



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 25, 2011

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| Title | Agenda Item Type |
| Subordinate Judicial Officers: Allocation of Conversions for Fiscal Year 2011–2012 and Conversions of Family and Juvenile Law SJO Vacancies | Action Required |
| | Effective Date |
| | January 1, 2012 |
| Rules, Forms, Standards, or Statutes Affected | Date of Report |
| None | February 10, 2011 |
| Recommended by | Contact |
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Executive Summary

The Administrative Office of the Courts recommends that the Judicial Council approve a modification to the allocation schedule for Subordinate Judicial Officer conversions authorized under Government Code Section 69615(c)(1)(A). The modification will allow the Superior Court of Orange County to convert a second vacant SJO position to a judgeship in fiscal year 2011–2012 and facilitate the timely implementation of SJO conversion policy. The AOC further recommends guidelines for the conversion of additional SJO vacancies authorized under Government Code Section 69615(c)(1)(C) and the delegation of authority and responsibility for confirming conversions under this code section to the Executive & Planning Committee. These guidelines and the delegation of authority will clarify and expedite the process by which courts may convert additional SJO vacancies.

Recommendation

The authors recommend that the Judicial Council approve:

1. A modification to the allocation schedule for fiscal year 2011–2012 to increase the allocation of conversions of vacant SJO positions in the Superior Court of Orange County from one to two positions.
2. Guidelines for the conversion of additional SJO vacancies under Government Code section 69615(c)(1)(C) that include the following features:
 - A. SJO vacancies that are eligible for conversion under Government Code section 69615(c)(1)(C) will be reported to the AOC in the same manner established for reporting SJO vacancies previously for the conversion of SJO positions under Government Code section 69615(c)(1)(A).
 - B. Courts seeking to have positions converted under the new authority for conversions contained in Government Code section 69615(c)(1)(C) will confirm in writing that the conversion will result in a judge being assigned to a family law or juvenile law assignment that was previously presided over by an SJO.
 - C. Conversions under Government Code section 69615(c)(1)(C) will be an “opt-in” process, with no court required to convert a position under the new authority for conversions;
 - D. Reporting on the implementation of SJO conversions to the Legislature as required under Government Code section 69614(b)(3) will be accomplished through aggregate reports on judicial officer assignment rather than on a position-by-position basis;
 - E. Calendars to which a judge is assigned under Government Code section 69615(c)(1)(C) will continue to be presided over by a judge and will not revert to commissioner assignments.
 - F. Judgeships are considered to be interchangeable across case types, and the assignment of new judges to family and juvenile law dockets will not interfere with the normal rotation of judges on the bench or management of the court’s total workload.
3. The delegation of the authority and responsibility for confirming SJO conversions under Government Code section 69615(c)(1)(C) to the Executive & Planning Committee.

Previous Council Action

The 2002 report of the Subordinate Judicial Officer Working Group led the Judicial Council to sponsor legislation to restore an appropriate balance between judges and SJOs in the trial courts. The 2002 report found that many courts had created SJO positions out of necessity in response to the dearth in the creation of new judgeships during the 1980s and 1990s. As a result, many

SJOs were working as temporary judges. This imbalance between judges and SJOs was especially critical in the area of family and juvenile law.¹

In 2007, the Judicial Council approved a methodology for evaluating the amount of workload appropriate to SJOs relative to the number of SJOs working in the courts. In the same year, the Legislature passed Assembly Bill 159, which adopted the Judicial Council's methodology. This resulted in a list of 25 courts in which a total of 162 SJO positions would be converted. Government Code Section 69615(c)(1)(A) allows for the annual conversion of up to 16 SJO vacancies upon authorization by the Legislature in courts identified by the Judicial Council as having SJOs in excess of the workload appropriate to SJOs.²

Subsequent council action established and refined guidelines for expediting the conversion of SJO vacancies. These guidelines included:

