

ARTICLE VI DRAFT FOR FEB. 17 JUDICIAL-BAR LEADERSHIP EDUCATION / DISCUSSION PROGRAM

(Prepared at the Request of Senators Joseph Dunn and Richard Ackerman;
Not Yet Reviewed by Judicial Council or Senators Dunn and Ackerman)

Draft Amendments to Constitution Concerning Judicial Branch

(February 14, 2005)

Judicial power; the judicial branch

Section 1 of Article VI would be amended to read as follows:

(a) The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts, all of which are courts of record.

(b) The judicial branch includes the courts, the Judicial Council, the Commission on Judicial Appointments, the Commission on Judicial Performance, the State Bar of California, and other entities established by the foregoing or as designated by law.

Comment: Subdivision (a) contains the current language of section 1.

Subdivision (b) reflects existing law. The phrase “judicial branch” is used, but not clearly defined in Section 4 of Article VII of the Constitution (“The following are exempt from civil service: ... (b) Officers and employees appointed or employed by councils, commissions or public corporations in the judicial branch or by a court of record or officer thereof”) and in several statutes (see Bus. & Prof. Code, §§ 6008, 6008.2, 6210, 6236; Code Civ. Proc., §§ 1775; Gov. Code, §§ 1156, 11019.6, 11410.20, 12080, 20397, 20677.2, 21353, 21354.1, 21363, 21363.1, 22875, 68090.8, 68655, 68661, 77100, 82011, 82048, 84308, 87200, 87311.5, 87400; Pen. Code, §§ 115.3, 830.36, 13828.1; and Pub. Contract Code, §§ 7103, 10335.7). The concept of “branches” of government also is used by the courts in the context of separation-of-powers jurisprudence. See *Carmel Valley Fire Protection District v. California* (2001) 25 Cal.4th 287, 297 (“The separation of powers doctrine limits the authority of one of the three branches of government to arrogate to itself the core functions of another branch”).

All of the entities listed in subdivision (b) are recognized as being within the judicial branch. Entities not expressly listed that also are part of the judicial branch, pursuant to the language “other entities established by the foregoing or as designated by law,” include the Habeas Corpus Resource Center (Gov. Code, § 68661) and the Administrative Office of the Courts (Cal. Rules of Court, rule 6.81). Judicial branch entities also, from time to time, establish task forces, committees, or commissions (e.g., Cal. Rules of Court, rules 6.30–6.70).

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Judicial Council: Membership, chairperson

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

(a) 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 the superior courts, ~~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; two judges or justices appointed by the Chief Justice for one-year terms pursuant to procedures established by the council; four members of the State Bar appointed by the Chief Justice for three-year terms pursuant to procedures established by the council, which shall include a requirement that its the governing body of the State Bar submit nominations for the positions constituting three times the number of such positions for three-year terms; and one nonvoting member of each house of the Legislature appointed as provided by the house. The governing body of the State Bar shall ensure that its nominees reflect the diversity of bar members in terms of geographic location, type and size of practice, and background. Notwithstanding Section 2 of this Article providing for an acting Chief Justice, 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: 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) is amended to make explicit again that the Chief Justice heads the Judicial Council and changes the title to “chairperson.”

Additional language 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. The “Notwithstanding” language in this

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section is designed to ensure that the vice chairperson may function as chairperson of the council even though another person is serving as acting Chief Justice.

Subdivision (a) also is amended to reflect the current practice of appointing three court administrators to the council. This practice results in representation for a significant segment of the judicial branch on the council and its internal committees. Subdivision (a) makes the court administrators voting members instead of nonvoting members. Court administrators have been valuable participants in the council's deliberations and in the judicial branch generally, and it is appropriate to recognize their voice through voting membership.

Subdivision (a) 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) 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.

Subdivision (a) changes the method of appointment of state bar members of the council. It transfers authority to make the appointment from the State Bar Board of Governors to the Chief Justice. The procedural requirements, to be adopted by the council, will require the Board of Governors to submit nominations constituting three times the number of open positions. The requirements for diversity are intended to balance the views of various segments of the bar and to encourage the Board of Governors to select nominees from different parts of the legal community in a manner similar to the process used for other nominations to the council. (See California Rules of Court, rule 6.4(a)(1): "The selected nominees should represent diverse backgrounds, experiences, and geographic locations.")

At the suggestion of members of the Legislature, subdivision (a) 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.

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).

(b)–(c) * * *

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Judicial Council: Purpose, authority

(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; establish policies and make recommendations to promote access to the courts and to improve the fair and effective administration of justice; 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 with 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 and the setting of policy for the branch. 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).

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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 for the judicial branch, duties imposed on the council should be limited to those related to the administration of justice.

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.

Judicial Council: New judicial positions

(e) Effective January 1, 2010, the Judicial Council shall establish uniform criteria for determining the need for additional superior court judges and court of appeal justices. If a need is established for additional judgeships, the Judicial Council shall certify to the Legislature its findings and recommendations concerning such need. The Legislature shall act on these findings and recommendations within one year of their submission.

