Judicial Council of California · Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-13-03

Title
Judicial Council: Nonvoting Council Positions

Rules, Forms, Standards, or Statutes Affected
None

Recommended by
Hon. Douglas P. Miller
Chair, Executive and Planning Committee

Action Requested
VOTING MEMBERS ONLY: Vote and return by fax. Additionally, return original signature page.

Please Respond By
May 10, 2013

Date of Report
May 3, 2013

Contact
Nancy E. Spero, 415-865-7915
nancy.spero@jud.ca.gov

Executive Summary

The chair of the Executive and Planning Committee recommends that the Judicial Council approve two advisory nonvoting Judicial Council positions. Because two council advisory positions terminate this year, approving these two positions will allow the council to extend these two positions three more years. The Judicial Council has the authority to add nonvoting positions under the California Constitution and rule 10.2 of the California Rules of Court. These positions will provide the council with additional perspective, experience, diversity, and wisdom.

Recommendation

The chair of the Executive and Planning Committee recommends that the Judicial Council approve two advisory nonvoting Judicial Council positions, each for a three-year term, September 15, 2013, through September 14, 2016.

Previous Council Action

Continuing advisory council positions

In 1993, the council approved rule 1005, which expressly authorized the Chief Justice to appoint advisory council members.[1] Rule 1005(g)(1)–(3) required at least five nonvoting members: three trial court administrators,[2] one appellate court clerk, and one court commissioner. Advisory members on the Judicial Council, however, predate this rule, going back to 1987.[3]

Effective June 3, 1998, the California voters approved Proposition 220, which amended the California Constitution to require two "nonvoting court administrators" to serve on the Judicial Council and allow the council to establish other nonvoting positions.[4] Effective January 1, 1999, rule 6.2(a) incorporated the council membership list, as approved in Prop. 220. Rule 6.2(a) was renumbered as rule 10.2(a) effective January 1, 2007. At the time Prop. 220 was passed, the council had six nonvoting members: the five listed 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[5] that were not explicitly approved in Prop. 220, the council approved those positions through September 14, 1999, by circulating order on July 28, 1998. The following year, similarly through circulating order, the council preserved those positions 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[6] positions: three court administrators (one allowed to be an appellate court clerk at the Chief Justice's discretion),[7] the president of the California Judges Association (CJA), and a court commissioner. These positions do not have a term end, although the order states the council's intention to review the appropriateness of the court commissioner position.

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[1] Rule 1005 became effective July 1, 1993.

[2] Rule 1005 did not use the term *trial court administrator* but rather "either a superior court clerk or a trial court executive officer. . . ."

[3] The Circulating Order memorandum from 2000, upon which the current continuing advisory council positions are based, states: "All of the advisory positions . . . have existed since 1991. Some were established in 1987. Prior to 1987, there were no advisory positions on the council."

[4] The text of Prop. 220 states in pertinent part "and such other nonvoting members as determined by the voting membership of the council."

[5] These four positions are: one additional trial court administrator, one appellate court clerk, one court commissioner, and the president of the California Judges Association.

[6] In the 1998 and 1999 circulating orders, these positions were described as "nonvoting." In the 2000 circulating order, these positions were described as "advisory."

[7] These three court administrators included the two identified in the state Constitution, as a result of Prop. 220.

In 2000, the council approved an additional advisory council position for the chair of the Trial Court Presiding Judges Advisory Committee by amendment to rule 6.46(f), now rule 10.46(f). The rule provides that the advisory committee submits annually to the Chief Justice three nominations for its chair. The Chief Justice selects the chair, who serves as an advisory member of the council.[8]

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 of court administrators on the council to four. When that position lapsed in September 2008, the council returned to having three court administrator advisory members.
- In May 2009, E&P created on behalf of the council another advisory position for a single term. The Chief Justice again appointed an additional court administrator for a three-year term, bringing the total of court administrators on the council back to four. This position lapsed in September 2012.
- In April 2010, E&P created an advisory position on behalf of the council ending in September 2012 and recommended that retired Judge Terry B. Friedman be appointed to this advisory position.[9] This advisory position also lapsed in September 2012.
- In May 2010, E&P created two additional advisory member positions on behalf of the council, to which the Chief Justice appointed Judges Teri L. Jackson and Robert J. Moss with terms ending September 14, 2013.[10]
- In May 2011, the Chief Justice appointed Judge Teri Jackson to a three-year term as a voting member of the council effective September 15, 2011, and appointed Judge David De Alba to complete the advisory term of Judge Jackson, ending September 14, 2013.
- In May 2012, the council created three additional advisory positions for a single term, to which the Chief Justice appointed Judges Morris D. Jacobson, Brian L. McCabe, and Charles D. Wachob. The Chief Justice also appointed Judge Kenneth K. So to the final year of the advisory position previously held by Judge De Alba and, before him, Judge Jackson.