- The adoption of four trial court allocation groups and a schedule that distributes the 16 annual SJO conversions across these groups in numbers that are proportional to the total number of conversions for which the groups are eligible;
- The delegation of authority to the Executive & Planning (E&P) Committee for confirming SJO conversions;
- The establishment of guidelines for courts to notify the AOC of SJO vacancies and timelines for the redistribution of SJO conversions across the allocation groups; and
- The establishment of criteria for E&P to use in evaluating and granting requests by courts to exempt SJO vacancies from conversion.³

An August 2010 report to the Judicial Council showed that, in the four years since the passage of Assembly Bill 159, 48 SJO vacancies had been converted to judgeships, and 45 of those filled by the Governor. Another 16 vacancies had been confirmed for conversion by E&P for fiscal year 2010–2011 and were awaiting legislative authorization for conversion (accomplished with the final passage of the budget in September 2010). All 16 of the annual conversions for which the trial courts have been eligible since fiscal year 2007–2008 had been converted, for a total of 64.⁴

¹ See Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Subordinate Judicial Officers: Duties and Titles* (July 2002), www.courtinfo.ca.gov/reference/documents/sjowgfinal.pdf.

² See Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Update of the Judicial Workload Assessment and New Methodology for Selecting Courts with Subordinate Judicial Officers for Conversion to Judgeships* (Feb. 23, 2007).

³ See Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Subordinate Judicial Officers: Allocation of Conversions* (Dec. 4, 2007); and Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Proposal to Modify Subordinate Judicial Officer Conversion Policy*, (Apr. 24, 2009).

⁴ See Judicial Council of Cal., Subordinate Judicial Officer Working Group Rep., *Subordinate Judicial Officers: Exception to Policy For the Conversion of SJO Vacancies to Judgeships* (Aug. 27, 2010).

Rationale for Recommendation

Rationale for Recommendation 1

Table 1 below shows the allocation schedule adopted in 2007 by the Judicial Council. In the case of the Superior Court of Orange County, the total allocation of 14 SJO conversions cannot be completed within the expected timeframe of 10 years given an annual allocation of 1 conversion.⁵

The transfer of a position from one of the other allocation groups would accommodate the conversion needs of the Superior Court of Orange County. However, the transfer of an additional conversion to the Orange County court will require that a position be taken from another allocation group. In August 2010, the Judicial Council authorized a similar transfer of a position from one allocation group to another.

The group that can most easily accommodate the transfer of a position is the group furthest along in the conversion of its positions, currently Allocation Group 4. To date, more than half of the positions eligible for conversion have been converted or approved for conversion in Allocation Group 4—19 of 31 positions—while under half—16 of 39 positions—have been converted in Allocation Group 3 and less than one-third of the positions have been converted in Allocation Group 1—23 of 78 positions.

Therefore, the authors recommend that a single position be transferred from allocation group 4 to the Superior Court of Orange County for fiscal year 2011–2012 as reflected in Table 1 below.

Table 1: SJO Conversion Allocation Groups and Recommendation for FY 2011–2012

| Allocation Groups for SJO Conversions | Annual Allocation of Conversions | Recommended Allocation for Fiscal Year 2011–12 |
|---|---|---|
| Group 1: Los Angeles | 7 | 7 |
| Group 2: Orange | 1 | 2 |
| Group 3: Alameda, Contra Costa, Riverside, Sacramento, San Diego, San Francisco | 4 | 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 | 3 |

Rationale for Recommendation 2

The guidelines proposed for implementing SJO conversions under Government Code section 69615(c)(1)(C) are designed to strike a balance between the values of decentralized management

⁵ Because fractional positions cannot be converted, the annual number of positions allocated to a court with a large number of conversions will not align precisely with the total number of conversions for which a court is eligible.

of the trial courts and the interest of the judicial branch in ensuring that important family and juvenile law matters are presided over by judges rather than SJOs.

Rule 10.601 of the California Rules of Court establishes the decentralized management of trial court resources. The goals of decentralized management of the trial courts include 1) the management of day-to-day operations to meet the needs of individuals served by the courts, and 2) the development and implementation of processes and procedures to improve court operations and responsiveness to the public.