Comment: This new provision would provide that the Judicial Council’s certification, based on uniform criteria, of the need for additional judgeships would be submitted to the Legislature for consideration. The Legislature would have one year to consider and either accept or reject the findings and recommendations.

The term “judgeship” includes judicial positions in both the courts of appeal and the superior courts.

The State Appropriation Limit adjustment in proposed section 6.5 would provide an appropriate funding mechanism for any new positions created under this provision absent extraordinary circumstances.

(f) * * *

(g) ~~(f)~~ * * *

Judicial Council: Court fees

(h) The Judicial Council shall establish statewide fees for court services and shall adopt rules under which a court may waive fees.

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(1) The Judicial Council biannually shall review statewide fees and may make necessary adjustments not greater than the changes in the California Consumer Price Index for All Urban Consumers or its successor index. The Legislature may make additional adjustments to statewide fees.

(2) Fees for services performed by the courts shall be remitted for transfer to the appropriate state court fund, to be overseen and allocated by the Judicial Council, and shall be used exclusively to support the courts.

Comment: Subdivision (h) is new language providing authority for the council over the setting of court fees and the uses made thereof. This subdivision limits the amount of adjustment in the fees to the rise in the consumer price index since the last increase in fees and requires that fees for court services be used to support the courts.

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

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Budget

[The language of section 6.5, which would provide the budgetary and appropriation provisions for the courts and the Judicial Council, is still under discussion with the Department of Finance. The language will be submitted at a later date. The comments below indicate the intent and purpose of this section.]

Comment: This section will be designed to 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.

Presently under consideration are provisions that would automatically increase the base budgets of the courts and the Judicial Council based on changes in the State Appropriation Limit (SAL). Provisions also 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 statute, 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 court facilities.

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.

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The State Bar, subject to the Supreme Court’s supervision and direction, serves as the administrative arm of the Supreme Court in the court’s discharge of its responsibilities concerning the admission and discipline of attorneys.

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

[The language proposed for section 16, which would make modifications to the provisions involving judicial elections and vacancies, is proposed as one possibility among other reforms that might be considered.]

Section 16 of Article VI would be amended to read as follows:

(a) ~~Judges~~ Justices of the Supreme Court shall be elected at large and ~~judges~~ justices of courts of appeal shall be elected in their districts at the November general elections at the same time and places as the Governor held in even-numbered years. Their terms are 12 years beginning the Monday after

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January 1 following their election, ~~except that a judge elected to an unexpired term serves the remainder of the term~~ except for initial terms of justices of a new court of appeal district or division. 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) * * *

(c) Terms of judges of superior courts are 10 ~~six~~ years beginning the Monday after January 1 following their election. A vacancy ~~shall~~ may be filled by appointment by the Governor. If the Governor appoints a person to fill the vacancy within six months of the occurrence of the vacancy, the election for a 10-year term shall be held at the next general election following the January 1 after the judge has served two years in office. Otherwise, the election to a full for a 10-year term shall be held at the next general election following the January 1 more than eight months after the second January 1 following the occurrence of the vacancy; but the Governor shall appoint a person to fill the vacancy temporarily until the elected judge's term begins. A vacancy occurs when (1) a judge does not file for reelection and the judge's term ends or (2) a judge leaves office before the end of his or her term. As used in this subdivision, "general election" means the primary election preceding the statewide election held in November of even-numbered years at which candidates for the November election are selected and the statewide election held in November.

(d) (1) Within 30 days before August 16 preceding the expiration of the ~~judge's~~ justice's term, a ~~judge~~ 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 ~~judge~~ justice. 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.

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(2) The Governor shall fill vacancies in those courts 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. ~~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) * * *

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. Although a reorganization of these subdivisions would improve readability, the reorganization also would create some degree of confusion in light of the substantial number of cases that have been decided under the existing structure of Section 16. Because the amendments being proposed do not fundamentally alter the pattern of superior court contested elections and appellate court retention elections, the existing structure of Section 16 is retained.

Subdivision (a) is amended to 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) is amended to 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) where the difference in the length of term is based upon the randomness of the timing of the vacancy and subsequent appointment.

Subdivision (c) is amended in order to accomplish four purposes. It is proposed that:

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1. Terms for superior court judges be increased to 10 years.
2. If a judge does not file for reelection and serves out his or her term, the position be deemed vacant at the expiration of the judge's term; as in the case of all vacancies, the Governor may make an appointment to fill the vacancy.
3. The Governor be encouraged to make appointments to vacant positions within six months of the vacancy so that the court system will not be adversely affected by an undue number of vacancies.
4. An appointee 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.

The existing provision specifies that the election to fill a vacancy normally occurs at the first general election that occurs after the January 1 more than eight months after the vacancy. The nomination process for an election begins a bit less than four months before the election (113 days). Case law holds that an election begins with the nomination process and thus continues even if the Governor appoints a person to the vacancy. (See *Stanton v. Panish* (1980) 28 Cal.3d 107.) The draft provision starts the election process (i.e., the nomination process) at least 10 months after the vacancy (eight months of vacancy and two months from January to March), ensuring that no election process will have commenced until the Governor has had at least six months to fill the vacancy.

