

ARTICLE VI DISCUSSION DRAFT

(Not Yet Reviewed by Judicial Council)

Draft Amendments to Constitution Concerning Judicial Branch

(October 17, 2005)

Summary of Changes to Initial Discussion Draft of Feb. 14, 2005*

- **Article III, Section 4** [judicial salaries] modified to conform to changes in Article VI, Section 19.
- **Section 1** [judicial branch] amendment defining judicial branch and judicial branch agencies removed.
- **Section 4** [judgeships] amended to require:
 - Legislature to provide a sufficient number of judges in each superior court to provide access to the courts.
 - Judicial Council to establish standards regarding sufficiency of number of judges.
 - Legislature may delegate the specification of the number of judges to the Judicial Council.
- **Section 6(a)** [council membership] amended as follows:
 - Court administrators kept non-voting and increased to three.
 - Selection proceedings include nominations by presiding judges of four superior court positions.
 - Additional one-year-term judge added to council.
 - Clarified language providing for council ensuring diversity of membership.
 - Changed provision involving State Bar appointees to clarify appointments come from Board of Governors pursuant to criteria set by council.
 - Commentary rearranged so that it follows the language of the provision.
 - Language clarified and simplified.
- **Section 6(d)** [council duties and responsibilities] amended as follows:

* All references are to Article VI except where expressly indicated otherwise.

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- Permit council to set both policies and goals but ensure that these are only for the administration and operation of the judicial branch.
- Require the council to establish standards for accountability and performance.
- Modify the rule making power to require conflict with “a” statute to invalidate a rule.

- **Subdivision 6(e)** [judgeships] removed and replaced with amended section 4.

- **Section 6(h)** [fees] deleted.

- **Section 6.5** [budget] added and amended as follows:
 - Provide for automatic judicial branch budget limited to increase in state appropriation limit.
 - Provide for discretionary judicial branch budget subject to adoption by Legislature and Governor.
 - Provide that judicial branch budget becomes part of the Governor’s proposed budget and not automatically part of the approved budget.
 - Specifically exclude new construction from being included in the base budget.

- **Section 9** [State Bar] amended to more closely reflect the language of *In re Attorney Discipline System* (1998) 19 Cal.4th 582.

- **Section 16** [elections and term of judges] amended as follows:
 - Removed provision extending superior court term from six to ten years
 - “Open” (end-of-term) elections retained.
 - Make local option superior court retention elections more closely conform to appellate court retention election procedure.
 - Removed superfluous reference to length of terms of superior court judges.
 - Clarified language that a vacancy does not occur when an election has started.

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- Holding of *Stanton v. Panish* (vacancy occurring after election process begins does not stop election) expressly made part of Constitution.
- Rewritten and reorganized so that language clarified and simplified.
- **Section 18** [discipline] removed. Provision, prior to removal, provided:
 - Suspension without pay.
 - Restitution.
 - Education and treatment.
- **Section 19** [judicial salaries] amended as follows:
 - Remove references to compensation to make it clear that commission only deals with issues of salary.
 - Require commission to consider any changes to salaries made by provision concerning increases based on average of state employees.
 - Remove requirement that corporation among the largest employers in this state be incorporated in this state.
 - Removed reference in commentary to benefits.
 - Make appointment language for commission internally consistent.
- **Section 20** [judicial benefits] removed from draft because Legislature is to retain authority over judicial benefits.
- **Article VII, section 4** technical change removed as unnecessary because no amendment being made to Article I, Section 1 concerning definition of judicial branch.

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Judgeships

Section 4 of Article VI would be amended to read as follows:

In each county there is a superior court of one or more judges. The Legislature shall ~~prescribe the~~ provide for a number of judges sufficient for full access to the courts and provide for the officers and employees of each superior court. The Judicial Council shall periodically report to the Legislature on standards concerning the number of judges needed for full access to the courts. The Legislature may delegate to the Judicial Council the designation of the number of judges needed. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court.

