



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
April 15, 2016	Recommend for Judicial Council Sponsorship
To	Deadline
Members of the Policy Coordination and Liaison Committee	N/A
From	Contact
Executive and Planning Committee	Cory Jasperson, 916-323-3121
Hon. Douglas P. Miller, Chair	cory.jasperson@jud.ca.gov
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Policy Coordination and Liaison Committee	laura.speed@jud.ca.gov
Hon. Kenneth K. So, Chair	
Subject	
Proposal for Judicial Council-Sponsored Legislation: Delegation of authority to the Judicial Council to allocate vacant judgeships	

Executive Summary

Justice Miller, Executive and Planning Committee (E & P) chair along with Judge So, Policy Coordination Liaison Committee (PCLC) chair recommend that the Judicial Council sponsor legislation to allow the council to allocate vacant judgeships from courts with less judicial workload needs to courts with greater judicial workload needs, as proposed by the Commission on the Future of California's Court System (commission).

On April 12, 2016, the commission's Court Administration Working Group released a report recommending that the Chief Justice refer a proposal to the council to draft and sponsor legislation authorizing the council to allocate vacant judgeships from courts with less judicial

workload needs to courts with greater judicial workload needs. The commission recommended that the legislation:

- be structured similar to Government Code section 69614, which authorized 50 new judgeships in 2006, and established uniform standards for factually determining additional judicial need in each county, and Government Code section 69615, which authorized the conversion of subordinate judicial officers;
- direct that vacant judgeships be reallocated by the council under a methodology approved by the council; and
- retain the Legislature's authority to create and fund judgeships and the Governor's authority to appoint judges.

Recommendation

Justice Miller, Executive and Planning Committee (E & P) chair along with Judge So, Policy Coordination Liaison Committee (PCLC) chair recommend that the Judicial Council sponsor legislation to allow the council to allocate vacant judgeships from courts with less judicial workload needs to courts with greater judicial workload needs, as proposed by the Commission on the Future of California's Court System (commission).

Previous Council Action

In 2005, the Judicial Council sponsored Senate Bill 56 (Dunn; Stats. 2006, ch. 390), which authorized the first 50 of 150 critically needed judgeships. Full funding was provided in the 2007 Budget Act, and judges were appointed to each of the 50 judgeships created by SB 56.

SB 56 also established uniform standards for factually determining additional judicial need in each county. This determination shall be based on: a) court filings data averaged over a three-year period; b) workload standards that represent the average amount of time of bench and nonbench work required to resolve each case type; and c) a ranging methodology that provides consideration for courts that have the greatest need relative to their current complement of judicial officers. SB 56 further requires the Judicial Council to update this Judicial Needs Assessment every two years and report the need for new judgeships to the Legislature and Governor.

In 2007, the council secured the second set of 50 new judgeships of the 150 critically needed judgeships. (AB 159 [Jones]; Stats 2007, ch. 722.) Initially, funding for the second set of new judgeships would have allowed appointments to begin in June 2008. However, because of budget constraints, the funding was delayed until July 2009. The delay allowed the state to move the fiscal impact from FY 2007–08 to FY 2009–10. The Governor included funding for the second set of judgeships in the proposed 2009 Budget Act, but the funding ultimately was made subject to what has been called the “federal stimulus trigger.” This trigger was not reached, and the funding for the new judgeships and the various other items made contingent on the trigger was not provided.

In 2008, the council sponsored Senate Bill 1150 (Corbett) to authorize the third set of new judgeships. With the delay of the funding for the second set of judgeships and the state's worsening fiscal condition, SB 1150 was held in the Senate Appropriations Committee. At its October 25, 2008 meeting, the council approved the 2008 update of the Judicial Needs Assessment. At the same time, the council confirmed the need for the Legislature to create the third set of 50 judgeships, completing the request for 150 new judgeships, based on the allocation list approved by the Judicial Council in 2007. The council also sponsored Senate Bill 377 (Corbett) in 2009 to authorize the third set of judgeships to become effective when funding was provided for that purpose. That legislation was also held in the Senate Appropriations Committee.

In both 2011 and 2012, the council sponsored AB 1405 to establish the third set of 50 judgeships. Even though the legislation did not provide funding for those positions, the state's continuing fiscal crisis and the fact that the second set of 50 judgeships had yet to be appointed because of lack of funding resulted in the legislation not moving forward. The Judicial Council chose not to sponsor similar legislation in 2013.

In 2014, the council sponsored SB 1190 (Jackson), which sought to secure funding for the second set of 50 new judgeships approved in 2007 (but not yet funded), and to authorize a third set of 50 new judgeships to be allocated consistent with the council's most recent Judicial Needs Assessment. This bill also would have authorized the two additional justices in Division Two of the Fourth Appellate District. The bill was held in the Senate Appropriations Committee.

