

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT SP13-07

Title	Action Requested
Judicial Administration: Rules for Advisory Groups	Review and submit comments by August 30, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rules 10.60 and 10.61 and repeal rules 10.57, 10.170, and 10.171	October 25, 2013
Proposed by	Contact
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Technology Committee	
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Executive Summary and Origin

This proposal would establish by rule two new Judicial Council advisory committees and repeal the rules concerning three advisory groups that no longer exist. At its meeting on April 25, 2013, the Judicial Council approved the *Report and Recommendations to Improve the Governance, Structure, and Organization of Judicial Council Advisory Groups*¹ submitted by the Rules and Projects Committee (RUPRO), the Executive and Planning Committee (E&P), and the Technology Committee (JCTC). Among the recommendations were the establishment of two advisory committees: The Tribal Court/State Court Forum and the Court Security Advisory Committee. Another recommendation accepted by the council was repeal of the rules concerning the Judicial Services Advisory Committee (rule 10.57), the Working Group on Court Security (rule 10.170), and the Working Group on Court Security Fiscal Guidelines (rule 10.171).

¹ The report can be found at www.courts.ca.gov/documents/jc-20130426-item4.pdf.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Background

The council initiative for reviewing the governance, structure, and organization of the council's advisory groups had its genesis in its June 2011 planning meeting. In August 2011, E&P made this recommendation to the council:

The Judicial Council will review the structure and organization of its advisory groups, including its advisory committees and task forces, and their subcommittees and advisory groups.²

The Proposal

This proposal would establish by rule of court two new advisory committees³ to provide policy recommendations and advice to the council on topics the Chief Justice or the council specifies using the individual and collective experience, opinions, and wisdom of their members. (See Cal. Rules of Court, rule 10.30(a).) Consistent with the rules for all advisory committees, the proposed rules include provisions addressing the advisory committee's area of focus and membership. Where appropriate, the proposed rules include additional areas of responsibility of the advisory committee and, where necessary, they include additional information about the nominations process and member selection and appointment, if those procedures differ from the procedures set out in rules 10.31 and 10.32.

Existing rules 10.31–10.34 address, respectively, Judicial Council advisory bodies, advisory committee membership and terms, nominations and appointments to advisory committees, advisory committees meetings, and duties and responsibilities of advisory committees. Unless otherwise stated or other provisions addressing these matters appear in proposed rules 10.60 and 10.61, these existing rules apply to the rules establishing the Tribal Court/State Court Forum and the Court Security Advisory Committee.

Rule 10.57 (Judicial Services Advisory Committee), rule 10.170 (Working Group on Court Security), and rule 10.171 (Working Group on Court Security Fiscal Guidelines) would be repealed, as those groups have been disbanded and no longer provide policy recommendations and advice to the council. Due to realignment of court security funding, the two groups on court security are no longer relevant to the current funding model. In addition, Government Code section 69927, which required the groups, was repealed.

² Judicial Council meeting minutes, August 25–26, 2011, page 7, report from the chair of the E&P. <http://www.courts.ca.gov/documents/jc-20110826-minutes.pdf>. See also, Minutes, August 12, 2011, E&P meeting. <http://www.courts.ca.gov/documents/jc-121311-comrep.pdf>

³ The recommendations approved by the council in the *Report and Recommendations to Improve the Governance, Structure, and Organization of Judicial Council Advisory Groups* include the establishment by rule of several other advisory groups. It is expected that a separate invitation to comment for those groups' rules will circulate for comment beginning in October 2013.