In each superior court there is an appellate division. The Chief Justice shall assign judges to the appellate division for specified terms pursuant to rules, not inconsistent with statute, adopted by the Judicial Council to promote the independence of the appellate division.

Comment: While the Legislature has a duty to state the number of judges in each superior court, there is no standard for the exercise of this authority. For a court system to be fully accessible to all the people of the state, there needs to be assurance that enough judges are provided for in each court to carry out the business of the court. Otherwise cases will either not be heard or cases will be not given enough time for a fair hearing. The Judicial Council is charged with providing the Legislature information to assure that a sufficient number of judges are being provided.

This amendment keeps the authority to specify the number of judges in the Legislature where it has always existed in this state as well as other states. Previously the language of this section stated that the Legislature had a non-delegable duty to determine the number of judges as shown by the use of the term “prescribe.” The new language uses the term “provide” which is the term used when the duty is delegable. The section also states that this authority can be delegated to the Judicial Council, the appropriate body for making judgeship determinations should the Legislature choose to delegate this responsibility.

Judicial Council: Membership, chairperson

Section 6 of Article VI would be amended to read as follows:

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(a) (1) The Judicial Council consists of the Chief Justice, who serves as the chairperson of the council, and one other judge justice of the Supreme Court, three judges justices of the courts of appeal, 10 11 judges of superior courts, four members of the State Bar, three two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council; each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three-year terms; two judges or justices each appointed for a one-year term; and one non-voting member of each house of the Legislature appointed as provided by the house and any other nonvoting members as determined by the voting membership of the council.

(2) The members of each house of the Legislature shall be appointed as provided by the house. The governing body of the State Bar shall appoint the State Bar members pursuant to criteria established by the council. The other members shall be appointed by the Chief Justice pursuant to procedures and criteria established by the council. Pursuant to the procedures established by the council, the presiding judges of the superior courts shall provide nominees for four of the superior court judge positions.

(3) The Chief Justice may appoint from among the judicial members of the Judicial Council a vice-chairperson of the council who shall perform all the duties of chairperson when the chairperson is absent or unable to act or as otherwise directed by the chairperson.

Comment: In this section, as in other sections proposed for amendment, the term “justice” is used to refer to a judicial officer of the Supreme Court and courts of appeal and the term “judge” is used to refer to a judicial officer of the superior courts (trial courts).

Subdivision (a)(1) also adds another trial court judge in recognition of the increased role of the council in addressing trial court issues, and in order to provide broader trial court representation in the council.

Subdivision (a)(1) also is amended to increase the number of advisory court administrator members of the council. This practice results in increased representation of a significant segment of the judicial branch that is likely to provide useful input in the adoption and implementation of new policies.

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Subdivision (a)(1) further adds two one-year judicial positions that would permit the selection of additional individual appointees or representatives of groups or constituencies who may bring useful perspectives to assist the council in its deliberations.

At the suggestion of members of the Legislature, subdivision (a)(1) is amended to change the legislative members of the council from voting to nonvoting members, which is appropriate under the principle of separation of powers as provided by Article III, Section 3. The communication resulting from the participation of members of the Legislature on the Judicial Council can be of significant value.

Subdivision (a)(2) adds the provision that the council establishes criteria for the State Bar Board of Governors to use in appointing State Bar members of the council. This process would be helpful in ensuring the attorney members represent the views of various segments of the bar.

The council will establish not only the procedures for selection of council members but the “criteria” for council members as well. In this manner the council can ensure that its members reflect the diversity of the bench and bar in terms of geographic location, size of court or of law practice, type of court or law practice, as well as other factors. (See California Rules of Court, rule 6.4(a)(1): “The selected nominees should represent diverse backgrounds, experiences, and geographic locations.”)

