

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3660

Report

TO: Members of the Judicial Council

FROM: Donna Hershkowitz, Acting Director, Office of Governmental
Affairs, 916-323-3121 donna.hershkowitz@jud.ca.gov

Dag MacLeod, Manager, Office of Court Research, 415-865-7660
dag.macleod@jud.ca.gov

DATE: October 26, 2007

SUBJECT: Recommendations on the Conversion of Subordinate Judicial Officer
Positions to Judgeships per AB 159 (Action Required)

Issue Statement

Recently-enacted legislation authorizes the second set of 50 new superior court judgeships and also provides for the conversion of subordinate judicial officer (SJO) positions to judgeships upon vacancy (Assembly Bill 159 (Jones), stats. 2007, ch. 722 (hereafter “AB 159”). As reported to the council in February 2007, 162 SJO positions in 25 courts have been identified as eligible for conversion to judgeships using the methodology of Judicial Workload Assessment to distinguish workload that is appropriate to SJOs – e.g., small claims and traffic infractions – from workload that should be handled exclusively by judges. AB 159 allows 16 conversions in fiscal year 2007-08, and for the remaining 146 (for a total of 162), upon subsequent legislative authorization. AB 159 also caps at 16 the number of conversions that may occur in a single fiscal year. After evaluating various factors impacting the implementation of SJO conversions, this report presents a plan for the allocation of SJO conversions in fiscal year 2007-08 that balances the long-term goal of achieving a more appropriate balance between judgeship and SJO positions in the trial courts, as well as the short-term, immediate need of the trial courts in handling their workload.

Recommendation

Staff recommend that the Judicial Council approve seven SJO positions that trial courts have confirmed are either vacant or will become vacant by June 30, 2008, and proceed with the process for converting these positions to judgeships. Staff

will return to the council in February with a recommendation for allocating the remaining nine positions to convert in fiscal year 2007-08.

Rationale for Recommendation

Assembly Bill 159 provides for the conversion of SJO positions in eligible courts pursuant to the criteria approved by the Judicial Council. These criteria, approved by the council at its February 23, 2007, meeting, identified 162 positions in 25 courts eligible for SJO conversion. The Legislature authorized the conversion of 16 positions in fiscal year 2007-08, and, upon subsequent legislative authorization¹ 146 positions, capped at 16 per year. AB 159 further provides that “the positions for conversion shall be allocated each fiscal year pursuant to uniform allocation standards to be developed by the Judicial Council for factually determining the relative judicial need for conversion of a subordinate judicial officer position.” This provision was intended to guide the process for allocating positions among the courts in years in which there are more than 16 vacancies eligible for conversion to judgeships.

If the number of vacancies for SJO positions is sixteen or fewer in any given year, then no priority ranking is needed and the council can proceed with the conversion of all of those vacant positions. When more than 16 vacancies are available in a given year, a policy is needed to determine which positions should be converted to judgeships.

A methodology to allocate positions when there are more than 16 vacancies in a given year must seek to balance the immediate needs of the trial courts to fill vacant SJO positions against the possibility that some courts may have a greater need for SJO conversions than others. Waiting until late in the fiscal year to compile a full list of all the positions that come vacant in a year would create a burden for the courts and introduce uncertainty into the process by requiring that courts hold open positions that may not be converted in the near term. Thus, this proposal seeks to satisfy the practical need for courts to fill vacant SJO position to keep up with their workload by approving conversions in successive phases until the annual number of vacant positions exceeds 16. The methodology for allocating positions in a final phase of an allocation process, if the number of total conversions exceeds 16, will be presented at a subsequent judicial council meeting.

AOC staff surveyed the 25 eligible courts to determine the number of SJO positions that are currently vacant or will become vacant prior to June 30, 2008.

¹ AB 159 allows that subsequent legislative authorization to occur by either enactment of a substantive policy bill or by inclusion in the budget act.

The courts reported two eligible SJO positions that have been confirmed as currently vacant, with five additional vacancies confirmed to be expected prior to June 30, 2008. (See table below for the vacant positions reported by the courts.)

