

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W18-01

Title	Action Requested
Court Administration: Judicial Sabbaticals	Review and submit comments by February 9, 2018
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 10.502	May 29, 2018
Proposed by	Contact
Hon. Douglas P. Miller, Chair Executive and Planning Committee	Susan McMullan, susan.mcmullan@jud.ca.gov , 415-865-7990

Executive Summary and Origin

Judicial sabbaticals are addressed in the Government Code and the California Rules of Court. Current law and practices provide for only unpaid sabbaticals on approval of the Judicial Council. The council's Executive and Planning Committee proposes amending rule 10.502 to make it consistent with current law and practices and to eliminate outdated provisions on paid sabbaticals. The amendments would also eliminate the role of the Judicial Sabbatical Review Committee.

Background

Current Government Code section 68554¹ authorizes the Judicial Council to provide for unpaid judicial sabbaticals. Specifically the council may "grant any judge a leave of absence" for up to one year to permit "study, which will benefit the administration of justice and the individual's performance of judicial duties, upon a finding that the absence will not work to the detriment of the court."

Former section 77213 established the Judicial Administration Modernization and Efficiency Fund (Mod Fund) and authorized use of money therein for paid judicial sabbaticals. It provided in part as follows:

(b) Moneys deposited into this fund shall be administered by the Judicial Council, subject to appropriation by the Legislature. . . . Moneys in the fund may

¹ If not specified, further references to "section" are the Government Code.

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 These proposals are circulated for comment purposes only.

be expended to implement projects approved by the Judicial Council. Expenditures may be made to vendors or individual trial courts that have the responsibility to implement approved projects. Projects approved by the Judicial Council may include, but are not limited to, the following:

(3) Retain experienced jurists by establishing incentives of enhanced judicial benefits and educational sabbaticals, not to exceed 120 days every five years, as provided for by rules of court adopted by the Judicial Council.

Few paid sabbaticals were granted under this authority and section 77213 was repealed in 2012, when legislation also amended section 77209, which effectively combined the former Mod Fund with the former Trial Court Improvement Fund to create the new State Trial Court Improvement and Modernization Fund as a successor to both.² No monies have been set aside in this fund for paid sabbaticals since the funds merged. The amended statutory language of section 77209 omitted the list of example projects (including judicial sabbaticals) that had been contained in former section 77213. These statutory changes created uncertainty as to whether the council could grant paid judicial sabbaticals.

Current rule 10.502 sets out the procedures for considering requests for both paid and unpaid judicial sabbatical and includes provisions that are no longer accurate due, in part, to statutory changes.

The Proposal

Rule 10.502 would be amended to:

- Eliminate the reference to Government Code section 77213 in subdivision (b) and cross references elsewhere in the rule to the requirements of section 77213;
- Align the rule's language on the purpose of a sabbatical with that in section 68554;
- Eliminate the reference to the Judicial Sabbatical Review Committee and authorize the council's Executive and Planning Committee to evaluate and make recommendations to the council on judicial sabbatical applications; and
- Make stylistic changes and change the order of subdivisions (h) and (i).

Paid judicial sabbaticals were authorized by former section 77213. With its repeal, it is unclear whether the Judicial Council may grant an unpaid sabbatical. This proposal would delete from rule 10.502, current subdivision (b)(1), which provides as follows:

² Senate Bill 1021

Eligibility

A judge or justice is eligible to apply for a paid sabbatical under Government Code section 77213 if:

- (A) He or she has served for at least seven years as a California judicial officer, including service as a subordinate judicial officer;
- (B) He or she has not taken a sabbatical within seven years of the date of the proposed sabbatical; and
- (C) He or she agrees to continue to serve as a judicial officer for at least three years after the sabbatical.

With this amendment, the rule would provide for unpaid sabbaticals only. Other references in rule 10.502 to section 77213 or to the requirements for a paid sabbatical, which are in subdivisions (c)(2), (f)(1), (g), (h), and (j), would be deleted from the rule. In addition, minor stylistic changes would be made: Administrator Director of the Courts would be changed to “Administrative Director.” The order of current subdivision (h), on the judge’s report following a sabbatical leave, and subdivision (i), on retirement and benefits, would be switched for improved continuity.

