



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on June 28, 2013

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Title	Agenda Item Type
Trial Courts: Trial Court Presiding Judges Advisory Committee Chair Nomination Process	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 10.46	July 1, 2013
Recommended by	Date of Report
Trial Court Presiding Judges Advisory Committee (TCPJAC) Hon. Laurie M. Earl, Chair	June 5, 2013
	Contact
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### **Executive Summary**

The Trial Court Presiding Judges Advisory Committee recommends amendments to the California Rules of Court, rule 10.46(f), to permit the committee to submit to the Chief Justice *one name* for appointment as chair of the committee. Currently, the rule requires the committee to submit three nominations.

### **Recommendation**

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council amend rule 10.46(f) of the California Rules of Court to provide that the committee submit to the Chief Justice one nomination, rather than three, for appointment as advisory committee chair and that the chair be elected by a majority vote of all TCPJAC members.

### **Previous Council Action**

Effective January 1, 1999, the rule was adopted as Rule 6.46. The rule was amended effective September 1, 2000, and April 18, 2003 in ways not related to this proposal. Effective January 1, 2007, the rule was renumbered Rule 10.46.

## Rationale for Recommendation

At the August 24, 2012, business meeting of the TCPJAC, members discussed revisions to the TCPJAC bylaws in which the TCPJAC Executive Committee would select three names for the chair position and one name would then be ratified by the full committee.

However, after further discussion at the TCPJAC Executive Committee meeting on November 8, 2012, the Executive Committee decided that the initial selection process should be opened up to the entire membership.

In December 2012, the TCPJAC members approved changes in the TCPJAC bylaws that address the chair and vice-chair selection process: to a majority vote of all committee members, rather than a ratification of a vote of the Executive Committee; and to reflect that “the advisory committee shall submit to the Chief Justice *one name* for appointment as the chair of the advisory committee.”

The TCPJAC recognizes that submitting only one name is inconsistent with rule 10.46(f), and therefore, this amendment to the bylaws is contingent on Judicial Council approval of a corresponding rule amendment. Because current rule 10.46(f) provides that the advisory committee must submit *three* nominations for chair of the advisory committee, the TCPJAC recommends amendment of the rule to provide that the committee must submit *one* name for chair of the advisory committee.

This recommendation would allow the TCPJAC to elect its own membership under a majority vote. The TCPJAC believes this rule change is important to ensure that the presiding judges have an opportunity to identify their choice for chair, that all presiding judges have an equal opportunity to serve as chair, and that the entire membership have an equal vote in electing its leaders. Each advisory committee member may submit his or her own name, the name of another member of the advisory committee, or the name of an incoming member of the advisory committee to be considered for nomination. Only current advisory committee members are eligible to vote. Because the rule requires a majority vote, it would take 30 or more votes to elect the member to be submitted to the Chief Justice as the TCPJAC’s nominee for chair. If no candidate receives 30 or more votes, balloting continues with members voting for the top two candidates from the preceding ballot. If more than two candidates receive the greatest number of votes due to a tie—for example, one candidate receives 17 votes, two candidates receive 15 votes each, and the remaining candidates receive less than 15 votes each—that number of candidates will be on the next ballot. In this example, three candidates would be on the next ballot.

Regardless of whether the Chief Justice approves of the TCPJAC’s recommended candidate for chair, the Chief Justice retains the authority under rule 10.31(c) (Advisory committee membership and terms) to appoint an advisory committee member to be a committee chair or vice-chair for a one-year term.

## **Comments, Alternatives Considered, and Policy Implications**

This proposal was circulated for comment from March 22, 2013, through May 17, 2013. The proposal was available on the judicial branch’s website and distributed to all presiding judges by the TCPJAC chair on multiple occasions.

Four individuals or organizations submitted comments. Two commentators agreed with the proposal. One commentator suggested adding additional language to specify the Chief Justice’s veto power of the TCPJAC’s nominee. As outlined in the Invitation to Comment, regardless of whether the Chief Justice approves of the TCPJAC’s recommended candidate for chair, the Chief Justice retains the authority under rule 10.31(c) (Advisory committee membership and terms) to appoint an advisory committee member to be a committee chair or vice-chair for a one-year term. The Chief Justice’s veto power is already implicit under rule 10.31(c). One commentator indicated disagreement, but comments did not address this proposal.

