

The Long Gray Stay

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Justice William Stein thought about retiring four years ago but decided to stick around because of a program that'll leave him with a fatter wallet when he finally hangs up the robe.

The 67-year-old will be taking advantage of a state program — now in its eighth year — that provides bench veterans a healthy financial incentive to stay awhile longer. As a result, when Stein leaves San Francisco's First District Court of Appeal at the end of August, he'll take with him about an extra \$160,000 in retirement funds.

"I'm more than halfway into this incentive program now," Stein said. "It will be four years in August, and that's enough."

Stein is one of dozens of jurists on the trial and appellate benches who are participating in the state's Extended Service Incentive Program, which is designed to keep talent on the bench instead of leaving for the more lucrative field of private judging.

The program may have accomplished its goal, judging by data provided to *The Recorder* by the state's Administrative Office of the Courts.

From 2000, when the program was approved by legislators, through 2007, appellate jurists stayed on the bench for an average of 22.5 years, the AOC data showed, while from 1996 through 1999, they stayed an average of 19.6 years. Superior court judges hung around on the bench for 18.2 years on average since the program started, versus 17.7 years in the four years prior, according to the AOC.

The average age of appellate justices serving on the bench also rose, possibly because of the program. The average justice is 65.7 years old these days (measured from 2000-2007), up from 62.8 (measured from 1996-1999). The average age of trial judges, 63.5, did not change.

More appeal court justices are participating in the program, which may explain the more significant age and tenure increases in their ranks. Nearly half of California's appellate justices — 46 out of 103 — were enrolled, while 115 trial court judges out of 1,482 were enrolled in the program as of July 1, according to AOC figures.

The longer duration of appeal court tenures could be a source of frustration among superior court judges looking to move up.

"There are a bunch of guys over at superior court tapping their toes waiting for us to leave," said Fourth District Justice William Bedsworth, who turned 60 last year. "I know who they are, and I've seen them tapping their feet. And I know I'm here largely because of the retirement program."

William Vickrey, executive director of the AOC, said the sheer number of judges and justices in the program suggests it works.

"ESIP addresses the need to retain the most experienced judges who are eligible for retirement," he said. "The people of California lose vital judicial resources and experience when long-serving and capable judges leave public service."

ESIP provides trial court judges and appellate justices a benefit equal to 20 percent of their salaries if they're at least 60 years old and they remain on the bench at least three years past the time they're eligible for retirement, which comes at 20 years of service. After five years, the percentage drops to 8 percent. The money is placed in a tax-sheltered, interest-bearing account and can be paid out in a lump sum after retirement.

An AOC subcommittee proposed the idea in 1999 to combat what was perceived as an exodus of veteran jurists to arbitration and mediation services. A subsequent 2006 study by the California Public Employees' Retirement System found that the program, which became effective in 2001, had the added benefit of saving the state more than \$128,000 per judge.

It's cheaper to have a judge enrolled in the incentive program, the report noted, than to pay the full salary of a replacement judge, while simultaneously paying a retired judge — as required by law — 75 percent of his or her salary.

"All I know is anecdotal, and I'm under the impression that it is keeping more judges on the bench," said First District Justice J. Anthony Kline, who is 69 and has been a judge for nearly 26 years.

"One of my sons goes to Yale, which is \$50,000 a year, and the other, thankfully, goes to Berkeley, but that's not cheap either," he said. "So I can't say this [program] is wholly irrelevant to my decision to stay on the bench."

First District Justice Timothy Reardon, who is 66 and has been a judge for almost 25 years, called the program a "nice incentive," but said he has continued judging simply because he likes it.

"If one is ready to retire, I'm not sure this incentive would change one's mind," he said. "But if you're on the fence, it might."

For some justices, ESIP was a fairly key motivation for sticking around.

"It did make me face the issue of whether I'd retire or not," said Bedsworth, who has been on the bench for nearly 22 years and will get a \$200,000 windfall if he stays on until 2012.

"I grew up blue collar," the Santa Ana-based justice said. "That looks like a lot of money to me."

The program may leave colleagues on the trial court champing at the bit, some justices acknowledged.

Fourth District Justice William Rylaarsdam, who is 71 and has been on the bench for nearly 23 years, calls it his "death watch."

"I understand that there are several [judges] who have put in their names for my position," he said. "I'll have to go someday."

Out of all 103 appellate justices, the oldest is the Second District's Joan Dempsey Klein at 83, while the youngest, at 47, is Patricia Bigelow, also of Los Angeles' Second District.

Yet some judges downplayed the influence of the ESIP program on the appeal court vacancy rate.

Orange County Superior Court Judge Francisco Briseno chuckled at the thought of trial court judges conducting retirement watches for their appellate colleagues.

"It's hard to fathom who will retire or who will be selected [for a seat]," he said. "There is no direct relation between interest, ability and being chosen."

And it's not as if there haven't been openings on the appellate bench. Since 2001, 24 justices have retired, compared with 17 in the five previous years.

Justice Stein speculated that now that the program has been in place for more than seven years, many jurists who opted into it early on will feel it's time to move on. Having tapped its maximum benefit, there will be little, if any, financial incentive to stay.

"Now," he said, "I think you'll start to see the retirements coming again soon."

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