The objective of sabbatical leave set out in subdivision (a) would be shortened and made consistent with section 68554, which provides that a sabbatical is for “study, which will benefit the administration of justice and the individual’s performance of judicial duties.” Accordingly, in subdivision (a) of rule 10.502, the words “teaching, research, or another activity” would be removed from the following sentence:

The objective of sabbatical leave is to facilitate study, teaching, research, or another activity that will benefit the administration of justice and enhance judges’ performance of their duties.

Subdivision (d), concerning the Judicial Sabbatical Review Committee would be amended to remove references to that committee and its membership and add that the Executive and Planning Committee will make recommendation to the council regarding sabbatical requests with support from the council’s human resources staff. Subdivision (e) would replace “Judicial Sabbatical Review” with “Executive and Planning.” The Judicial Sabbatical Review Committee no longer exists and, because of the infrequency of requests for a judicial sabbatical, it is more efficient to transfer the duty to review and make recommendations on such requests to a council standing committee; the Executive and Planning Committee is the most appropriate committee to take on this role.

These changes are necessary to make the rule consistent with statutory changes and current practices concerning judicial sabbaticals. The rule amendment will make clear that only unpaid sabbaticals may be granted and accurately set out the responsibility for reviewing and recommending sabbatical requests.

Alternatives Considered

No alternatives were considered, as the inconsistency between current rule 10.502 and current law and practices cannot be corrected by education, training, guidelines, or best practices.

Implementation Requirements, Costs, and Operational Impacts

This proposal has no implementation requirements or costs. Amending the rule to provide that paid judicial sabbaticals are not authorized is likely to have a positive operational impact by eliminating ambiguity.

Request for Specific Comments

In addition to comments on the proposal as a whole, the Executive and Planning Committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

Attachments and Links

Cal. Rules of Court, rule 10.502 at pages 5–6

Rule 10.502 of the California Rules of Court would be amended, effective May 29, 2018, to read:

1 **Rule 10.502. Judicial sabbatical ~~pilot~~ program**

2
3 **(a) Objective**

4
5 Sabbatical leave is a privilege available to jurists by statute. The objective of
6 sabbatical leave is to facilitate study, ~~teaching, research, or another activity~~ that will
7 benefit the administration of justice and enhance judges' performance of their
8 duties.

9
10 **(b) Eligibility**

11
12 ~~(1) A judge or justice is eligible to apply for a paid sabbatical under Government~~
13 ~~Code section 77213 if:~~

14
15 ~~(A) He or she has served for at least seven years as a California judicial~~
16 ~~officer, including service as a subordinate judicial officer;~~

17
18 ~~(B) He or she has not taken a sabbatical within seven years of the date of~~
19 ~~the proposed sabbatical; and~~

20
21 ~~(C) He or she agrees to continue to serve as a judicial officer for at least~~
22 ~~three years after the sabbatical.~~

23
24 ~~(2) Any judge is eligible to apply for an unpaid sabbatical under Government~~
25 ~~Code section 68554.~~

26
27 **(c) Application**

28
29 ~~(1) An eligible judge may apply for a sabbatical by submitting a sabbatical~~
30 ~~proposal to the Administrative Director of the Courts with a copy to the~~
31 ~~presiding judge or justice.~~

32
33 (2) The sabbatical proposal must include:

34
35 ~~(A) The judge's certification that he or she meets the eligibility~~
36 ~~requirements established in (b);~~

37
38 ~~(B) The beginning and ending dates of the proposed sabbatical;~~

39
40 ~~(C) A description of the sabbatical project, including an explanation of how~~
41 ~~the sabbatical will benefit the administration of justice and the judge's~~
42 ~~performance of his or her duties; and~~

1 (DC) A statement from the presiding judge or justice of the affected court,
2 indicating approval or disapproval of the sabbatical request and the
3 reasons for such approval or disapproval, forwarded to the ~~Judicial~~
4 ~~Sabbatical Review~~ Executive and Planning Committee with a copy to
5 the judge.

