



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

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# CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: -CO-1403

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Title	Action Requested
Judicial Council: Nonvoting Council Position	<b>VOTING MEMBERS ONLY:</b> Vote and return by fax. Additionally, return original signature page.
Rules, Forms, Standards, or Statutes Affected	Please Respond By
None	<b>May 23, 2014</b>
Recommended by	Date of Report
Hon. Douglas P. Miller, Chair Executive and Planning Committee	<b>May 20, 2014</b>
	Contact
	Nancy Carlisle, 415-865-7614 <a href="mailto:nancy.carlisle@jud.ca.gov">nancy.carlisle@jud.ca.gov</a>

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### **Executive Summary**

The chair of the Executive and Planning Committee recommends that the Judicial Council approve one advisory nonvoting Judicial Council position for appointment to the council for a single term, included with the new 2014 Judicial Council appointments. 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. This position will provide the council with an additional source of court-based knowledge and statewide perspective on information technologies and trends, as the council devotes increasing attention to the future of data management, information technology, and a branchwide technology plan for the California courts.

## Recommendation

The chair of the Executive and Planning Committee recommends that the Judicial Council approve the creation of one additional advisory nonvoting council position for a three-year term from September 15, 2014, through September 14, 2017.

## Previous Council Action

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,<sup>1</sup> 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.<sup>2</sup> Effective January 1, 1999, rule 6.2(a) incorporated the council membership list, as approved in Prop. 220.<sup>3</sup> At the time Prop. 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 positions<sup>4</sup> 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 advisory<sup>5</sup> positions: three court administrators (one of which may be an appellate court clerk at the Chief Justice’s discretion),<sup>6</sup> 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.

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

<sup>2</sup> Proposition 220 added to the list of council members contained in article VI, section 6, “two nonvoting court administrators and any other nonvoting members as determined by the membership of the council....”

<sup>3</sup> Rule 6.2(a) was renumbered as rule 10.2(a) effective January 1, 2007.

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

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

<sup>6</sup> These three court administrators included the two identified in the Constitution, as a result of Prop. 220.

Rule 10.46(f),<sup>7</sup> as amended in July 2013, also provides for another advisory council position for the chair of the Trial Court Presiding Judges Advisory Committee. The rule requires the committee to submit one nomination for its chair each year to the Chief Justice. The Chief Justice appoints the chair to serve as an advisory member of the council.

### **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 2007, E&P created on behalf of the Judicial Council an advisory position for a limited, one-year term. The Chief Justice subsequently appointed E&P's nominee, Senator Joseph Dunn, to the position. The position lapsed in December 2007.
- 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.
- In April 2010, E&P created on behalf of the council a limited-term advisory position and nominated Judge Terry B. Friedman (Ret.) to fill the position. The position lapsed in September 2012.
- 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.<sup>8</sup>
- In May 2012, E&P recommended and the Judicial Council approved the addition of three nonvoting advisory council positions, each for a three-year term. The Chief Justice subsequently appointed Judges Morris D. Jacobson, Brian L. McCabe, and Charles D. Wachob to fill each of the three positions.

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<sup>7</sup> Rule 10.46(f) was amended to require one nomination for the chair position of the Trial Court Presiding Judges Advisory Committee, from the committee to the Chief Justice. Previously, the rule provided for three nominations from the committee for the Chief Justice to make a selection and an appointment to the Judicial Council.

<sup>8</sup> 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.

## **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 with a blend of professional expertise and other experience on a variety of leadership issues. With the complexity and far ranging implications of statewide court technology issues before the Judicial Council, the council would benefit from an additional member to add to the council's perspective on the data management challenges and technological choices of importance to the judicial branch.

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.<sup>9</sup> The council can be as small as the constitutionally required 23 members, or as large as the voting membership chooses. Since May 2012, the council has had 11 advisory members. Creating the additional advisory position as E&P recommends would bring the total number of advisory positions to 12 as of September 2014.

The Chief Justice will be making appointments to this year's vacancies on the council: three superior court judge positions (voting), one court administrator position (advisory), and one court commissioner position (advisory). The Judicial Council's approval would present the Chief Justice with the opportunity to appoint a total of three advisory members.

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

This proposal was not circulated for comment.

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

The creation of this position will result in a small cost increase for the additional expense associated with one council member's travel and administrative support. 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 regardless of whether the membership numbers 32 or 33.

## **Attachments**

1. Voting instructions
2. Vote and signature pages

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<sup>9</sup> 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).)

## Instructions for Review and Action by Circulating Order

### Voting members

- Please indicate your **vote, sign, and return by 5pm, May 23, 2014**, if possible by one of these methods:
  1. Fax the signature pages to the attention of Judicial Council Support Services, Judicial Council and Court Leadership Services Division at 415-865-4391
  2. Reply to the e-mail message with “I approve,” “I disapprove,” or “I abstain.”
- If you are unable to reply by **5pm, May 23, 2014**, please do so as soon as possible thereafter.
- Additionally, **return the original** signature page to the Judicial Council Support Services, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California, 94102-3688. **Please keep a copy for your records.**

### Advisory members

The circulating order is being faxed to you for your information only. There is no need to sign or return any documents.

**CIRCULATING ORDER  
Judicial Council of California  
Voting and Signature Pages**

Effective immediately, the Judicial Council approves the one advisory nonvoting Judicial Council position for appointment to the council for a single term, included with the new 2014 Judicial Council appointments.

My vote is as follows:

Approve       Disapprove       Abstain

\_\_\_\_\_  
Tani G. Cantil-Sakauye, Chair

\_\_\_\_\_/s/ ✓  
Judith Ashmann-Gerst

\_\_\_\_\_/s/ ✓  
Stephen H. Baker

\_\_\_\_\_/s/ ✓  
Marvin R. Baxter

\_\_\_\_\_  
Richard Bloom

\_\_\_\_\_/s/ ✓  
Mark G. Bonino

\_\_\_\_\_/s/ ✓  
James R. Brandlin

\_\_\_\_\_  
Angela J. Davis

\_\_\_\_\_/s/ ✓  
David De Alba

\_\_\_\_\_/s/ ✓  
Emilie H. Elias

\_\_\_\_\_  
Noreen Evans

\_\_\_\_\_/s/ ✓  
James P. Fox

\_\_\_\_\_/s/ ✓  
Harry E. Hull, Jr.

\_\_\_\_\_/s/ ✓  
Teri L. Jackson

My vote is as follows:

Approve

Disapprove

Abstain

                  /s/      ✓                    
Douglas P. Miller

                  /s/      ✓                    
Gary Nadler

                  /s/      ✓                    
Mary Ann O'Malley

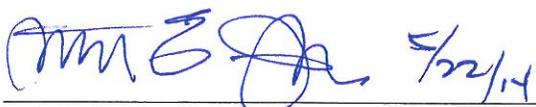
                  /s/      ✓                    
Mark P. Robinson, Jr.

                  /s/      ✓                    
David Rosenberg

                  /s/      ✓                    
David M. Rubin

                  /s/      ✓                    
Dean T. Stout

Date: May 22, 2014

Attest:  5/22/14  
Administrative Director of the Courts and  
Secretary of the Judicial Council