



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 27, 2012

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| Title | Agenda Item Type |
| Other Postemployment Benefits: Prefunding Policy and Qualified Irrevocable Trusts | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| Statement of Policy for Prefunding Other Postemployment Benefits and Establishing Qualified Irrevocable Trusts in the Trial Courts, adopted October 23, 2009 | July 27, 2012 |
| | Date of Report |
| | July 05, 2012 |
| Recommended by | Contact |
| Court Staff Retirement Cost and Planning Working Group, Court Executives Advisory Committee | Kenneth R. Couch, 415-865-4271 |
| Pat Sweeten, Chair | kenneth.couch@jud.ca.gov |

Executive Summary

The Court Staff Retirement Cost and Planning Working Group of the Court Executives Advisory Committee (CEAC) recommends that the council adopt a revision to the Judicial Council policy on prefunding other postemployment benefits (OPEB) and establishing irrevocable trusts within the trial courts. The revision would require trial courts to notify the Administrative Office of the Courts of their intent to establish an irrevocable trust and to continue to follow the Judicial Council's Statement of Investment Policy for the Trial Courts, adopted in 2004.

Recommendation

The Court Staff Retirement Cost and Planning Working Group of the Court Executives Advisory Committee recommends that the Judicial Council, effective July 27, 2012, revise the Statement of Investment Policy for the Trial Courts to:

1. Require that the trial courts seeking to establish irrevocable trusts to only notify the AOC Human Resources Office, Administrative Services Division; and
2. Require trial courts seeking to fund established trusts to continue following the Judicial Council's *Statement of Investment Policy for the Trial Courts*.

In the event the council does not revise the policy, the working group recommends that the council accept the recommendation of Interim Administrative Director Jody Patel and approve the request of the Shasta County Superior Court to establish an irrevocable trust for the purposes of funding OPEB.

The text of the proposed revision to the policy is attached at page 6.

Previous Council Action

At its meeting on October 23, 2009, the Judicial Council adopted its *Statement of Policy for Prefunding Other Postemployment Benefits and Establishing Qualified Irrevocable Trusts in the Trial Courts* to provide trial courts with guidance and authorization protocols for prefunding other postemployment benefits obligations. The policy included a moratorium through June 30, 2011, on trial courts' establishing qualified irrevocable trusts for the purpose of prefunding OPEB. The moratorium was established in consideration of the ongoing budget difficulties facing the judicial branch. Since the moratorium has expired, two trial courts have inquired about establishing qualified irrevocable trusts.

Rationale for Recommendation

In reviewing the courts' requests, staff from Human Resources, Finance, and the Office of the General Counsel have determined there should be a difference between establishing a qualified irrevocable trust, and the financial implications of funding such a trust. The intent of the proposed revision is to separate the more administrative act of establishing the trusts from the financial decision and implications of financing such trust.

Under the recommended revision, the *Statement of Policy* adopted in October 2009 will address the administrative act of establishing these trusts, while the financial aspects will continue to be governed and addressed by the Judicial Council's *Statement of Investment Policy for the Trial Courts*, adopted in 2004.

Comments, Alternatives Considered, and Policy Implications

Members of the CEAC Court Staff Retirement Cost and Planning Working Group commented, reviewed, and approved the proposed revision.

Implementation Requirements, Costs, and Operational Impacts

The proposed revision to current policy involves no cost to participating courts. The proposed revision will make the administrative act of establishing a qualified irrevocable trust simpler, while maintaining the requirements of existing policy on investments.

Relevant Strategic Plan Goals and Operational Plan Objectives

N/A

Attachments

1. Current policy
2. Proposed revisions to the current policy

recommended to modernize expectations for ethical employee conduct and ensure the public's trust and confidence in the justice system.

Council action

The Judicial Council, effective October 23, 2009:

1. Approved the proposed nonsubstantive clarifying language amendments contained throughout the 12 tenets and guidelines of the Code of Ethics;
2. Amended Tenet Eight to combine the original Tenet Eight (Duty to serve) with the original Tenet Nine (Competency) to create a new Tenet Nine (Service and competency);
3. Approved a new Tenet Eight and guideline (Public resources) that address the importance of good stewardship of court public resources;
4. Amended Tenet Eleven (Harassment) to expand the guidance to avoiding all categories of harassment, including sexual harassment; and
5. Directed the AOC to start the proposal process to amend rule 10.473(c)(1) of the California Rules of Court to include a requirement of a minimum of 3 hours of ethics training as part of the 30 hours of continuing education that trial court executive officers must complete every 3 years.