6
7 **(d) ~~Judicial Sabbatical Review Committee~~ Review of applications**

8
9 ~~A Judicial Sabbatical Review~~ The Executive and Planning Committee will be
10 ~~appointed to~~ make recommendations to the Judicial Council regarding sabbatical
11 ~~requests, with support from the council's human resources staff.~~

12
13 (1) — *Membership*

14
15 ~~The committee must include at least one member from each of the following~~
16 ~~groups:~~

17
18 (A) — ~~Administrative Presiding Justices Advisory Committee;~~

19
20 (B) — ~~Trial Court Presiding Judges Advisory Committee;~~

21
22 (C) — ~~Court Executives Advisory Committee;~~

23
24 (D) — ~~Governing Committee of the Center for Judicial Education and~~
25 ~~Research;~~

26
27 (E) — ~~Judicial Service Advisory Committee; and~~

28
29 (F) — ~~California Judges Association (liaison).~~

30
31 (2) — *Staffing*

32
33 ~~The committee will be staffed by the Human Resources Division of the~~
34 ~~Administrative Office of the Courts and may elect its chair and vice chair.~~

35
36 **(e) Evaluation**

37
38 (1) The Administrative Director ~~of the Courts~~ must forward all sabbatical
39 requests that comply with (c) to the ~~Judicial Sabbatical Review~~ Executive and
40 Planning Committee.

1 (2) The ~~Judicial Sabbatical Review~~ Executive and Planning Committee must
2 recommend granting or denying the sabbatical request after it considers the
3 following factors:

4
5 (A) Whether the sabbatical will benefit the administration of justice in
6 California and the judge's performance of his or her duties; and

7
8 (B) Whether the sabbatical leave will be detrimental to the affected court.

9
10 (3) ~~The Judicial Sabbatical Review Committee may recommend an unpaid~~
11 ~~sabbatical if there is insufficient funding for a paid sabbatical.~~

12
13 **(f) Length**

14
15 ~~(1) A paid sabbatical taken under Government Code section 77213 may not~~
16 ~~exceed 120 calendar days. A judge may be allowed to add unpaid sabbatical~~
17 ~~time onto the end of a paid sabbatical if the purpose of the unpaid sabbatical~~
18 ~~is substantially similar to the work of the paid sabbatical.~~

19
20 ~~(2) An unpaid judicial sabbatical taken under Government Code section 68554~~
21 ~~may not exceed one year.~~

22
23 **(g) Ethics and compensation**

24
25 A judge on unpaid sabbatical leave is subject to the California Code of Judicial
26 Ethics and, ~~while on a paid sabbatical, must not accept~~ may receive compensation
27 and reimbursement for expenses for activities performed during that sabbatical
28 leave ~~but may receive reimbursement for the expenses~~ as provided in canon 4H(2)
29 of the Code of Judicial Ethics.

30
31 **~~(h) Judge's report~~**

32
33 ~~On completion of a sabbatical leave, the judge must report in writing to the Judicial~~
34 ~~Council on how the leave benefited the administration of justice in California and~~
35 ~~on its effect on his or her official duties as a judicial officer.~~

36
37 **~~(i)(h) Retirement and benefits~~**

38
39 ~~(1) A judge on a paid sabbatical leave under Government Code section 77213~~
40 ~~continues to receive all the benefits of office and accrues service credit~~
41 ~~toward retirement.~~

1 (2)—A judge on unpaid sabbatical leave under Government Code section 68554
2 receives no compensation, and the period of absence does not count as
3 service toward retirement. The leave does not affect the term of office.
4

5 **(h)(i) Judge's report**
6

7 On completion of a sabbatical leave, the judge must report in writing to the Judicial
8 Council on how the leave benefited the administration of justice in California and on its
9 effect on his or her official duties as a judicial officer.
10

11 ~~**(j) Judicial assignment replacement**~~
12

13 ~~Funds must be made available from the Judicial Administration Efficiency and~~
14 ~~Modernization Fund to allocate additional assigned judges to those courts whose~~
15 ~~judges' requests for paid sabbaticals are approved.~~