[8] The Trial Court Presiding Judge Advisory Committee (TCPJAC) is currently soliciting comments on a proposal that would amend rule 10.46(f) to permit the committee to submit to the Chief Justice one name, rather than three, for appointment as the chair of the committee. Under the proposed amendment, the chair-nominee would be elected by a majority vote of all TCPJAC members.

[9] Judge Friedman had to give up his three-year *voting* position on the council earlier in 2010, when he took his judicial retirement.

[10] E&P also created, on that date, an additional advisory member position for a short term, which allowed the Chief Justice to appoint Judge Mary Ann O'Malley as an advisory member for three and a half months after the completion of her year on the council as chair of the Trial Court Presiding Judges Advisory Committee. At that time, the Chief Justice appointed Judge O'Malley to a voting position effective January 1, 2011, to succeed the council member who was expected to become the next presiding judge of the Superior Court of Los Angeles County, Judge Lee Smalley Edmon. Judge Edmon left the council on the effective date of her becoming the presiding judge in Los Angeles, January 1, 2011. Her departure was eight and a half months before the completion of her three- year term.

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. Diversity and the resultant collective wisdom can only be achieved with a sufficient number of members.

Although the California Constitution limits the number of voting members on the council to 21 and requires at least two nonvoting members, there is no limit on the size or composition of the advisory membership of the council. The council can be as large as the voting membership chooses or as small as 23 members. For the past several years, the council has had about 10 advisory members.

This spring, the Chief Justice will be making appointments to this year's vacancies on the council: two trial court judge positions (voting) and one court administrator position (advisory). In addition, the Chief Justice has indicated that she would like the council to extend the two advisory positions that otherwise lapse on September 14, 2013: those presently held by Judges Robert J. Moss and Kenneth K. So. After the council approves these advisory positions, the Chief Justice will be able to make appointments. With the council extending these two positions, the council membership will stay at its current number: 21 voting members and 11 advisory members.

These additional advisory positions will provide the council with the additional perspective, experience, diversity, and wisdom of those appointed.

Comments, Alternatives Considered, and Policy Implications

This proposal was not circulated for comment.

Implementation Requirements, Costs, and Operational Impacts

The creation of these positions will have a negligible cost impact because it coincides with the lapse of an equal number of advisory positions. There will be no implementation and operational impacts due to no change in the number of members.

Attachments

1. Voting instructions, at page 5
2. Vote and signature pages, at pages 6-7

Instructions for Review and Action by Circulating Order

Voting members

- Please indicate your **vote**, **sign, and return by 1pm, May 10, 2013,** 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 **May 10, 2013**, 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 two advisory nonvoting Judicial Council positions, each for a three-year term, September 15, 2013, through September 14, 2016.

My vote is as follows:

☒ Approve ☐ Disapprove ☐ Abstain

_____	/s/
Tani G. Cantil-Sakauye, Chair	Judith Ashmann-Gerst
/s/	/s/
Stephen H. Baker	Marvin R. Baxter
/s/	/s/
Richard Bloom	James R. Brandlin
_____	_____
Angela J. Davis	David De Alba
/s/	/s/
Emilie H. Elias	Sherrill A. Ellsworth
_____	_____
Noreen Evans	James P. Fox
/s/	_____
James E. Herman	Harry E. Hull, Jr.

My vote is as follows:

☒ Approve ☐ Disapprove ☐ Abstain

/s/
Teri L. Jackson

/s/
Ira R. Kaufman

Edith R. Matthai

/s/
Douglas P. Miller

/s/
Mary Ann O'Malley

/s/
Mark P. Robinson, Jr.

/s/
David Rosenberg

Date: May 14, 2013

Attest: _____
Administrative Director of the Courts and
Secretary of the Judicial Council