documents/reports/022307item9.pdf>.

⁶ Courts that converted positions in Fiscal Year 2009-10 are excluded from this analysis because the amount of time between conversion of the position and appointment makes it less likely that a converted position was the cause of a change in calendaring. Although 14 courts converted positions in the first two years of the policy, El Dorado is excluded from this analysis due to missing data on current SJO allocations.