Subdivision (c) would provide that the election-process schedule changes when the Governor makes an appointment within six months of the vacancy. In that circumstance, the election takes place after the appointee has served at least two years in office.

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 in subdivision (c) makes explicit these two election dates.

Subdivision (d) is amended so that an appointee to an appellate court will first stand for retention election only after having served in office at least two years. The scheduling of this election will ensure that there is a sufficient time for an appointee to establish a record of performance that the community may assess through the retention election process.

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Expansion of discipline options for CJP

Section 18 of Article VI would be amended to read as follows:

(a)–(c) * * *

(d) ~~Except as provided in subdivision (f),~~ The Commission on Judicial Performance may (1) retire a judge or justice for disability that seriously interferes with the performance of the judge’s or justice’s duties and is or is likely to become permanent, or (2) censure a judge or former judge or remove a judge for action occurring not more than 6 years prior to the commencement of the a judge’s or justice’s current term or of the a former judge’s or justice’s last term that constitutes willful misconduct in office, persistent failure or inability to perform the judge’s or justice’s duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or for (3) publicly or privately admonish a judge or former judge found to have engaged in an improper action or dereliction of duty, take one or more of the following disciplinary actions as appropriate based upon the circumstances of the case and any prior acts of misconduct: issue an advisory letter, private admonishment, or public admonishment; censure; order restitution; suspend the judge or justice from office for up to 60 calendar days without salary; and remove the judge or justice. In addition or as an alternative to the foregoing discipline, the commission may require completion of appropriate treatment and educational programs.

The commission may also bar a former judge or justice who has been censured from receiving an assignment, appointment, or reference of work from any California state court. Upon petition by the judge or justice or former judge or justice, the Supreme Court (or a tribunal of court of appeal justices as provided in subdivision (f) of this section) may, in its discretion, grant review of a determination by the commission to retire, ~~remove,~~ ~~censure,~~ ~~admonish~~ discipline, require treatment and educational programs, or disqualify pursuant to subdivision (b) a judge or justice or former judge or justice. When the Supreme Court reviews a determination of the commission, it may make an independent review of the record. If the

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Supreme Court has not acted within 120 days after granting the petition, the decision of the commission shall be final.

(e)-(m) * * *

Comment: Subdivision (d) is amended to clarify the Commission on Judicial Performance's flexibility in choosing among disciplinary options within the context of a general system of progressive discipline, and to authorize certain new, intermediate remedies. These new remedies are restitution, suspension from office for up to 60 calendar days without pay, and requiring the completion of treatment and educational programs. Consistent with the Supreme Court's ruling in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, "advisory letters" are included within the list of disciplinary options.

Subdivision (d) also is amended to clarify that suspension of a judge or justice constitutes suspension without *salary* rather than suspension without pay or compensation. This is to indicate that a judge's or justice's benefits will continue to be afforded.

Judicial salary

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

Section 19. ~~The Legislature shall prescribe compensation for judges of courts of record.~~

(a) Beginning 200#, 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, 200#, is the salary as determined by the law in effect on June 30, 200#. The Legislature may provide for a method of determining the salary increases provided for by this subdivision.

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(b) The California Judicial Compensation 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).

(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:

(1) Three public members, all appointed by the Governor, one of whom has expertise in the area of compensation and particularly compensation 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 incorporated in this State 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 shall be appointed as provided by the Senate, and one of whom is an owner of a small business in this State, who shall be appointed as provided by the Assembly.

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

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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 terms of each members. 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.

(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

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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.

(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.

(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 compensation 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).

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The establishment of a separate judicial compensation commission would enable that commission to consider the specialized issues that affect judicial compensation including the full-time nature of the judicial position, the ethical constraints against most other remunerative activity, the need for adequate compensation 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 factors that the commission would consider in setting judicial salaries is a recognition of the need for adequate compensation to attract qualified judges. Consideration has been given to including a provision that any person who is a 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.

Judicial benefits

Section 20 of Article VI would be amended to read as follows:

Section 20. The Legislature shall provide for retirement, with reasonable allowance, of judges and justices of courts of record for age or disability. The Judicial Council may provide for additional benefits for judges and justices.

Comment: The Legislature's authority to provide retirement benefits for judges and justices is unchanged.

Under this amendment, the Judicial Council would have express authority to provide other benefits to judges and justices. Several counties provide benefits for judges under

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existing law. This provision does not change this practice, nor is it intended to alter these benefits. However, the council would have the authority to eliminate disparities in the benefits available to judges and justices statewide that result from these provisions.

Technical change to conform to definition of judicial branch

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

The following are exempt from civil service:

(a) * * *

(b) Officers and employees appointed or employed by an entity in the judicial branch or by an officer of a court of record ~~councils, commissions or public corporations in the judicial branch or by a court of record or officer thereof.~~

(c)–(m) * * *

Comment: This amendment to subdivision (b) conforms the use of the phrase “judicial branch” to the definition proposed above in Section 1 of Article VI.