Subdivision (a)(2) changes the method of appointment of some of the superior court judge members of the council. The council is to establish procedures so that the trial court presiding judges would nominate individual judge members for these positions and the Chief Justice would appoint council members from among those nominated. This process would be helpful in ensuring the voice of this important segment of the judiciary is heard while keeping the overall authority and responsibility of the Chief Justice.

The Chief Justice is the chairperson of the Judicial Council. Language specifying the Chief Justice as the “chairman” of the Judicial Council was removed in 1974 through a nonsubstantive amendment. The subsequent absence of substitute language for “chairman” apparently was a result of a dispute about using the term “chairperson.” Subdivision (a)(1) is amended to make explicit again that the Chief Justice heads the Judicial Council and changes the title to “chairperson.” Additional language in subdivision (a)(3) provides that the Chief Justice may appoint a vice chairperson who shall act as chairperson in the chairperson’s absence, inability to act, or when so directed by the chairperson. Compare Article VI, Section 2 providing for an acting Chief Justice to perform the functions of the Chief Justice.

(b)–(c) * * *

Judicial Council: Purpose, authority

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(d) To improve the administration of justice the council shall: ~~survey judicial business and make recommendations to the courts,~~ make recommendations annually to the Governor and the Legislature; make recommendations and establish policies and goals for the administration and operation of the judicial branch to promote access to the courts and to improve the fair and effective administration of justice; establish standards for performance and accountability of the branch and reporting on the accomplishment of these standards; establish fiscal and budget procedures for the courts and the council; allocate appropriations and other funds available to the courts and the council; survey judicial business and provide financial reports to the Legislature and Governor concerning court and council expenditures; adopt procedures for performing its duties; adopt rules for court administration, practice, and procedure; and perform other functions related to the administration of justice as prescribed by statute. The rules adopted shall not ~~be inconsistent~~ conflict with a statute. The Chairperson of the Judicial Council shall report to the Legislature and the Governor each calendar year on the condition of the judicial branch.

Comment: Subdivision (d) has been amended to reflect the council’s existing role within the judicial branch concerning matters involving judicial administration. It expressly recognizes why the council acts—to improve the administration of justice and to promote access to the fair and effective administration of justice—and that the council, in so acting, sets policy for the judicial branch. The enumeration in the Constitution of tasks to be performed by the council in pursuit of these goals now expressly includes budgetary responsibilities, the setting of policy relating to the administration of justice for the branch, and the establishment of standards for performance and accountability. Budgetary and other responsibilities already are set forth in statute and in rule.

The language concerning expenditures provides for accountability by the judicial branch. For example, under this provision the council could employ independent financial audits as part of its reporting.

The language proposed for subdivision (d) is consistent with the purpose behind the establishment of the council. The ballot argument in favor of the proposition creating the Judicial Council stated that the purpose of that constitutional amendment was “to organize the courts . . . on a business basis” and to bring about the smooth operation of the courts, with the Chief Justice, as the Chairperson of the council, serving as the “real, as well as the nominal, head of the judiciary.” (Amendments to Constitution and Proposed Statutes With Arguments Respecting the Same (1928) Argument in Favor of Senate Constitutional Amendment No. 15, at p. 33.) The council, with the Chief Justice as chairperson, has long been carrying out the responsibilities described in the amendments to subdivision (d). The language has also been clarified so that the policies established

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by the council are for the branch and relate to access to the court and the administration of justice. This provision is not intended to infringe upon the prerogatives of the legislative and executive branches as policy making entities.

Subdivision (d) has also been modified to clarify the rule-making authority of the council. Language has been added to clarify that it is only in the case of a direct conflict between a statute and a rule of court that the rule of court is invalid. This establishes a higher standard for determining the invalidity of a court rule in relation to legislation and is designed to ensure that the Legislature does not unintentionally invalidate a rule of court.

Subdivision (d) also has been modified to delineate the types of duties that may be imposed by statute on the Judicial Council. Because the council is the policy- and rule-making authority regarding the administration of justice for the judicial branch, duties imposed on the council should be limited to its constitutional role.

