



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: May 17, 2012

Title	Agenda Item Type
Judicial Council: Nonvoting Judicial Council Positions	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	May 17, 2012
Recommended by	Date of Report
Hon. Douglas P. Miller, Chair Executive and Planning Committee	May 16, 2012
	Contact
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Executive Summary

The chair of the Executive and Planning Committee recommends that the Judicial Council approve three advisory nonvoting Judicial Council positions. The Judicial Council has the authority to add nonvoting positions under Article VI, section 6 of the California Constitution and rule 10.2 of the California Rules of Court. These positions will provide the council with additional perspective, experience, diversity, and wisdom.

Recommendation

The chair of the Executive and Planning Committee recommends that the Judicial Council approve the addition of three nonvoting advisory council positions, each for a three-year term from September 15, 2012, through September 14, 2015.

Previous Council Action

Continuing Advisory Council Positions

Effective July 1, 1993, the Judicial Council adopted rule 1005 of the California Rules of Court, which expressly authorized the Chief Justice to appoint nonvoting advisory members to the council. Rule 1005(g)(1)(3) required the following five nonvoting members: three trial court administrators,¹ one appellate court clerk, and one court commissioner.

Effective June 3, 1998, the California voters approved Proposition 220 which, among other things, amended Article VI, section 6 of the California Constitution to require two “nonvoting court administrators” to serve on the Judicial Council and allow the council to establish other nonvoting positions.² Effective January 1, 1999, rule 6.2(a) incorporated the council membership list, as approved in Proposition 220.³ At the time Proposition 220 was passed, the council had six nonvoting members—the five specified in rule 1005 and the president of the California Judges Association (CJA), appointed under the general authority of the Chief Justice under rule 1005(g).

To preserve the four nonvoting positions⁴ not specified under amended Article 6, the council approved those positions through September 14, 1999, by circulating order on July 28, 1998. The following year, another circulating order extended those positions by an additional year, through September 14, 2000.

On July 18, 2000, the council approved by circulating order the recommendation from its Executive and Planning Committee (E&P) that the council have the following five advisory⁵ positions: three court administrators (one of which may be an appellate court clerk at the Chief Justice’s discretion),⁶ the president of the CJA, and a superior court commissioner. The terms of these positions are open-ended, although the circulating order states that the council intends to review the appropriateness of the commissioner’s position.

In 2000, the council amended rule 6.46(f), now rule 10.46(f), to add another advisory council position for the chair of the Trial Court Presiding Judges Advisory Committee. The rule provides that the advisory committee submits three nominations for its chair each year to the Chief Justice. The Chief Justice selects the chair, who serves as an advisory member of the council.

¹ Rule 1005 did not use the term, trial court administrator, but rather “either a superior court clerk or a trial court executive officer. . . .”

² Proposition 220 added to the list of Judicial Council members contained in Article VI, section 6, “two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council....”

³ Rule 6.2(a) was renumbered as Rule 10.2(a) effective January 1, 2007.

⁴ These four positions comprise one trial court administrator, one appellate court clerk, one court commissioner, and the president of the California Judges Association.

⁵ In the 1998 and 1999 circulating orders, these positions were described as “nonvoting.” In the 2000 circulating order, these positions were described as “advisory.”

⁶ These three court administrators included the two identified in the constitution, as a result of Proposition 220.

Single Term Advisory Council Positions

From time to time, the council has created advisory positions for single terms.

- In May 2005, E&P created on behalf of the council an advisory position for a single term. At that time, the Chief Justice appointed an additional court administrator to the Judicial Council for a three-year term, bringing the total number of court administrators on the council to four; when that position lapsed in September 2008, the council was left with three court administrators as advisory members.
- In May 2009, E&P created on behalf of the council another advisory position for a single term. The Chief Justice appointed an additional court administrator, Mr. Frederick K. Ohlrich, for a three-year term, returning the number of court administrators on the council to four. Mr. Ohlrich's advisory position lapses this September.
- In April 2010, E&P created on behalf of the council a limited-term advisory position and nominated Judge Terry B. Friedman (retired) to fill it. Judge Friedman's advisory position lapses this September.
- In May 2010, E&P created on behalf of the council two additional advisory member positions, to which the Chief Justice appointed Judges Teri L. Jackson and Robert J. Moss. These two terms end September 14, 2013.⁷
- In May 2011, the Chief Justice appointed Judge Teri Jackson to a three year term as a voting member of the council effective September 15, 2011, and appointed Judge David De Alba to complete Judge Jackson's advisory term ending in September 2013.

Rationale for Recommendation

Rule 10.4(a) observes that nominees for positions on the Judicial Council should be drawn from diverse backgrounds, experiences, and geographical locations. The Judicial Council has recognized that it benefits from a diverse group of members. Diversity and the resultant collective wisdom can only be achieved with a sufficient number of members.

Although the Constitution limits the number of voting members on the council to 21, and requires two nonvoting court administrator members, there is no upper limit on the size or composition of the advisory membership of the council.⁸ The council can be as small as the

⁷ E&P also created on that date an additional short-term advisory position, which allowed the Chief Justice to appoint Judge Mary Ann O'Malley as an advisory member for another three and a half months after she completed her year on the council as chair of the Trial Court Presiding Judges Advisory Committee.

⁸ "The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, three judges of courts of appeal, 10 judges of superior courts, 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; and one member of each house of the Legislature appointed as provided by the house." (Cal. Const., art. VI, §6(a).)

constitutionally required 23 members, or as large as the voting membership chooses. For the past several years, the council has had about 10 advisory members.

This spring, the Chief Justice will be making appointments to this year's vacancies on the council: four trial court judge positions (voting) and one court administrator position (advisory). In addition, the Chief Justice has indicated that she would like three additional advisory positions to which she may make council appointments.

Because the advisory positions currently held by Judge Friedman and Mr. Ohlrich lapse this September, the addition of three nonvoting advisory council positions effective September 2012 will result in a net gain of one additional council member. In September 2013, the advisory position currently held by Judge De Alba will lapse. Unless an additional position is created next year, that lapse will result in the council membership returning to its current number: 21 voting members and 10 advisory members.

Adding three advisory positions as suggested by the Chief Justice will expand the council's collective perspective, experience, diversity, and wisdom at a time when these qualities are most needed to address the circumstances facing the judicial branch.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment.

Implementation Requirements, Costs, and Operational Impacts

The creation of these positions will have a negligible cost impact because it coincides with the lapse of an almost equal number of advisory positions. There will be no implementation or operational impacts from this minor change in the number of members, as the council will operate in essentially the same way whether it has 32 or 31 or 29 members.