Rule 10.60

The Tribal Court/State Court Forum was initially established in May 2010 when members were appointed by former Chief Justice Ronald M. George and given a charge. This proposal would establish the forum as a council advisory committee. It would provide in subdivision (a) that the forum's area of focus is to make "recommendations to the council for improving the administration of justice in all proceedings in which the exercise of jurisdiction by the state judicial branch and the tribal justice systems overlap." Because the forum has additional duties, subdivision (b) would list those duties, which include the following:

1. Identify issues of mutual importance to tribal and state justice systems including those concerning the working relationship between tribal and state courts in California;
2. Make recommendations relating to the recognition and enforcement of court orders that cross jurisdictional lines, the determination of jurisdiction for cases that might appear in either court system, and the sharing of services between jurisdictions;
3. Identify, develop, and share with tribal and state courts local rules of court, protocols, standing orders, and other agreements that promote tribal court–state court coordination and cooperation, the use of concurrent jurisdiction, and the transfer of cases between jurisdictions;
4. Recommend appropriate activities needed to support local tribal court–state court collaborations; and
5. Make proposals to the Governing Committee of the Center for Judicial Education and Research on educational publications and programming for judges and judicial support staff.

The subdivision addressing membership, which is in all advisory committee rules, would provide that the forum consists of the following:

1. Tribal court judges or justices selected by tribes in California,
2. At least three trial court judges from counties in which a tribal court is located,
3. At least one appellate justice of the California Courts of Appeal,
4. At least one member from each of seven listed council advisory committees whose subject areas would provide special expertise to the forum, and

5. As ex officio members, the Director of the California Attorney General's Office of Native American Affairs and the Governor's Advisor on Tribal Affairs.

Under the proposed rule, the membership composition between tribal court and state court judicial officers must be equal or close to equal. A member may satisfy more than one membership category; for example, an appellate justice member may also be a member of one of the seven listed advisory committees.

Another subdivision would provide the procedure for member selection. As with most advisory committees, the Chief Justice would appoint members by order (see Cal. Rules of Court, rule 10.32(e)), except that tribal court members would be appointed by a different process. Subdivision (d)(2) of the proposal rule would provide that for each tribe in California with a tribal court, the chairperson of the tribe's governing body will appoint the tribal court judge or justice member to the forum. That subdivision includes details about the procedures for doing so. The final rule subdivision would provide that the Chief Justice appoints an appellate justice or trial court judge and a tribal court appellate justice or judge to serve as cochairs of the forum.

In recommending the establishment of a formal advisory committee by rule of court, RUPRO, E&P, and the Technology Committee recognized the growing need for an advisory group to make recommendations to the council for improving the administration of justice in proceedings in which the jurisdiction of state and tribal justice systems overlap. In 2012, 39 tribes of 109 federally recognized California tribes (36 percent) either had a tribal court or access to a tribal court through an inter-tribal court coalition. That number is a sharp increase from 2002, when only 10 California tribes reported having a tribal court. The tribes' reservations, rancherias, Indian trust allotments all constitute "Indian country." In Indian country, special rules govern state and local jurisdiction and there may also be federal and tribal laws that apply. As sovereigns, tribes have legal jurisdiction over both their citizens and their lands. Thus there is a need for an advisory committee to, among other things, address the various issues concerning jurisdiction, including developing local rules of court, protocols, standing orders, and other agreements that promote tribal court–state court coordination and cooperation, the use of concurrent jurisdiction, and the transfer of cases between jurisdictions.

Rule 10.60 would include a Judicial Council Comment acknowledging that tribes are sovereign and citing statutory and case law recognizing tribes as distinct, independent political nations that retain inherent authority to establish their own form of government, including tribal justice systems. Thus the council's oversight of the forum under rule 10.30(d) would be limited to oversight of the forum's work and activities and expressly would not include oversight of any tribe, tribal court, or tribal court judge.

Rule 10.61

This proposal would create a council advisory committee known as the Court Security Advisory Committee. It would provide in subdivision (a) that the committee's area of focus is to make

“recommendations to the council for improving court security, including personal security and emergency response planning.” The committee has no additional duties outside its area of focus.

The subdivision addressing membership would provide six different membership categories, as follows:

1. Appellate court justice;
2. Appellate court administrator;
3. Trial court judge;
4. Trial court judicial administrator;
5. Member of the Court Facilities Advisory Committee; and
6. Member of the Trial Court Facility Modification Advisory Committee.