The last sentence is added to subdivision (d) to require an annual report, in the nature of a “State of the Judiciary” message. The provision is based on Article V, Section 3 providing for a “State of the State” message by the Governor and is consistent with current practice.

(e)-(f) * * *

Court facilities

Section 6.2 would be added to Article VI to read as follows:

The Judicial Council shall be vested with the authority to manage and dispose of the property owned by the state and used for court facilities and the operation of the Judicial Council and shall have the power to take and hold, by purchase or donation or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property to be used for court facilities and for the operation of the Judicial Council or incidental thereto; provided, however, that sales of real property shall be subject to such competitive bidding procedures as may be provided by statute. Title to property taken or held by the Judicial Council shall be in the name of the State.

Comment: Section 6.2 is new language providing authority to the council for the oversight of judicial branch facilities, consistent with enactment of facilities legislation transferring authority from the counties to the state. This section gives the Judicial Council overall authority for court facilities. The authority to acquire is not limited as to means and would include methods of property acquisition such as lease-purchase. The

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authority for the Judicial Council is similar to and tracks the authority of the University of California Regents (see art. IX, § 9).

Budget

Section 6.5 would be added to Article VI to read as follows:

(a) Commencing with the 2007-2008 fiscal year, there shall be appropriated to support the courts and the Judicial Council: (1) A base amount equal to the prior fiscal year appropriations, as adjusted; (2) a cost of living and population growth amount computed by multiplying the base amount by the year-to-year percentage change in the State appropriation limit as provided in subdivisions (e)(1) and (f) of section 8 of Article XIII B; and (3) such other moneys as may be appropriated by the regular budget process.

(b) The prior fiscal year appropriations shall be adjusted to remove the cost of expiring and single year programs and reflecting the full year cost of programs implement partially during the prior fiscal year.

(c) The other moneys referred to in subdivision (a)(3) are intended to cover increased costs for new operations or programs, increased costs necessitated by law, increased costs imposed by local government; and costs resulting from extraordinary circumstances.

(d) Prior to the start of each calendar year, the Judicial Council shall submit to the Legislature and the Governor, with an explanatory message, a budget for the ensuing fiscal year for the courts and the Judicial Council.

(e) Subdivision (a) may be suspended for one year when made part of or included within any bill enacted pursuant to Section 12 of Article IV.

Comment: This section will help ensure that the basic operating needs of the courts and the Judicial Council are met in a manner that ensures a predictable fiscal environment, that promotes court financial accountability, and that ensures sufficient funding is provided to accommodate increased costs. The funding provisions will help ensure that the branch remains independent, provides access to courts statewide, and fulfills its obligations to provide courts that administer fair and impartial justice, protect individual rights, and help assure public safety.

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Subdivision (a)(2) would automatically increase the base budgets of the courts and the Judicial Council based on changes in the State Appropriation Limit (SAL). Subdivisions (a)(3) and (c) would give discretion to the Legislature and the Governor to increase the budget for new programs and mandates.

Further, it is contemplated that consistent with existing statutes, the judicial branch's budget proposal would be submitted directly to both the Legislature and the Governor.

The base budget for the courts also would include funding for the operation, maintenance, and repair of all facilities for the courts and the Judicial Council, but not the costs of new construction.

Subdivision (e) contains no specific test for the one-year suspension of the automatic SAL increase. This treatment is consistent with the provision permitting a one-year suspension of the Education allocation under article XVI, section 8(h).

Technical note: A corresponding change in subdivision (d) of Section 12 of Article IV should be made as follows:

“No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools and for the courts and the Judicial Council under subdivision (b)(1) of Section 6.5 of Article VI, are void unless passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring.”

Supreme Court authority over State Bar

Section 9 of Article VI would be amended to read as follows:

The Supreme Court of California has inherent and primary authority over the admission and discipline of attorneys licensed to practice law in this State.