## **Implementation Requirements, Costs, and Operational Impacts**

This proposal will impose no implementation burdens on the superior courts, the Courts of Appeal, the Supreme Court, or the Administrative Office of the Courts.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

This proposal falls within strategic Goal II, Independence and Accountability, particularly objective 1 of the operational plan for that goal—to safeguard judicial impartiality and strengthen the ability of the branch and local courts to respond effectively to attempts to politicize the decisions of individual judicial officers—by democratizing the nomination of the chair position.

## **Attachments**

1. Cal. Rules of Court, rule 10.46(f), at page 4
2. Comments chart, at pages 5–10

Rule 10.46 of the California Rules of Court is amended, effective July 1, 2013, to read:

1 **Rule 10.46. Trial Court Presiding Judges Advisory Committee**

2  
3 **(a)–(e) \* \* \***

4  
5 **(f) Chair**

6  
7 The advisory committee must annually submit to the Chief Justice ~~three~~ one  
8 nominations for the chair of the advisory committee. ~~The Chief Justice will select a~~  
9 ~~chair from among the names suggested.~~ Any member of the advisory committee  
10 whose term as presiding judge would extend at least through the term of the  
11 advisory committee chair is eligible for nomination. The nomination must be made  
12 by a majority vote of the full advisory committee. In the event that no candidate  
13 receives a majority vote on the first ballot, subsequent ballots of the top two  
14 candidates will occur until a candidate receives a majority vote. The chair of the  
15 advisory committee serves as chair of any Executive Committee established under  
16 (d) and as an advisory member of the Judicial Council.

17  
18 **Advisory Committee Comment**

19  
20 Subdivision (f): An advisory committee member may submit his or her own name, the name of  
21 another member of the advisory committee, or the name of an incoming member of the advisory  
22 committee to be considered for nomination. An incoming member of the advisory committee may  
23 be nominated by a current member of the advisory committee, but he or she may not participate  
24 in the voting process. Only current members of the advisory committee may vote. The successful  
25 candidate must receive 30 or more votes.

**SP13-03****Trial Court Presiding Judges Advisory Committee: Chair Nomination Process (amend Cal. Rules of Court, rule 10.46)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Judges Association Submitted by Lexi Howard, Legislative Director	A	The California Judges Association supports the proposed rule, as specified in Invitation to Comment SP13-03.	No response required.
2.	Superior Court of California, County of Los Angeles	A	<p>The Los Angeles Superior Court strongly supports the proposed amendment to California Rule of Court 10.46(f). The amendment would allow the Trial Court Presiding Judges Advisory Committee (“TCPJAC”) to submit to the Chief Justice one nominee, rather than three candidates, to serve as Chair of the Advisory Committee.</p> <p>The proposed amendment is a matter of sound governance. A presiding judge who has the confidence of his or her peer presiding judges will be more likely to be able to develop a consensus among the presiding judges. In turn, presiding judges, having been elected by their judicial colleagues, most often will have the support of the judges on their court when they make decisions. Thus, an elected leader of TCPJAC is a critical link in the process of developing a branchwide consensus on important issues.</p> <p>Two specific examples may be helpful.</p> <p>At the end of last year, Judge Jahr developed a two-page sheet to serve as a template for discussions with the legislature (“Reinvesting in our Justice System: Budget Reductions and Proposed Solutions, Fiscal Year 2013-2014”). As part of the process of developing this document, Judge Jahr consulted with Judge</p>	No response required.

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			<p>Laurie Earl, current Chair of TCPJAC. Judge Earl was able to determine the extent to which she needed to consult with other presiding judges to develop a consensus on the document. As best we are aware, that consensus has held, and the document has served to keep legislative discussions on track for all participants.</p> <p>The critical task of developing a budget and allocation methodology was achieved through the leadership of TCPJAC Chair Judge Laurie Earl and other delegates from TCPJAC. This task presented virtually unprecedented challenges for the Branch, requiring some courts to face the prospect of further reduced funding at a time when all courts are suffering from inadequate funding. Because Judge Earl had earned the confidence of her peers, she was able, as Chair, to exercise exceptional leadership throughout the process, and most particularly when the concrete implications of the allocation methodology became apparent to all. It is important to recognize what did not happen at the end of the process: individual judges did not question the result. We believe that this success flowed from the representative authority of the elected presiding judges and from the leadership authority of the TCPJAC Chair.</p> <p>Thus, an elected leader of TCPJAC, representing a membership that also is elected within each county, will be an effective governance tool for the Branch. This governance structure provides an opportunity to</p>	