In addition to the confirmation of seven SJO positions that are now or will be vacant during fiscal year 2007-08, many courts also noted additional vacancies that are expected, but not confirmed, prior to the end of the fiscal year, either due to retirement or possible appointment of a sitting SJO to a vacant judgeship position.

Vacant SJO Positions Confirmed by the Courts as of October 22, 2007

| Court | Currently Vacant Positions | Confirmed Vacancies Prior to 06/30/08 | Expected Vacancy Date | Total Vacancies in FY 07-08 |
|-----------------|----------------------------|---------------------------------------|-----------------------|-----------------------------|
| Contra Costa | 1 | 2 | 2/2008 3/2008 | 3 |
| Los Angeles | 1 | 1 | 10/30/2007 | 2 |
| San Francisco | 0 | 1 | 1/26/2008 | 1 |
| San Luis Obispo | 0 | 1 | 12/29/2007 | 1 |
| Total | 2 | 5 | | 7 |

The trial courts' need to manage their workload should be one of the primary factors in determining the allocation of SJO conversions. In practice, this would translate into a policy for allocating this first phase of SJO conversions to those courts which have the first vacancies. Once those positions are allocated, a second phase of conversions would be allocated using the same basic approach and, if necessary, a third phase until all 16 conversions are allocated. To the extent that more than a total of 16 positions become vacant this fiscal year, staff will present the council with a methodology for prioritizing among those that remain.

In consideration of both the long-term policy goals and short-term workload concerns described above, and the fact that the enactment of AB 159 puts the council in a position to achieve the stated policy goal over the course of several years, staff recommend that the council authorize the conversion of the seven SJO positions currently vacant or confirmed to become vacant in 2007-08.

AB 159 becomes effective January 1, 2008. By determining the first seven positions that may be converted to judgeships at this time, staff will be in a position to inform the Governor and the Secretary of State that immediately upon the effective date of the legislation, there are seven additional judicial vacancies to

be filled. Attached is a draft notification form that staff propose to submit to the Governor, the Secretary of State, and the affected courts, confirming the courts in which SJO positions have been converted to judgeships.

Alternative Actions Considered

The council could allocate conversions to those courts where the imbalance between the work of judges and SJOs is the greatest; giving these courts priority over other courts where the imbalance is not as great. Because AB 159 limits the number of annual conversions to 16 each year, and because only vacant positions may be converted, however, this would likely lead to the conversion of fewer than 16 positions each year as courts with vacant positions wait for SJO vacancies in courts with a higher priority ranking. Moreover, the methodology that determined the 25 courts eligible for conversions already established the need for SJO conversions in all of the courts on the list.

The council could choose not to act now when there are only seven known vacancies, and could ask all eligible courts to hold vacant SJO positions open until the close of the fiscal year. At that time, the council could then determine how to allocate vacancies amongst the eligible courts. This would mean, however, that courts could be expected to keep a position open for a considerable period of time, and then discover that the selected methodology does not make its position eligible for conversion. And for those courts that would be entitled to convert the position to a judgeship, it would delay the selection and appointment process by at least six months.

Comments from Interested Parties

None; the proposal was not circulated for comment.

Implementation Requirements and Costs

SJOs typically receive 85 percent of a judges' salary. Upon conversion of an SJO to a judgeship, courts will be responsible for absorbing the salary differential, which may be offset by a reduction in the cost to the courts of provided benefits.

7. The uniform allocation standards were developed by the Judicial Council for factually determining the relative judicial need for conversion of a subordinate judicial officer position that becomes vacant to a superior court judgeship position.

8. In each of the superior courts listed in paragraph 1, the number of subordinate judicial officer positions is hereby decreased by the number listed after the name of the superior court and the number of superior court judgeships is hereby increased by the same number.

9. The filling of the vacant positions created by the action pursuant to Government Code section 69615 shall be pursuant to Section 16 of Article VI of the California Constitution.

[DATES AND SIGNATURE AS REQUIRED FOR COUNCIL ACTION.]