The State Bar of California is a public corporation. Every person admitted and licensed to practice law in this State is and shall be a member of the State Bar except while holding office as a judge or justice of a court of record.

The State Bar serves as the administrative arm of the Supreme Court in the court's discharge of its responsibilities concerning the admission and discipline of attorneys.

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Comment: The Legislature has long recognized the Supreme Court’s inherent and primary authority regarding admission and discipline of members of the State Bar. (See Business and Professions Code section 6087 [“Nothing in this chapter shall be construed as limiting or altering the powers of the Supreme Court of this State to disbar or discipline members of the bar as this power existed prior to the enactment of Chapter 34 of the Statutes of 1927, relating to the State Bar of California.”].) Section 6087 and other provisions recognize that, throughout its history, the State Bar has provided administrative assistance to the Supreme Court in discharging the court’s fundamental authority over admission to the bar and the discipline of attorneys. The Supreme Court explained this relationship in *In re Attorney Discipline System* (1998) 19 Cal.4th 582, 607, as follows: “The State Bar is not an entity created solely by the Legislature or within the Legislature’s exclusive control, but rather is a constitutional entity subject to this court’s expressly reserved, primary, inherent authority over admission and discipline Statutes [regarding the] disciplinary system are not exclusive—but are supplementary to, and in aid of, our inherent authority in this area.” (See also *Lebbos v. State Bar* (1991) 53 Cal.3d 37, 47–48 [“We have described the bar as a public corporation created . . . as an administrative arm of this court for the purpose of assisting in matters of admission and discipline of attorneys. In those two areas, the bar’s role has consistently been articulated as that of an administrative assistant to or adjunct of this court, which nonetheless retains its inherent judicial authority to disbar or suspend attorneys.”], citations and internal quotation marks omitted.) The new material added to Section 9 reflects this constitutional relationship.

Judicial elections and vacancies

Section 16 of Article VI would be repealed and reenacted to read as follows:

~~(a) Judges of the Supreme Court shall be elected at large and judges of courts of appeal shall be elected in their districts at general elections at the same time and places as the Governor. Their terms are 12 years beginning the Monday after January 1 following their election, except that a judge elected to an unexpired term serves the remainder of the term. In creating a new court of appeal district or division the Legislature shall provide that the first elective terms are 4, 8, and 12 years.~~

~~(b) Judges of superior courts shall be elected in their counties at general elections except as otherwise necessary to meet the requirements of federal law. In the latter case the Legislature, by two-thirds vote of the membership of each house thereof, with the advice of judges within the affected court, may provide for their election by the system prescribed in subdivision (d), or~~

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~~by any other arrangement. The Legislature may provide that an unopposed incumbent's name not appear on the ballot.~~

~~(c) Terms of judges of superior courts are six years beginning the Monday after January 1 following their election. A vacancy shall be filled by election to a full term at the next general election after the second January 1 following the vacancy, but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins.~~

~~(d) (1) Within 30 days before August 16 preceding the expiration of the judge's term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected.~~

~~(2) The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which the appointee had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.~~

~~(3) Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts.~~

(a) (1) Justices of the Supreme Court shall be elected at large. Justices of the courts of appeal shall be elected in their districts. Elections shall be held at the November general election in even-numbered years. The terms of Supreme Court and court of appeal justices are 12 years, beginning the Monday after the January 1 following the election, except that the Legislature, in creating a new court of appeal district or division, shall provide that the initial terms of the new justices are 4, 8, and 12 years.

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(2) Within 30 days before the August 16 preceding the expiration of the justice's term, a justice of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the justice. If the declaration is not filed, the Governor shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate who is not elected may not be appointed to that court but later may be nominated and elected.

(3) The Governor shall fill vacancies in the Supreme Court and courts of appeal by appointment. An appointee shall appear on the ballot for a full 12-year term at the first November general election after the justice has served two years in office.