Item F Statement of Policy for Prefunding Other Postemployment Benefits and Establishing Qualified Irrevocable Trusts in the Trial Courts

Mr. Ernesto V. Fuentes and Mr. Kenneth R. Couch, Human Resources Division, presented this item.

The Administrative Office of the Courts proposed that the Judicial Council adopt a policy and guidelines on prefunding other postemployment benefits and the establishment of irrevocable trusts by the trial courts. The policy would require trial courts to work with the AOC in determining the court's ability to prefund such trusts, as well as the actual process of establishing an irrevocable trust. No current policy or guidelines covered these issues.

Council action

The Judicial Council, effective October 23, 2009, adopted the following policy directives to provide trial courts with guidance and authorization protocols for prefunding other postemployment benefits (OPEB) obligations:

1. Courts offering OPEB, such as retiree health insurance, should consider prefunding as a financial goal. In considering to prefund OPEB, each trial court should take into account its current and future financial condition and determine whether prefunding is in the best interest of the court in balancing and reconciling the branch's goals to provide access to the courts.

2. Given the difficult financial condition of the State Budget, the Judicial Council should establish a moratorium on authorizing prefunding of OPEB. This moratorium on prefunding should last for a two-year period, ending June 30, 2011. The Judicial Council should delegate to the Administrative Director of the Courts (ADC) the authority to grant exceptions to this moratorium. The ADC will consider exceptions on a case-by-case basis. Factors creating exceptions may include extenuating circumstances beyond the control of the court and/or contractual obligations under a memorandum of understanding that require prefunding. Additionally, courts must consult with the AOC Finance Division in determining a court's ability to prefund these benefits.
3.
 - a. Trial courts prefunding their OPEB, in accordance with this policy and working in conjunction with the AOC Finance Division, must follow Government Accounting Standards Board Standard 43 and establish a qualified irrevocable trust that follows the Internal Revenue Code section 115.
 - b. Numerous entities provide such qualified trusts. However, the California Employer's Retiree Benefit Trust available through the California Public Employees' Retirement System (CalPERS) and Public Agency Retirement Services are the providers of qualified trusts authorized by the Judicial Council. Trial courts seeking to use other providers for establishing a qualified irrevocable trust must receive prior approval from the ADC.
 - c. A court must not make itself a fiduciary for the qualified irrevocable trust.
4. Trial courts prefunding their OPEB must follow the Judicial Council's *Statement of Investment Policy for the Trial Courts*, adopted in 2004. The policy requires that the Judicial Council or its designee, the Administrative Director of the Courts, approve all investments.
5. Trial courts prefunding their OPEB by establishing a qualified irrevocable trust must contact the AOC Human Resources Division. The division will coordinate a trial court's application through review by the AOC Finance Division and the Office of the General Counsel, with final approval by the ADC.

Item G Allocation of Special Fund Monies for Court System Projects and Programs in FY 2009–2010

Mr. Stephen Nash and Mr. Steven Chang, Finance Division, presented this item with the participation of Mr. Colin Simpson, Finance Division.

The Administrative Office of the Courts recommended approval of allocations from the Trial Court Improvement Fund, Judicial Administration Efficiency and Modernization

1. Courts offering other postemployment benefits (OPEB), such as retiree health insurance, should consider prefunding as a financial goal. In considering to prefund OPEB, each trial court should take into account its current and future financial condition and determine whether prefunding is in the best interest of the court in balancing and reconciling the branch's goals to provide access to the courts.
2. a. Trial courts prefunding their OPEB must follow Government Accounting Standards Board Standard 43 and establish a qualified irrevocable trust that follows the Internal Revenue Code section 115.

b. Numerous entities provide such qualified trusts. However, the California Employer's Retiree Benefit Trust available through the California Public Employees' Retirement System (CalPERS) and Public Agency Retirement Services are the providers of qualified trusts authorized by the Judicial Council.

c. A court must not make itself a fiduciary for the qualified irrevocable trust.
3. Trial courts prefunding their OPEB must follow the Judicial Council's *Statement of Investment Policy for the Trial Courts*, adopted in 2004.
4. Trial courts prefunding their OPEB by establishing a qualified irrevocable trust must notify the AOC Administrative Services Division, Human Resources Office.