The rule would also provide that at least one member of the committee should be from a trial court that uses a marshal for court security services. Two California courts use marshals: the Superior Courts of Shasta and Trinity Counties. These courts face different funding and operational issues than courts that use sheriffs. Marshals are court employees and are funded with money from the Trial Court Trust Fund allocated by the council. In contrast, sheriffs provide court security services to courts under contract and are paid by the county with money appropriated by the state. In order to ensure that the advisory committee addresses issues in a way that is consistent with both models, at least one member of the committee should be familiar with the practice in courts that use marshals.

In recommending the establishment of the Court Security Advisory Committee, the council was informed by the final report of the Court Emergency Response and Security Task Force. The task force, which has since completed its appointment, was charged with evaluating security and emergency planning in California’s courts and making recommendations to maintain and improve security in the courts through statewide systems and progressive initiatives to increase efficiency, effectiveness, and cost-saving measures. In its final report, the task force made six recommendations, including a recommendation to establish the Court Security Advisory Committee. The task force explained that a standing committee was necessary because court security is a fundamental area of court administration and no group currently advises the council in this area comprehensively from a branchwide perspective.

At the time the task force made its recommendations, there were two groups devoted to trial court security. Government Code section 69927(a), as enacted in 2002, required the council to establish both a Working Group on Court Security and a Working Group on Court Security Fiscal Guidelines. The council established both groups, adopting rules 10.170 and 10.171 and

providing for membership consistent with section 69927(a). The primary purpose of the two groups was to make recommendations to the council regarding the court security costs that a sheriff was allowed to charge to a court and other rules, standards, and policies to achieve efficiencies to reduce and constrain court security operating costs. Following the realignment of court security funding, counties—and not courts—are responsible for direct payment for most sheriff-provided security services and the working groups are no longer relevant to the current funding model. Government Code section 69927, which required the working groups, was repealed and the council adopted the task force’s recommendation that the groups be disbanded. This proposal would repeal rules 10.170 and 10.171.

Alternatives Considered

In the recent review by three of the council’s internal committees—RUPRO, E&P, and JCTC—which resulted in the *Report and Recommendations to Improve the Governance, Structure, and Organization of Judicial Council Advisory Groups*, those committees evaluated ways to achieve the following objectives:

1. Create efficiencies by consolidating certain committee activities and reducing overlapping responsibilities;
2. Reduce the costs associated with committee operations, including gaining a better understanding of the resources and staff support reasonably needed by the council’s advisory groups;
3. Strengthen Judicial Council oversight of the groups that had not been directly overseen by the council, such as subcommittees and subgroups which had been created by the council’s advisory groups; and
4. Create formal standing advisory committees to succeed task forces and working groups when the continued assistance of those groups is needed.

The internal committees concluded that establishing as standing advisory committees the Tribal Court/State Court Forum and the Court Security Advisory Committee, would assist in achieving these objectives.

Implementation Requirements, Costs, and Operational Impacts

Advisory committee costs include the costs of members’ travel, meals, and lodging (if needed) for in-person meetings and the cost of telephone and video conferences. Other costs include AOC staff time. The Judicial Council has determined that the subject areas of these advisory committees are ones in which both the council and judicial branch would benefit from policy recommendations and advice. It has also determined that it is appropriate to establish advisory groups of members with diverse experience to provide recommendations and advice in the needed subject areas.

The Tribal Court/State Court Forum travel costs associated with in-person meetings and cost of staff time have been and will continue to be funded through stable, long-term grants. RUPRO, E&P, and JCTC believe that there have been and will continue to be cost savings as a result of the types of proposals initiated by the forum.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Rules and Projects Committee, the Executive and Planning Committee, and the Technology Committee are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

Proposed California Rules of Court, rule 10.60 and 10.61 and proposed repealed rules 10.57, 10.170, and 10.171

Rules 10.60 and 10.61 of the California Rules of Court would be adopted, and rules 10.57, 10.170, and 10.171 would be repealed, effective October 24, 2013, to read:

1 **Rule 10.60. Tribal Court/State Court Forum**

2
3 **(a) Area of focus**

4
5 The forum makes recommendations to the council for improving the administration
6 of justice in all proceedings in which the exercise of jurisdiction by the state judicial
7 branch and the tribal justice systems overlap.