In 2015, the Judicial Council sponsored SB 229 (Roth) which would have appropriated \$5 million for the funding of 12 of the 50 previously authorized judgeships. Despite strong support for this approach to funding judgeships by the Legislature, Governor Brown vetoed the bill.

The Judicial Council is currently sponsoring SB 1023 (Judiciary) which again appropriates \$5 million for the funding of 12 of the 50 previously authorized judgeships.

Rationale for Recommendation

Governor Brown has indicated a reluctance to fund new judgeships until action is taken to balance judicial positions based on workload needs. In his veto message for SB 229 (Roth, 2015), Governor Brown stated the following:

I am aware that the need for judges in many courts is acute—Riverside and San Bernardino are two clear examples. However, before funding any new positions, I intend to work with the Judicial Council to develop a more system-wide approach to balance the workload and the distribution of judgeships around the state.

Also, in June 2015, Governor Brown’s administration signaled its desire for the commission to address reallocation of judgeships when Keely Bosler, the chief deputy director of the Department of Finance told a legislative budget committee that, with regard to new judicial positions:

[w]e think that the Commission should do their work and report back to the Legislature and the administration when their work is complete about what additional modifications may be needed.

In his proposed budget for FY 2016-17, the Governor reiterated his goal of promoting the redistribution of judgeships based on workload need:

[T]he Administration is proposing to work with the Judicial Council to reallocate up to five vacant superior court judgeships and the staffing and security complements needed to support and implement the proposal. This will shift judgeships where the workload is highest without needing to increase the overall number of judges.

Legislation with Delegation to the Judicial Branch

Legislation will clarify that the Chief Justice has express authority to transfer vacant judgeships from one court to another.

There are two recent precedents in which the Legislature delegated authority regarding judgeships to the council. In 2006, when the Legislature created and funded 50 new judgeships through Government Code section 69614, it delegated authority to the council to allocate the judgeships according to “uniform standards approved by the Judicial Council in August 2001, and as modified and approved by the Judicial Council in 2004.”¹ Similarly, in 2007, when the Legislature authorized the conversion of subordinate judicial officers under Government Code section 69615, it again delegated to the council the authority to develop uniform standards for the allocation of those conversions. Thus, there appears to be an acceptance by the Legislature and the executive branch that the judicial branch, under the direction of the council, is in the best position to determine the allocation of its judgeships. Given these recent precedents, it would now be appropriate for the Legislature to enact a statute that clearly establishes the authority of the Chief Justice to transfer vacant judgeships from one jurisdiction to another.

Comments, Alternatives Considered, and Policy Implications

The commission solicited public input on the concept of the allocation of vacant judgeships through both a public comment session and invitation to submit written comments.

¹ In 2014, this section was amended to require use of the most current Judicial Needs Assessment rather than the one from 2004. (See AB 2745 (Chapter 311, Statutes of 2014).) The section now reads as follows, “The judges shall be allocated, in accordance with the uniform standards for factually determining additional judicial need in each county, as approved by the Judicial Council in August 2001, and as modified and updated and approved by the Judicial Council in August 2004, pursuant to the Update of Judicial Needs Study...”

At the public comment session, two individuals spoke on the allocation of vacant judgeships concept, Presiding Judge Harold Hopp of Riverside County Superior Court and Ms. Kimberly Rosenberger, a representative from the Service Employees International Union (SEIU).

In addition to asking that allocation of judgeships be conducted at a deliberate pace that avoids overwhelming affected courts, Presiding Judge Hopp suggested that the principles underlying where to place newly funded judgeships be used in allocating vacant judgeships. The commission appreciated and agreed with Presiding Judge Hopp's comments and has incorporated his suggestions into the proposal.

Ms. Rosenberger expressed concern that a allocation of vacant judgeships may corrupt existing "checks and balances in place with judgeships through elections and the legislative process." However, Ms. Rosenberger did not elaborate on how these checks and balances would be corrupted. Instead, she asked that SEIU be apprised of developments concerning this concept. The commission appreciates SEIU's comments and has incorporated in its recommendations the principle that the allocation of vacant judgeships should not usurp the Legislature's authority to fund and authorize judgeships, the Governor's ability to appoint vacant judgeships, or the Chief Justice's authority.

Written Comments

The commission received written comments regarding the reallocation of judgeships from the following entities and individuals: the California Judges Association (CJA), California State Senator Richard D. Roth, and a coalition of five Interest on Lawyer Trust Accounts-funded California disability advocacy organizations. In one comment, the CJA asked to be included in the commission's work, adding that:

while [the branch's] decimated budget is often measured in bricks and mortar, crumbling, dilapidated and shuttered courthouses, what is truly at risk is justice itself. Our people depend on our courts, the best legal talent on the bench and at the bar, and sufficient staffing to assist them through physical danger, unpermitted financial harms, unconstitutional over-reaching, and much more.

