



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 20, 2014

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Two New Court of Appeal Justices	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
None	February 20, 2014
Recommended by	Date of Report
Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Administrative Presiding Justices Advisory Committee Hon. Tani G. Cantil-Sakauye, Chair	January 10, 2014
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Executive Summary

The Policy Coordination and Liaison Committee (PCLC) and the Administrative Presiding Justices Advisory Committee recommend the Judicial Council sponsor legislation to authorize two new justice positions for Division Two of the Court of Appeal, Fourth Appellate District. These two new justice positions are necessary to address the substantial and growing workload in the Fourth Appellate District.

Recommendation

The PCLC and the Administrative Presiding Justices Advisory Committee recommend the Judicial Council sponsor legislation to authorize two new justice positions for Division Two of the Fourth Appellate District, along with funding for those positions and the related staff complement of three research attorneys and one judicial assistant per justice.

Previous Council Action

In fiscal year (FY) 2007–2008, the Judicial Council submitted an unsuccessful Budget Change Proposal (BCP) seeking authorization and funding for four new justice positions for the Courts of Appeal. In FY 1999–2000, the council submitted a BCP for 12 new justice positions and supported the legislation, SB 1857 (Stats. 2000, ch. 998), that authorized the positions.

The Judicial Council has acted repeatedly in recent years to authorize the sponsorship of legislation to secure the 150 most critically needed superior court judgeships; the first 50 were authorized and funded in 2006, and the second 50 were authorized in 2007 but never funded. On January 17, 2013, the council acted to defer for the 2013–2014 fiscal year (1) pursuing legislation to authorize the third set of 50 superior court judgeships, and (2) seeking funding for the second set of judgeships that were authorized in 2007. However, in December 2013, the council included among its legislative priorities for 2014 seeking funding for the second set of 50 judgeships and seeking legislation to authorize the third set of 50 judgeships.

Rationale for Recommendation

Appellate courts have mandatory review of any appealable order or judgment from a superior court as well as writ review of nonappealable superior court decisions and discretionary review of decisions of the appellate division of a superior court. The principal function of the courts of appeal is to decide the merits of the issues presented by the appealing and responding parties to ensure the correct and uniform interpretation of the law throughout the state. Second only to adjudication is the function of construing statutes and guiding the development of the common law of California through written opinions in a fashion that provides guidance for trial courts when applying the law in future cases.

In addition to the responsibilities each Court of Appeal justice has for writing opinions to which he or she is assigned as the lead author, justices must read the briefs and conduct research as appropriate in each of the cases in which he or she is a member of the panel. Since appeals are decided by three-judge panels, each justice is a panel member for twice as many cases as he or she is assigned as lead author. Whether or not assigned to author an opinion, each justice on a panel is equally responsible for the decision and reasoning of the appellate decision. A dissenting justice may also issue a written opinion in a case.

The justices also review briefs and draft memoranda prepared for routine disposition of criminal and criminally-related cases—referred to as routine disposition appeals (RDAs)—and for *Wende* appeals (*People v. Wende* (1979) 25 Cal.3d 436) in which assigned counsel formally advise the court that he or she can find no argument of any merit to present on appeal. In *Wende* appeals (which occur in criminal and juvenile delinquency matters), the court must conduct an independent review of the record to ascertain whether or not there are any appealable issues and, if so, ask counsel to brief them.

Furthermore, during the course of the year, each justice reviews hundreds of writ petitions, voting whether to request opposition or further information, and whether to grant review of the petition.

There are currently 105 Court of Appeal justices, divided among the six appellate districts. In the past 20 years, only 17 new appellate justice positions have been created: 12 in 2001 and 5 in 1996. Prior to that, 11 were authorized in 1987, with funding provided in 1989.

In 1994, the Appellate Resources Working Group was appointed by then-Chief Justice Malcolm M. Lucas to assess the resource needs for the Courts of Appeal. The working group developed a methodology to determine the relative workload of the Courts of Appeal. This methodology uses a three-year average of appeals becoming fully briefed to reduce the effect of annual fluctuations.

The working group determined that the most appropriate method for assessing additional judicial need was to establish a weighting of the cases. In this weighting, *Wende* and RDAs (estimated to be 64 percent of criminal appeals and juvenile delinquency appeals) were given a weight of .33 because these matters typically take less time to prepare than other matters. Remaining appeals are given a weight of 1. These case weights were then used to assess the relative judicial workload in each of the six Court of Appeal districts. At the time, the working group determined that 98 case weights per justice, using this formula, would be optimal. That workload study, accepted by the Judicial Council in January 1995, was the basis for the new positions approved by the Legislature in 1996. When the council sought the additional 12 justices in 2000, the council revised the optimal number of case weights per justice to 89. This was due to changes in criminal and civil law over the intervening years that increased the complexity of the court's caseload. According to the BCP that was presented in support of the request, "the Judicial Council has evaluated appellate workload by several measures to account for structural and procedural differences among courts as well as differences in case type and complexity." The 12 justices were approved based on this analysis.