8
9 **(b) Additional duties**

10
11 In addition to the duties described in rule 10.34, the forum must:

- 12
13 (1) Identify issues of mutual importance to tribal and state justice systems
14 including those concerning the working relationship between tribal and state
15 courts in California;
- 16
17 (2) Make recommendations relating to the recognition and enforcement of court
18 orders that cross jurisdictional lines, the determination of jurisdiction for
19 cases that might appear in either court system, and the sharing of services
20 between jurisdictions;
- 21
22 (3) Identify, develop, and share with tribal and state courts local rules of court,
23 protocols, standing orders, and other agreements that promote tribal court–
24 state court coordination and cooperation, the use of concurrent jurisdiction,
25 and the transfer of cases between jurisdictions;
- 26
27 (4) Recommend appropriate activities needed to support local tribal court–state
28 court collaborations; and
- 29
30 (5) Make proposals to the Governing Committee of the Center for Judicial
31 Education and Research on educational publications and programming for
32 judges and judicial support staff.

33
34 **(c) Membership**

35
36 The forum must include the following members:

- 37
38 (1) Tribal court judges or justices selected by tribes in California, as described in
39 (d), but in no event more than one tribal court judge or justice from each
40 tribe;

- 1 (2) At least one member from each of the following Judicial Council committees:
2 Access and Fairness Advisory Committee, Civil and Small Claims Advisory
3 Committee, Criminal Law Advisory Committee, Family and Juvenile Law
4 Advisory Committee, Governing Committee of the Center for Judicial
5 Education and Research, Probate and Mental Health Advisory Committee,
6 and Traffic Advisory Committee;
7
8 (3) At least one appellate justice of the California Courts of Appeal;
9
10 (4) At least three trial court judges from counties in which a tribal court is
11 located; and
12
13 (5) As ex officio members: the Director of the California Attorney General’s
14 Office of Native American Affairs and the Governor’s Advisor on Tribal
15 Affairs.
16

17 The composition of the forum must have an equal or close to equal number of
18 judges or justices from tribal courts and state courts.
19

20 **(d) Member selection**
21

- 22 (1) The Chief Justice appoints all forum members, except tribal court judges and
23 tribal court justices, who are appointed as described in (2).
24
25 (2) For each tribe in California with a tribal court, the chairperson of the tribe’s
26 governing body will appoint the tribal court judge or justice member to the
27 forum consistent with the following selection and appointment process:
28
29 (A) The forum cochairs will notify the tribal chairpersons with tribal courts
30 in California of a vacancy for a tribal court judge or justice and request
31 that they submit names of tribal court judges or justices to serve on the
32 forum.
33
34 (B) A vacancy for a tribal court judge or justice will be filled as it occurs
35 either on the expiration of a member’s term or when the member has
36 left the judicial position that qualified the member for the forum.
37
38 (C) If there are more names of tribal court judges and justices submitted by
39 tribal chairpersons than vacancies, then the forum cochairs will confer
40 and decide which tribal court judges or justices should be appointed.
41 Their decision will be based on the diverse background and experience
42 as well as geographic location of the current membership.
43

1 **(e) Cochairs**

2
3 The Chief Justice appoints a state appellate justice or trial court judge and a tribal
4 court appellate justice or judge to serve as cochairs consistent with rule 10.31(c).
5

6 **Judicial Council Comment**

7
8 Tribes are recognized as distinct, independent political nations (see *Worcester v. Georgia* (1832)
9 31 U.S. 515, 559 and *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 55 citing *Worcester*),
10 which retain inherent authority to establish their own form of government, including tribal justice
11 systems. (25 U.S.C.A. § 3601(4).) Tribal justice systems are an essential part of tribal
12 governments and serve to ensure the public health and safety and the political integrity of tribal
13 governments. (*Id.* § 3601(5).) Traditional tribal justice practices are essential to the maintenance
14 of the culture and identity of tribes. (*Id.* § 3601(7).)
15

