



JUDICIAL COUNCIL OF CALIFORNIA

POLICY COORDINATION
AND LIAISON COMMITTEE

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POLICY COORDINATION AND LIAISON COMMITTEE

MINUTES OF OPEN MEETING WITH CLOSED SESSION

April 28, 2016

4:30 pm

Teleconference

Advisory Body Members Present: Hon. Kenneth K. So, Chair; Hon. Gary Nadler, Vice-Chair; Hon. Brian J. Back; Hon. Samuel K. Feng; Hon. James M. Humes; Hon. Dean T. Stout; Mr. Mark G. Bonino; Ms. Donna D'Angelo Melby; and, Mr. Patrick Kelly.

Advisory Body Members Absent: Hon. Charles Wachob and Ms. Kimberly Flener

Others Present: **Judicial Council members:** Hon. Harry E. Hull, Jr.; Hon. Daniel J. Buckley; Hon. Stacy Boulware Eurie; Hon. Scott M. Gordon; Hon. Dalila C. Lyons; Hon. Eric C. Taylor; Mr. Frank A. McGuire; **Judicial Council staff:** Ms. Deborah Brown, Ms. Linda Nguyen, Mr. Patrick O'Donnell, and Ms. Leah Rose-Goodwin; **Committee staff:** Mr. Cory Jaspersen, Mr. Daniel Pone, Ms. Sharon Reilly, Mr. Alan Herzfeld, Ms. Monica Leblond, Ms. Yvette Casillas-Sarcos, and, Ms. Amanda Wells.

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 4:31 pm, and committee staff took roll call. No public comments were received.

DISCUSSION AND ACTION ITEMS

Item 1

Proposal for Judicial Council-Sponsored Legislation

Delegation of authority to the Judicial Council to allocate vacant judgeships

Allows 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.

Action: *Deferred action until the committee's next meeting for further consideration and input on the proposed language.*

A D J O U R N M E N T

There being no further open meeting business, the meeting was adjourned at 5:08 pm.

C L O S E D S E S S I O N

Approval of Minutes

None.

Item 1

Pursuant to California Rules of Court, rule 10.75(d)(3)

Negotiations concerning legislation.

- a) AB 1867 (Steinorth) – Evidence: judicial notice: official records of conviction
- b) AB 691 (Calderon) – Revised Uniform Fiduciary Access to Digital Assets Act

Adjourned closed session at 5:15 pm.

Approved by the advisory body on enter date.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
May 4, 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
	Laura Speed, 916-323-3121
Policy Coordination and Liaison Committee	laura.speed@jud.ca.gov
Hon. Kenneth K. So, Chair	
Subject	
Update: Options for Consideration by the Policy Coordination and Liaison Committee for Judicial Council-Sponsored Legislation on the Allocation of Vacant Judgeships	

Executive Summary

The Policy Coordination and Liaison Committee (PCLC) met on April 28, 2016, to consider a proposal that the Judicial Council sponsor legislation to allow the allocation of vacant judgeships from courts with less judicial workload needs to courts with greater judicial workload needs, as proposed in an interim report from the Commission on the Future of California's Court System (Futures Commission).

In response to comments received from PCLC members, as well as other Judicial Council members in attendance at the meeting, PCLC asked for a revised legislative proposal.

Options for Consideration

Based on the comments from PCLC and others, Judge So, Chair of Policy Coordination Liaison Committee (PCLC), and Justice Douglas P. Miller, Chair of the Executive and Planning Committee (E & P), provide three options for consideration by PCLC:

Option 1 – Judicial Council sponsorship of legislation to provide that vacant judgeships may be allocated from courts with more authorized judicial positions than their assessed need to courts with less authorized positions than their assessed need. The allocation of vacant judgeships shall be in accordance with a methodology approved by the council, after solicitation of comments.

Option 2 – Judicial Council sponsorship of legislation to provide that *up to five* vacant judgeships may be allocated from courts with more authorized judicial positions than their assessed need to courts with less authorized positions than their assessed need. The allocation of vacant judgeships shall be in accordance with a methodology approved by the council, after solicitation of comments.

Option 3 – Support the Governor’s Budget Proposal, defer consideration of Judicial Council sponsorship of legislation addressing allocation of vacant judgeships, and continue discussions with legislative and executive branches about the judicial branch’s need for additional judgeships.

A copy of draft legislation—with provisions for options 1 and 2 included— is attached at the end of this memorandum, at pages 10–11.

Background

Previous Executive Action

There is a critical need, especially in trial courts that have been determined to have insufficient judges, to have more judicial resources to properly serve the people in their counties. Governor Brown has recognized that there is such a need; however, he 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 vacant judgeship allocations 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.