(4) A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

(b) (1) Judges of superior courts shall be elected in their counties except as otherwise necessary to meet the requirements of federal law. In the latter instance the Legislature, by two-thirds vote of the members of each house, with the advice of the judges within the affected court, may provide for their election by the system prescribed in subdivision (6) or by any other system.

(2) Elections for superior court judges shall be held in even-numbered years at the primary election at which candidates for the November general election are selected. If a candidate receives a majority of the votes cast, the candidate is elected. If no candidate receives a majority of the votes cast, the two candidates receiving the most votes shall be candidates at the November general election. A term of a superior court judge is 6 years beginning the Monday after January 1 following the election.

(3) The Legislature may provide that an unopposed incumbent's name not appear on the ballot.

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(4) A vacancy occurs when a judge leaves office before the end of his or her term at a time at which the election process has not begun for the next term of that office. The election process shall be deemed to have begun if at least one person, other than the judge, has qualified for election for the next term of that office.

(5) The Governor may fill vacancies in the superior court by appointment. An election for a 6-year term shall be held at the next general election following the occurrence of the vacancy, except:

(i) If the vacancy has been filled by appointment within six months of its occurrence, the election shall not be held until after the judge has served at least two years in office; and

(ii) If the vacancy has not been filled by appointment within six months of its occurrence, the election shall not be held until after the judge has served at least eight months in office.

(6) Electors of a county, by a majority of those voting and in a manner the Legislature shall provide, may make the following procedure applicable to the election of judges of the superior court in that county. Within 30 days before the August 16 preceding the expiration of the judge's term, a judge may file a declaration of candidacy to succeed to the office presently held by the judge. If the declaration is not filed, the Governor shall nominate a candidate before September 16. At the next November general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question of whether the candidate shall be elected. The candidate shall be elected upon receiving a majority of the votes on the question. A candidate not elected may not be appointed to that court but later may be nominated and elected. If the judge does not file a declaration of candidacy and the Governor does not nominate a candidate, a vacancy shall occur in the office upon the expiration of the judge's current term.

Comment: Section 16 is amended to improve the process of judicial selection.

The subdivisions within Section 16 are in a somewhat confusing order. Subdivision (a) and (d) deal with appellate offices, and subdivisions (b) and (c) deal with superior court offices. The amendment proposes a complete reordering of the language of the section to make it clearer. Subdivision (a) would cover terms, elections, and filling of vacancies for

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Supreme Court and court of appeal justices and subdivision (b) would cover superior court judges. The reordering of the provisions, however, is not intended to fundamentally alter the pattern of superior court contested elections and appellate court retention elections.

In addition, other changes proposed to the section include:

(1) Clarify which officers are voted on at which elections. The term “general election” as used in the Constitution has two meanings—referring both to the direct primary election (currently held in June of even-numbered years) and the runoff or general election (held in November of even-numbered years). For superior court positions, it is possible (and occurs with some regularity) that no candidate receives a majority of votes at the first election and a runoff is necessary. The normal process is to hold the initial election at the direct primary, with a runoff, if needed, in November. The proposed language makes explicit these two election dates. (Subdivisions (a)(1) and (b)(2))

(2) Provide that retention elections for appellate justices occur at those general elections that occur in November of even-numbered years, rather than only at gubernatorial elections, which occur at four-year intervals. With over 100 appellate justices in California, it is preferable to spread out appellate retention elections to reduce the number of justices appearing on the ballot in any one election. (Subdivision (a)(1))

(3) Provide that an appointee to a vacant appellate judicial office will, following a successful retention election, serve a full term of office. Under current law, an appointee who is elected for an unexpired term serves out only the remainder of the unexpired term. In some cases, this means that an appointee’s first retention election is for a four-year or eight-year term followed by a second retention election. In light of the proposal to permit appellate retention elections at all November general elections, an appointee elected to an unexpired term could serve for as few as two years before being required to stand for a second retention election. It is confusing to voters to have appellate justices running for retention elections with different terms of office (i.e., 4 years, 8 years, or 12 years) when the difference in the length of term is based upon the randomness of the timing of the vacancy and subsequent appointment. (Subdivision (a)(1))