16 The constitutional recognition of tribes as sovereigns in a government-to-government relationship
17 with all other sovereigns is a well-established principle of federal Indian law. (See Felix S.
18 Cohen, *Handbook of Federal Indian Law* (2005 edition) p. 207.) In recognition of this
19 sovereignty, the Judicial Council’s oversight of the forum, through an internal committee under
20 rule 10.30(d), is limited to oversight of the forum’s work and activities and does not include
21 oversight of any tribe, tribal court, or tribal court judge.
22

23 **Rule 10.61. Court Security Advisory Committee**

24
25 **(a) Area of focus**

26
27 The committee makes recommendations to the council for improving court security,
28 including personal security and emergency response planning.
29

30 **(b) Membership**

31
32 The committee must include at least one member from each of the following
33 categories:
34

- 35 (1) Appellate court justice;
36
37 (2) Appellate court administrator;
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39 (3) Trial court judge;
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41 (4) Trial court judicial administrator;
42

1 (5) Member of the Court Facilities Advisory Committee; and

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3 (6) Member of the Trial Court Facility Modification Advisory Committee.

4
5 At least one member of the committee should be from a trial court that uses a
6 marshal for court security services.

7
8 ~~**Rule 10.57. Judicial Service Advisory Committee**~~

9
10 ~~**(a) Area of focus**~~

11
12 ~~The committee makes recommendations for improving judicial service, retention,~~
13 ~~and compensation.~~

14
15 ~~**(b) Additional duties**~~

16
17 ~~In addition to the duties described in rule 10.34, the committee must identify and~~
18 ~~evaluate best current national and local practices and develop or recommend~~
19 ~~necessary training related to the following issues:~~

20
21 ~~(1) A “cafeteria plan” of benefits; wellness subsidies; professional development~~
22 ~~allowances; personal leave; and supplemental life, disability, or liability~~
23 ~~insurance;~~

24
25 ~~(2) Health care benefits, including services and programs;~~

26
27 ~~(3) Compensation and retirement, including recommendations for 401(k) and~~
28 ~~other deferred compensation programs and the most appropriate mechanism~~
29 ~~for setting judicial salaries;~~

30
31 ~~(4) Resources and programs for quality of judicial life, particularly those dealing~~
32 ~~with health, stress, and relationships;~~

33
34 ~~(5) Mentorship programs; and~~

35
36 ~~(6) Special needs and programs for new and retired judges.~~

37
38 ~~**(c) Membership**~~

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40 ~~The committee must include at least one member from each of the following~~
41 ~~categories:~~

42
43 ~~(1) Appellate court justice;~~

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- (2) Retired jurist;
- (3) Superior court judge from a court with 15 or more judges;
- (4) Superior court judge from a court with 5 to 14 judges;
- (5) Superior court judge from a court with 4 or fewer judges;
- (6) Superior court executive officer from a court with 15 or more judges;
- (7) Superior court executive officer from a court with 14 or fewer judges;
- (8) Member of the Administrative Presiding Justices Advisory Committee; and
- (9) Member of the Trial Court Presiding Judges Advisory Committee.

Rule 10.170. Working Group on Court Security

(a) Purpose

The Judicial Council has established the Working Group on Court Security. The purpose of the working group is to recommend uniform standards and guidelines that may be used by the Judicial Council and any sheriff or marshal for the implementation of trial court security services. The Working Group on Court Security must also consult with the Administrative Office of the Courts' Office of Court Construction and Management regarding security considerations for court facilities. The Judicial Council, after receiving recommendations from the Working Group on Court Security, may adopt rules, standards, guidelines, and policy directions for the trial courts in order to achieve efficiencies that will reduce security operating costs and constrain growth in those costs.