The following aspects of the guidelines for implementing Government Code section 69615(c)(1)(C) seek to ensure that courts retain the flexibility needed to meet their obligations to the public and manage their resources in the most effective way possible:

- Conversion of vacant SJO positions under Government Code section 69615(c)(1)(C) is optional;
- Reporting of positions is in the aggregate rather than on a position-by-position basis, as aggregate reporting of judicial officers allows for the court and Legislature to evaluate the balance between judges and SJOs rather than individual assignments of specific judges; and
- Courts maintain the discretion, as always, to rotate calendar assignments among judges as necessary and appropriate. Family and juvenile law calendars to which judges are assigned under Government Code section 69615(c)(1)(C) may be rotated among any judge in the superior court.

At the same time, much of the history of Judicial Council action on this issue documented in the previous section of this report points to the need to restore an appropriate balance between judges and SJOs. Legislative findings articulated in Government Code section 69615(b)(1) and contained in legislation supported by the Judicial Council point out that the unique nature of family and juvenile law matters makes it especially important that “whenever possible, these cases should be presided over by judges who are accountable to the public.”

Moreover, the Judicial Council has adopted a recommendation to sponsor the legislation needed to convert the first 10 additional SJO positions under this new authority. Therefore, the accountability that the Legislature seeks in this regard is entirely consistent with established Judicial Council policy.

The following aspects of the guidelines for implementing Government Code section 69615(c)(1)(C) are intended to ensure the accountability of the judicial branch to the public and to the statewide goals contained in Government Code section 69615:

- Courts will report vacancies to the AOC as previously and will voluntarily submit their interest in writing to convert SJO positions under the additional authority contained in Government Code section 69615(c)(1)(C); and

- Calendars to which new judges are assigned under Government Code section 69615(c)(1)(C) will continue to be presided over by judges and will not revert to commissioner assignments.

Rationale for Recommendation 3

The Judicial Council delegated to the Executive and Planning Committee at its December 2007 meeting the authority to confirm the conversion of subordinate judicial officer positions authorized under Government Code Section 69615(c)(1)(A). Since that time, the committee has confirmed the conversion of more than 60 positions. It is appropriate for the committee to similarly confirm the conversions under Government Code section 69615(c)(1)(C).

Comments, Alternatives Considered, and Policy Implications

These proposals have not gone out for comment. However, given that the recommendations contained in this report each include multiple elements, multiple alternatives might be considered to either.

For Recommendation 1, the council could choose not to reallocate an SJO conversion from another court group to the Superior Court of Orange County, or it could choose to allocate an SJO conversion from another allocation group.

For Recommendation 2, the council could make SJO conversion under Government Code section 69615(c)(1)(C) mandatory rather than optional. The council could also adopt different reporting procedures for the courts to inform the AOC of SJO vacancies. For example, the council might adopt reporting procedures that require courts to report individual assignments of judges and commissioners and inform the council every time calendar assignments change rather than reporting the number and type of judicial officers presiding over different case types.

For the reasons outlined in the Rationale section above, the authors believe that these alternatives are inferior to the recommendations.

Implementation Requirements, Costs, and Operational Impacts

There have not as yet been implementation costs to courts that have converted SJO positions. The principal cost has been absorbed by the AOC in the form of assignment of staff to implement the conversion process. The main impact of implementing Government Code section 69615(c)(1)(C) will be the possibility of an accelerated conversion of SJOs to judgeships.

At 16 conversions per year, approximately five more years would be needed to complete the conversion of the remaining SJO positions that are eligible for conversion. If Government Code section 69615(c)(1)(C) results in an additional 10 conversions per year, then the remaining positions eligible for conversion could be converted in a little over three years.

Relevant Strategic Plan Goals and Operational Plan Objectives

SJO conversion aligns with the judicial branch strategic goals of improving access to justice and improving the independence and accountability of the branch. By converting SJO positions to judgeships, the branch improves the likelihood of judges hearing important cases in family and juvenile law, thus fostering greater public trust and confidence in the courts. Moreover, judges enjoy greater independence than SJOs while, at the same time, standing for periodic retention election which make them more accountable than SJOs.