(4) Permit an appointee to the Supreme Court or court of appeal to serve at least 24 months in office prior to standing for retention election. This provides sufficient time for an appointee to establish a record of performance that the community may assess through the retention election process. (Subdivision (a)(3))

(5) Encourage the Governor to make appointments to vacant positions within six months of the vacancy so that the court system will not be adversely affected by lengthy vacancies. (Subdivision (b)(5))

(6) Permit an appointee to serve at least 24 months in office prior to standing for election if the Governor has made the appointment within six months of the vacancy. This

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provides sufficient time for an appointee to establish a record of performance that the community may assess through the election process. (Subdivision (b)(5)(i))

(7) Place in the Constitution the holding of *Stanton v. Panish* (1980) 28 Cal.3d 107 that a vacancy does not occur if a candidate has qualified for the election prior to a judge leaving office. (Subdivision (b)(4))

Judicial salary

Section 19 of Article VI would be amended to read as follows:

~~The Legislature shall prescribe compensation for judges of courts of record.~~

(a) Beginning 2007, on July 1 of each year the salary of each judge and justice shall be increased by that amount which is produced by multiplying the then-current salary of each judge or justice by the average percentage compensation increase for the current fiscal year for California State employees; provided, that in any fiscal year in which the Legislature places a dollar limitation on compensation increases for state employees, the same limitation shall apply to judges and justices in the same manner applicable to state employees in comparable wage categories. As used in this subdivision, the salary of each judge or justice as of July 1, 2007, is the salary as determined by the law in effect on June 30, 2007. The Legislature may provide for a method of determining the salary increases provided for by this subdivision.

(b) The California Judicial Salary Commission, created by this section, may provide an increase in the salary of judges and justices in addition to that increase provided by subdivision (a). The commission shall take into account the increase provided by subdivision (a).

(c) If the percentage increase in judicial salaries under subdivision (a) together with any commission-ordered increase under subdivision (b) is greater than the percentage increase in the change in the cost of living component of the annual state appropriation limit, there shall be added to the base funding for the courts under Section 6.5 of this article an amount to make up the difference.

(d) The commission shall consist of the following persons:

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(1) Three public members, all appointed by the Governor, one of whom has expertise in the area of salary and particularly salary of members of the legal profession, such as an economist, market researcher, or personnel manager; one of whom is a member of a nonprofit public interest organization; and one of whom is representative of the general population. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, or have been a candidate for elective public office.

(2) Two members who have experience in the business community, one of whom is an executive of a corporation that ranks among the largest private sector employers in the State based on the number of employees employed by the corporation in this State, who is appointed as provided by the Senate, and one of whom is an owner of a small business in this State, who is appointed as provided by the Assembly.

(3) Two members who are officers or members of a labor organization, one of whom is appointed as provided by the Senate and the other of whom is appointed as provided by the Assembly.

(4) Two members who are members of the State Bar of California, both of whom are appointed by the Chief Justice. The Chief Justice shall strive to appoint bar members who reflect the diversity of bar members in terms of geographic location, and type and size of practice.

(e) Each appointing authority shall appoint commission members not later than 30 days after the effective date of this section. At the first meeting of the commission the members shall select one member as chairperson and the members shall draw lots to determine the initial term of each member. The terms of three of the initial appointees shall expire on December 31, 2008, three on December 31, 2010, and three on December 31, 2012. Thereafter, the term of each member shall be six years. Within 15 days of any vacancy, the appointing authority shall appoint a person to serve the unexpired portion of the term.

(f) Public notice shall be given of all meetings of the commission, and the meetings shall be open to the public.