Workload in Division Two of the Fourth Appellate District has continued to increase. Based on information from the last three years for which data is available (2010–2011, 2011–2012, and 2012–2013), Division Two has an annual average of 1,132 appeals becoming fully briefed. Applying the weighted formula, that results in 115 cases per justice, far exceeding all of the other divisions. A review of data back to 1991 shows that in 2012–2013, the number of fully briefed appeals in Division Two was at an all time high, as is the three-year average. The workload is continuing to increase, and the justices cannot continue to handle this volume of cases. Two additional justices would reduce the weighted workload to the ideal 89 cases per justice.

As noted at page 5 in the 1995 *Appellate Court Resources Analysis*:

[T]here are limits to the workload that any justice can continue to absorb without diminution of the quality of work. ..."[T]he appellate process must be more than

simply increasing production goals, improving filings-to-staff ratios, or achieving greater efficiencies. Each case coming before an appellate justice is different. They differ as to the issues to be decided and the area of law from which the appeal arises. The more complex appeals present novel questions of law, lengthy records, or numerous issues for decision. Each requires the individual judgment of the justices. The appellate process is not about producing cost-effective identical units, it is about the business of doing justice in individual cases.

The addition of two new justices will enable Division Two to process its workload more effectively and efficiently, benefiting the division, the Courts of Appeal as a whole, and the individuals and lawyers seeking to have their cases addressed in a timely manner.

In August 2004, the Judicial Council approved a proposal to pursue legislation for the 150 most urgently needed new superior court judgeships. In January 2005, SB 56 (Dunn) was introduced to authorize 150 new judges, 50 in each of three consecutive years. As enacted, the legislation authorized the first set of 50 new judgeships (Stats. 2006, ch. 390). In 2007, the Legislature passed AB 159, authorizing the second set of 50 judgeships (Stats. 2007, ch. 722). Legislation to authorize the third set of trial court judgeships has not yet been approved, but will be pursued again this year. The council will also be pursuing funding for the second set of 50 judgeships. The already authorized first 50 judgeships created 15 new trial court positions in Riverside and San Bernardino, which, along with Inyo, make up Division Two of the Fourth Appellate District. The second set of 50 judgeships, when funded, will provide 18 additional judgeships in San Bernardino and Riverside. These new judicial resources at the trial court level will further exacerbate the problems in the Court of Appeal, as more cases will be processed and more appeals pursued.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for public comment. There are no feasible alternatives. The caseload continues to grow, and transfers of cases to another division or another district are neither a long-term nor effective alternative. To perform the work, Division Two of the Fourth Appellate District needs two additional justices and the staff complement that accompanies them.

The Fourth Appellate District has tried to address the issue internally. For a 30-month period from February 2009 to August 2011, 500 cases were transferred from Division Two to Divisions One and Three. This helped to address the backlog, but began to create backlogs in the other divisions. In September 2013 the transfers resumed, with eight cases per month transferred to Division Three. Beginning in January 2014, an additional 10 cases per month were transferred to Division One, for a total of 18 cases per month transferred out of Division Two to help meet the workload demands. Furthermore, while staff vacancies in Divisions One and Three of the Fourth Appellate District have gone unfilled over the last several years, the Administrative Presiding Justice has allowed staff vacancies in Division Two to be filled so as not to further exacerbate the backlog. Finally, Division Two has been authorized to hire two additional attorneys for two-year limited term positions and use assigned judges to help process the caseload.

While the Chief Justice has the authority to provide for temporary workload adjustments among the Courts of Appeal (see Section 6, Article VI of the California Constitution), this would provide only temporary relief for a permanent and ongoing problem. Transfers of cases from one district to another have long been disfavored because they pose a hardship to litigants who bear the expense and burden of traveling to a distant district to have their matter heard. There is also a strong argument that local issues should be decided in the geographic area in which the dispute arose and was decided at the trial court level. Finally, there is a burden to the courts involved, including the increased workload in the receiving division and to the Chief Justice in having to consider and approve each transfer individually.

Implementation Requirements, Costs, and Operational Impacts

Each new justice position must be accompanied by three research attorneys and one judicial assistant. The cost for each new justice and these related staff positions, including salaries, benefits, and necessary operating expenses and equipment, is \$1.165 million, for a total cost of \$2.33 million the first year and \$2.125 million thereafter.

Relevant Strategic Plan Goals and Operational Plan Objectives

As recognized in the *2013 Legislative Policy Summary* adopted by the Judicial Council at its December 2013 meeting, securing adequate judicial resources for the courts to timely and efficiently hear the matters that come before them supports the first four goals of the branch's Strategic Plan: Goal I, Access, Fairness, and Diversity; Goal II, Independence and Accountability; Goal III, Modernization of Management and Administration; and Goal IV, Quality of Justice and Service to the Public.