Senator Roth, whose State Senate District 31 includes western Riverside County, expressed his concern regarding access to justice given the insufficient numbers of judicial officers. He reminded the commission that the allocation of vacant judgeships alone will not resolve the ongoing, critical need for additional judgeships throughout the state. Senator Roth also asked the commission to keep judicially underserved communities in mind when making its recommendations. The commission appreciated and agreed with Senator Roth's comments. Allocating vacant judgeships is an inexpensive measure that will provide some immediate relief to underserved communities.

Policy Implications

This option would give the council discretion to allocate vacant judgeships determined by a reallocation methodology to incorporate the following factors:

- The data, criteria, and principles underlying the council’s biennial Judicial Needs Assessment Report and the methodology for the subordinate judicial officer conversions under Government Code section 69615.
- Flexibility to accommodate judicial needs fluctuations that occur over multiple years.
- Funding for necessary staff and facilities.
- The maximum number/percentage of reallocations per court per designated time period.
- The minimum number of judgeships a court should have.

Implementation Requirements, Costs, and Operational Impacts

Staff and Facility Funding

Currently, the calculation for individual trial court funding need under the Workload-based Allocation and Funding Methodology (WAFM) is based on the level of funding needed for a trial court to be fully staffed to handle its workload. In addition to providing the allocation methodology for new state funding for trial courts, WAFM provides for the incremental shifting of funds from better resourced courts to historically under-resourced courts over a five-year period starting in fiscal year 2013-14.² Under WAFM, by fiscal year 2017–18, a minimum of 50 percent of a court’s funds will be allocated pursuant to WAFM and the remaining percentage will be allocated pursuant to fiscal year 2013-14 historically based funding methodology.³ Although WAFM is causing funds to be shifted to under-resourced courts to address workload needs, a court that receives an allocated vacant judgeship may require additional funding sooner than the incremental approach provided for under WAFM. Furthermore, the branch is funded at only about 72% of the total WAFM-identified funding need. Consideration should be given to if and how much additional funding a court would need to provide adequate staff support to an allocated vacant judgeship as well as the source of this funding.

Furthermore, WAFM does not address the allocation of funding for the one-time facilities costs associated with new judgeships. Nor does it address the allocation of funding for any potential increase in court security costs, which is largely the responsibility of sheriffs, funded separately and apart from judicial branch funding. Therefore, a number of council bodies such as the Trial Court Budget Advisory Committee, the Court Executives Advisory Committee, the Court Security Advisory Committee, and the Trial Court Facilities Modification Advisory Committee will need to help determine potential costs and funding sources.

Maximum Number or Percentage of Allocations per Court per Designated Time Period

Even if a court is deemed to have more judgeships than needed for its assessed needs, allocating vacant judgeships from that court could negatively impact its operations. Also, courts receiving reallocated judgeships may need time to absorb them effectively. At a

²Judicial Council of Cal., *Trial Court Budget Working Group: Recommendation of New Budget Development and Allocation Methodology* (July 1, 2013), <http://www.courts.ca.gov/documents/jc-20130426-itemP.pdf> (as of March 2016).

³Id.

minimum, these courts will need to hire or reassign staff to support the additional judgeship and outfit a courtroom and the judge's chambers. This consideration was first conveyed to the commission by Presiding Judge Harold Hopp of Riverside County Superior Court in his comment at the commission's December 8, 2015 public comment session in which he thanked the commission for tackling the shortage of judicial resources in the state but also asked that allocation of judgeships be incremental and deliberate so that under-resourced courts have stability and predictability in their court operations. The commission agrees that allocation of vacant judgeships should not overwhelm an under-resourced court so that the additional resources are underutilized. Accordingly, in developing the reallocation methodology, the commission recommends that any methodology that is adopted should consider the pace of the allocations so that courts gaining and losing judgeships can manage the transition with the least possible disruption to court operations.

Attachments and Link

1. Text of proposed Government Code section 69614.4, at page 8
2. "The Commission on the Future of California's Court System Proposes Legislation to Authorize the Council to Reallocate Vacant Judgeships." Report to the Chief Justice. April 12, 2016 <http://www.courts.ca.gov/documents/futures-commission-interim-report.pdf>

Allocation of Vacant Judgeships

1 GOV 69614.4

2 (a) Vacant judgeships shall be allocated in accordance with methodology and criteria established
3 by the Judicial Council. The criteria for the allocation of vacant judgeships shall include, but is
4 not limited to, the uniform standards for factually determining judicial need in each county, as
5 updated and approved by the Judicial Council and listed in subdivision (b) of section 69614 of
6 the Government Code.

7 (b) This section does not limit the authority of the Governor to appoint a person to fill a vacancy
8 pursuant to subdivision (c) of Section 16 of Article VI of the California Constitution.

9
10 (c) This section does not limit the authority of the Legislature to create and fund new judgeships
11 pursuant to Section 4 of Article VI of the California Constitution.

12
13 (d) This section does not limit the authority of the Chief Justice to assign judges pursuant to
14 subdivision (e) of Section 6 of Article VI of the California Constitution.