(b) Composition

The group is composed as follows:

- (1) Eight representatives from the judicial branch of government selected by the Chief Justice;
- (2) Two representatives of the counties selected by the California State Association of Counties;

1 (3) ~~Three representatives of the county sheriffs selected by the California State~~
2 ~~Sheriffs' Association;~~

3
4 (4) ~~One representative of labor selected by the California Coalition of Law~~
5 ~~Enforcement Associations; and~~

6
7 (5) ~~One representative selected by the Peace Officers Research Association of~~
8 ~~California.~~

9
10 ~~(e) Chair~~

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12 ~~The Chief Justice may appoint an appellate court justice to serve as nonvoting~~
13 ~~chair.~~

14
15 ~~(d) Initial terms~~

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17 (1) ~~The initial terms of the members of the working group are as follows:~~

18
19 (A) ~~Four years for three representatives of the judicial branch, one~~
20 ~~representative of the counties, one representative of the county sheriffs,~~
21 ~~one representative of the California Coalition of Law Enforcement~~
22 ~~Associations, and one representative of the Peace Officers Research~~
23 ~~Association of California.~~

24
25 (B) ~~Three years for three representatives of the judicial branch, one~~
26 ~~representative of the counties, and one representative of the county~~
27 ~~sheriffs.~~

28
29 (C) ~~Two years for two representatives of the judicial branch and one~~
30 ~~representative of the county sheriffs.~~

31
32 (2) ~~The appointing authority may designate which members are appointed to~~
33 ~~two, three, and four year terms.~~

34
35 ~~(e) Terms~~

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37 ~~After the initial terms of members of the working group as provided in (d), the~~
38 ~~terms of members are three years. The appointing authority may fill any vacancy~~
39 ~~occurring for the remainder of the term.~~

40
41 ~~Rule 10.171. Working Group on Court Security Fiscal Guidelines~~
42

1 **(a) Purpose**

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3 The Judicial Council has established the Working Group on Court Security Fiscal
4 Guidelines. The purpose of the working group is to consider whether modifications
5 are necessary and appropriate to the template that determines security costs, under
6 Government Code section 69927(a)(1) (“template review”), and to recommend
7 changes to the limit for allowable costs, as stated in Government Code section
8 69927(a)(5) (“allowable costs review”). Template review may involve, among
9 other items, that part of the template affecting law enforcement or security
10 personnel in courtrooms or court detention facilities (“personnel template review”).
11

12 **(b) Composition**

13
14 (1) *Composition for allowable costs review and template review, except*
15 *personnel template review*

16
17 In performing allowable costs review and template review, except personnel
18 template review, the group is composed as follows:

- 19
20 (A) Six representatives from the judicial branch from the Working Group
21 on Court Security established in rule 10.170, as selected by the
22 Administrative Director of the Courts;
23
24 (B) The two representatives of the counties from the Working Group on
25 Court Security established in rule 10.170; and
26
27 (C) The three representatives of the county sheriffs from the Working
28 Group on Court Security established in rule 10.170.
29

30 (2) *Composition for personnel template review*

31
32 In performing personnel template review, the group is composed as follows:

- 33
34 (A) The six representatives from the judicial branch of government selected
35 by the Administrative Director of the Courts, under (b)(1)(A);
36
37 (B) The two representatives of the counties under (b)(1)(B);
38
39 (C) Two of the three representatives of the county sheriffs under (b)(1)(C)
40 as determined by the California State Sheriffs’ Association; and
41
42 (D) Two representatives of labor selected by the California Coalition of
43 Law Enforcement Associations.

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~~(e)~~ **Chair**

~~The Administrative Director of the Courts may designate one of the judicial branch members to be chair of the working group.~~

~~(d)~~ **Terms**

- ~~(1) The initial and subsequent terms of the members of the Working Group on Court Security Fiscal Guidelines who are members because they are members of the working group established in rule 10.170 expire when their terms on that working group expire. The terms of any other members of the Working Group on Court Security Fiscal Guidelines are three years.~~
- ~~(2) The appointing authority may fill any vacancy occurring for the remainder of the term.~~