Futures Commission's Recommendations

The Judicial Branch is attempting to respond to the Governor's expressed concerns. On April 12, 2016, the Futures 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 allocation of vacant judgeships from superior courts with less judicial workload needs to courts with greater judicial workload needs.¹ 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 allocated 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.

If the legislation is enacted, the Futures Commission also recommended that the council develop an allocation methodology that:

¹ Further information about the commission's proposal is included in the report dated April 15, 2016, provided to PCLC for the April 28, 2016 meeting. The commission's full report to Chief Justice Tani G. Cantil-Sakauye is available at: <http://www.courts.ca.gov/documents/futures-commission-interim-report.pdf>

- Incorporates the principles of the council’s biennial *Judicial Needs Assessment Report* and the methodology for the subordinate judicial officer conversions under Government Code section 69615;
- Addresses changes in judicial workload needs; and
- Ensures appropriate funding to support the judgeships.

The Options

As mentioned above, this memorandum presents three options for PCLC members’ consideration. All three options, in different ways, attempt to address Governor Brown’s concerns about the need to reallocate judgeships and the formula upon which the allocations are predicated. Regardless of which option is ultimately selected, it is recognized that the Judicial Council will need to work closely with the Governor and the Legislature to accomplish the goal of providing additional judges for seriously under-judged courts.

Option 1 – Judicial Council sponsorship of legislation to provide that vacant judgeships may be allocated from courts with more authorized judicial positions than their assessed need to courts with less authorized positions than their assessed need.

This option would also include a provision that the allocation of vacant judgeships shall be in accordance with a methodology approved by the Judicial Council, after solicitation of comments. The determination of a superior court’s assessed need shall be in accordance with the uniform standards for factually determining judicial need in each county, as updated and approved by the Judicial Council, pursuant to the Update of Judicial Needs Study, based on the criteria listed in subdivision (b)(1)-(3) of section 69614 of the Government Code.

The reallocation of judgeships based on a methodology approved by the Judicial Council and under criteria contained in statute is similar to allocations of judgeships previously enacted by the Legislature and signed by the Governor. In 2006, when the Legislature created and funded 50 new judgeships through Government Code section 69614, it provided that the judgeships be allocated according to “uniform standards approved by the Judicial Council in August 2001, and as modified and approved by the Judicial Council in 2004.”² Similarly, in 2007, when the Legislature authorized the conversion of subordinate judicial officers under Government Code section 69615, it again provided that the council develop uniform standards for the allocation of those conversions. Thus, there has been prior 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 legislative experiences, it would now appear to be appropriate for the Legislature to enact legislation that provides for the reallocation of vacant judgeships based on a methodology approved by the Judicial Council.

² 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...”

Option 2 – Option 2 is similar to option 1, except that it would include a specific limit on the total number of vacant judgeships to be reallocated under the legislation. It would provide that the Judicial Council sponsorship of legislation to allow the allocation of *up to five* vacant judgeships from courts with more authorized judicial positions than their assessed need to courts with less authorized positions than their assessed need. Like option 1, it would provide that the allocation of vacant judgeships would be in accordance with a methodology and standards approved by the council.

The option of recommending the reallocation of up to five positions is responsive to the Governor’s statement in his FY 2016-2016 budget message that he 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. In his proposed budget, the Governor observed that this would shift judgeships where the workload is highest without needing to increase the overall number of judges.

In weighing the various options, PCLC can discuss the advantages and disadvantages of including a specific number of positions to be allocated in the legislation.

Option 3 – Support the Governor’s Budget Proposal, defer consideration of Judicial Council sponsorship of legislation addressing allocation of vacant judgeships, and continue discussions with legislative and executive branches about the judicial branch’s need for additional judgeships.

In considering this third option, PCLC can weigh the advantages and disadvantages of having a specific Judicial Council–sponsored bill introduced while discussions with the Governor’s office and others continue.

Legislation under Option 1 or 2

If PCLC recommends either option 1 or option 2, the legislation would provide for Judicial Branch involvement in the process of the allocation of vacant judicial positions in a manner similar to the branch’s involvement in the allocation of judicial positions under earlier legislation. Specifically, in this situation, the legislation would provide that the allocation of vacant judgeships would be in accordance with a methodology approved by the Judicial Council, after solicitation of comments. It would also provide that the determination of a superior court’s assessed need would be in accordance with the uniform standards for factually determining judicial need in each county, as updated and approved by the Judicial Council.

This section describes key aspects of any legislation that would be enacted under either option 1 or option 2.

The Methodology to be Developed after the Legislation is Enacted

Under the proposed legislation described in option 1 and 2, the essential task of authorizing the reallocation of vacant judgeships will be performed by the Legislature. However, the

legislation would not specify the specific methodology to be used for the allocation of those judgeships; rather if the proposed legislation is enacted, the council would develop the methodology pursuant to its usual council process. This consultation with all appropriate council bodies, including but not limited to the Trial Court Presiding Judges Advisory Committee, the Court Executives Advisory Committee, the Trial Court Budget Advisory Committee, and the Workload Assessment Advisory Committee, and a public comment period for all interested parties to provide input.