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(Not Yet Reviewed by Judicial Council)

(g) The commission shall meet at least every two years to consider increasing the salary of judges and justices pursuant to subdivision (b). The commission may adjust the annual salary of judges and justices by a single resolution adopted by a majority of the membership of the commission, and filed with the Secretary of State. The salary adjustment shall be effective on the first day of July following the adoption of the resolution unless otherwise specified in the resolution.

(h) In making its determination the commission shall consider the following:

(1) The amount of time directly or indirectly related to the performance of the duties, functions, and services of a judge or justice.

(2) The amount of the annual salary for other elected and appointed officers and officials in this state, and, to the extent practicable, for the private sector, including members of the bar in both public and private practice, recognizing, however, that (i) judges and justices do not receive, and do not expect to receive, salary at the same levels as individuals in the private sector with comparable experience and responsibilities, (ii) the salary for judges and justices represents a significant factor in the ability of the state to attract and retain qualified candidates for judicial positions, and (iii) the ethical limitations for judicial officers on receiving other remuneration

(3) The responsibility and scope of authority of the entity in which the judge or justice serves.

(4) The amount of any increases in salary received by judges or justices under subdivision (a) of this section.

(i) All commission members shall receive their actual and necessary expenses, including travel expenses, incurred in the performance of their duties. Each member shall be compensated at the same rate as members, other than the chairperson, of the Fair Political Practices Commission, or its successor, for each day engaged in official duties, not to exceed 45 days per year.

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(Not Yet Reviewed by Judicial Council)

(j) The Judicial Council shall provide staff and services to the commission as needed for the performance of its duties and shall be responsible for the compensation and expenses of the members of the commission.

(k) “Judge or justice” or “judge and justice” as used in this section, means justices of the Supreme Court and the courts of appeal, and judges of the superior courts.

(l) A judge or justice of a court of record may not receive the salary for the judicial office held by the judge or justice while any cause before the judge or justice remains pending and undetermined for 90 days after it has been submitted for decision.

Comment: Subdivision (a) continues in effect the current statutory language providing judges and justices with the same general salary increases provided to state employees.

The use of a neutral salary-setting commission for state officials generally, set forth in article III, section 8 of the Constitution, provides a means for keeping salaries current and for minimizing the perception that politics affects the salary-setting process for these positions.

Subdivision (b) establishes a separate judicial salary commission. The commission, at least every two years, would consider whether judicial salaries should be increased by an amount greater than the amount specified in subdivision (a).

The establishment of a separate judicial salary commission would enable that commission to consider the specialized issues that affect judicial salary including the full-time nature of the judicial position, the ethical constraints against most other remunerative activity, the need for adequate salary to attract and retain qualified judges, and the importance of the judicial office in ensuring the effective and efficient administration of justice.

Members of the commission would be appointed by the Legislature (labor and business representatives), the Governor (public members), and the Chief Justice (lawyer members). The appointment authority of the Chief Justice, even though the salary of the Chief Justice is also set by the commission, is consistent with the practice for the state officer commission whose members are appointed by the Governor even though the commission also sets the salary of the Governor.

The structure and regulation of the commission is similar to that for the state official salary setting commission. An additional factor that the commission would consider in setting judicial salaries is a recognition of the need for adequate salary to attract qualified judges. Consideration has been given to including a provision that any person who is a

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party to litigation in any court in the state is ineligible for membership on the commission. Such a provision has not been included because it might disqualify a large number of potential members who would be unlikely to be affected in their decision making by the existence of pending litigation involving them.

The language in subdivision (c) automatically funds any commission or other action raising judicial salaries.

Technical change to conform to judicial salary setting commission

Section 4 of Article III would be amended to read as follows:

(a) * * *

(b) Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. ~~The Legislature~~ California Judicial Salary Commission established by Section 19 of Article VI may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws, including actions of the California Judicial Salary Commission, setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law.

Comment: This amendment to subdivision (b) conforms the language concerning the setting of salaries of judges to the new California Judicial Salary Commission proposed above in Section 19 of Article VI.