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			develop consensus decision making to shape judicial branch decisions that affect trial court operations.	
3.	Herbert Paul Neuenkirchen-Vörden, Germany	AM	<p>Maybe it makes more sense giving the Chief Justice a veto right to the elected chair instead making an appointment. A veto means that the elected chair is not eligible saving as chair for the period elected. TCPJAC has then the possibility elect again and present a new chair elected to the Chief Justice.</p> <p><b>RECOMMENDATION</b></p> <p>The time of veto by the Chief Justice is (10 days?) and veto has done in writing. No reason must given by the Chief Justice using his/her right of veto. If no veto within this time is delivered to the acting chair (?) of the TCPJAC the chair elected is acting chair. If the Chief Justice declares not veto the chair elected, he/she is acting chair from this time.</p> <p>If a veto by the Chief Justice is given, the TCPJAC electing his chair again by the given rules. This is done in (21 days?) and present during this time the name of the chair elected to the Chief Justice.</p> <p>The Chief Justice again has the right to veto within (10 days?). Using the right of veto Chief Justice must give:</p> <p>a) good reasons for his veto in writing to the TCPJAC</p>	<p>The committee does not recommend incorporating the suggested modifications.</p> <p>As outlined in the Invitation to Comment, in the event that the Chief Justice does not approve of the TCPJAC’s recommended candidate for Chair, the Chief Justice retains the authority under Rule 10.31(c) (Advisory committee membership and terms) to appoint an advisory committee member to be a committee chair or vice-chair for a one-year term. The Chief Justice’s veto power is already implicit under Rule 10.31(c).</p>

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			<p>OR</p> <p>b) present a ruling of the majority of the Supreme Court, that the chair elected is no eligible. No reason ore other declaration must be given by the Supreme Court.</p> <p>(All other rules are the same as by the first veto)</p> <p>In case of veto the TCPJAC electing his chair again by the given rules. This is done in (21 days?) and present during this time the name of the chair elected to the Chief Justice. If Chief Justice want veto this chair elected, he can do this only after he inform the acting chair of TCPJAC immediately and then</p> <p>a) obtain a opinion of the majority of the Supreme Court, that the chair elected is no eligible. For this decision the Supreme Court must have good reasons which he discuss in a opinion</p> <p>AND</p> <p>b) appointed a chair as directed by status for the period of 1 year.</p> <p>(For this process it is also necessary to set a timeline.)</p> <ul style="list-style-type: none"> <li>In case there is no majority in the Supreme Court the chair elected is acting chair.</li> </ul>	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<ul style="list-style-type: none"> <li>• In case the Chief Justice don't appointed a chair within the give timeline after the date of opinion by the court, TCPJAC again has the right of electing his chair. The Name of this chair elected would give to the Chief Justice for his information only. The chief Justice has no right to veto this election.</li> </ul> <p>DISCUSSION</p> <p>Propose for the suggestion is the need of the TCPJAC elected his one chair. These are a normal democratic process and for an independent board I can't find any reason alter this.</p> <p>On the other hand is the question about the Independence of the TCPJAC in the judicial system of the state. This can give reasons for a controlled influence from the Supreme Court of the Committee by his Chief Justice. This could it make necessary that there is a special personal trust between the Chair of Committee and the Chief Justice.</p> <p>IF this is true then the Chief Justice must have an Instrument securing this matter. BUT this Instrument must of such kind of minimal influence of the democratic process within the Committee. Making a final election a Chief Justice instead the Committee strip the Committee from more democratic rights then necessary.</p> <p>With the recommendation of a veto concept</p>	

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			<p>hold the Committee full autonomy over their democratic election process. A veto by the chief Justice would have good reason even when he not give them by his first veto. The further process makes it more and more difficult for the Chief Justice veto the elected chair. The reason is simple that a democratic vote has find acceptance without very good reasons against it.</p> <p>On the other hand became the chief Justice 3 candidates during the full veto process but not for a free selection but for finding a eligible chair working trustfully with.</p>	
4.	Anonymous Lodi, CA	N	<p>I believe it would be different if we were not forced to pay a judges salary 100% until death. That is not any reasonable salary of any government official. The fact that this was elected by the judicial branch and majority of the commonwealth know nothing about such salary's is disgusting. No person within the boundaries of any normal pay or retirement obtains 100% of their pay until death. Its unethical that judges obtain this and it must be reversed. I for one am considering beginning a petition to be placed on the ballot for amending this salary. It is a gross waste of government funds!</p>	No response required.