In developing the methodology, the council would consider the Futures Commission's recommendation that the allocation methodology 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;
- The minimum number of judgeships a court should have;
- Funding for necessary staff and facilities; and
- The maximum number/percentage of vacant judgeship allocations per court per designated time period.

Assessed Need Determined by Existing Uniform Standards

Under the proposed legislation, a superior court's assessed needs will be determined in accordance with the uniform standards for factually determining judicial need in each county as approved by the council, based on the following criteria:

- (1) Court filings averaged over a period of three years;
- (2) Workload standards that represent the average amount of time of bench and non-bench work required to resolve each case type; and
- (3) A ranking methodology that provides consideration for courts that have the greatest need relative to their current complement of judicial officers.

These uniform standards form the basis of current legislative advocacy for new judgeships by the council. They have been vetted and accepted by the Legislature, the Executive Branch, and the superior courts.

General Process for Allocation of Vacant Judgeships

Under the proposed legislation, upon confirmation of a vacant judgeship, the council will determine whether the vacant position is eligible for allocation to another superior court under

the established methodology, standards, and criteria. If the position is eligible for allocation to another court, the council would promptly notify the affected superior courts, the Legislature, and the Governor that the judicial position vacated in one court will be allocated to another court.

“Vacant” Judgeship Defined

Under the proposed legislation, and for purposes of this legislation only, a judgeship is considered “vacant” when an incumbent judge relinquishes the office either:

- (a) At any time before the deadline to file a notice of intent provided in Elections Code section 8023; or
- (b) After the Elections Code section 8023 deadline if no candidate submits qualifying nomination papers by the deadline provided in Elections Code section 8020.

Furthermore, the legislation would clarify that an incumbent judge “relinquishes” his/her office through resignation, retirement, death, removal, or confirmation to an appellate court judgeship. The proposed legislation also states that it does not apply to judgeships that become vacant when an incumbent judge relinquishes the office as a result of being defeated in an election for that office.

Comments Received

After the April 28, 2016 PCLC meeting, comments on the legislative proposal discussed at that meeting were submitted to the PCLC mailbox from the California Judges Association (CJA) and the Alliance of California Judges (ACJ). Letters were also received from the Presiding Judges of the Superior Courts of San Bernardino and Riverside Counties. Copies of these letters have been distributed to the members of PCLC.

Attachments and Link

1. Text of proposed Government Code section 69614.4, at pages 10-11

Legislation: Allocation of Vacant Judgeships (revised text)

Gov. Code § 69614.4

(a) Option 1:

To provide for a more equitable distribution of judgeships and upon notice to the applicable courts, vacant judgeships may be allocated from superior courts with more authorized judicial positions than their assessed need to superior courts with less authorized judicial positions than their assessed need.

Option 2:

To provide for a more equitable distribution of judgeships and upon notice to the applicable courts, *up to five* vacant judgeships may be allocated from superior courts with more authorized judicial positions than their assessed need to superior courts with less authorized judicial positions than their assessed need.

- (b) The allocation of vacant judgeships shall be in accordance with a methodology approved by the Judicial Council, after solicitation of comments. The determination of a superior court's assessed need shall be in accordance with the uniform standards for factually determining judicial need in each county, as updated and approved by the Judicial Council, pursuant to the Update of Judicial Needs Study, based on the criteria listed in subdivision (b)(1)-(3) of section 69614 of the Government Code.
- (c) Upon confirmation of a vacant judgeship in a superior court, the Judicial Council shall determine whether the position is eligible to be allocated to another superior court under the methodology, standards, and criteria referenced in subdivision (b). If the position is eligible for allocation to another superior court, the council shall promptly notify the applicable courts, the Legislature, and the Governor that the judicial position vacated in one court shall be allocated to another court.
- (d) (1) For purposes of this section only, a judgeship shall become "vacant" when an incumbent judge relinquishes the office through resignation, retirement, death, removal, or confirmation to an appellate court judgeship, either:
- (A) at any time before the deadline to file a notice of intent provided in section 8023 of the Elections Code; or
 - (B) after the deadline to file a notice of intent provided in section 8023, if no candidate submits qualifying nomination papers by the deadline provided in section 8020 of the Elections Code.
- (2) A judgeship does not become "vacant" for purposes of this section when an incumbent judge relinquishes the office as the result of being defeated in an election for that office.

Uncodified language to be included in the bill as legislative intent:

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

This section does not limit the authority of the Legislature to create and fund new judgeships pursuant to Section 4 of Article VI of the California Constitution.

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