



# Judicial Council of California

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## REPORT TO THE JUDICIAL COUNCIL

*Item No.: 24-106*

For business meeting on May 17, 2024

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**Title**

Judicial Council: Nonvoting Council Position

**Agenda Item Type**

Action Required

**Rules, Forms, Standards, or Statutes Affected**

None

**Effective Date**

September 15, 2024

**Recommended by**

Executive and Planning Committee  
Hon. Brad R. Hill, Chair

**Date of Report**

May 3, 2024

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### Executive Summary

The chair of the Executive and Planning Committee recommends approving one new advisory, nonvoting position on the Judicial Council for a single, three-year term. 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 and enhance the geographic and gender diversity among its membership.

### Recommendation

The chair of the Executive and Planning Committee recommends that the Judicial Council approve the creation of one new advisory, nonvoting Judicial Council position for a single three-year term, from September 15, 2024, through September 14, 2027.

## Relevant 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 positions for either a superior court clerk or a trial court executive officer, one appellate court clerk, and one court commissioner.

Effective June 3, 1998, California voters approved Proposition 220, which, among other things, amended article VI, section 6 of the California Constitution to add to the list of council members and require two “nonvoting court administrators” to serve on the Judicial Council and to allow the council to establish other nonvoting positions. Effective January 1, 1999, rule 6.2(a) incorporated the council membership list as approved in Proposition 220.<sup>1</sup> At the time Proposition 220 was passed, the council had six nonvoting members: the five specified in rule 1005 and the president of the California Judges Association, appointed under the general authority of the Chief Justice under rule 1005(g).

To preserve the four nonvoting positions<sup>2</sup> not specified under amended article VI, section 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 (Executive Committee) that the council have the following five advisory<sup>3</sup> positions: three court administrators (one of which may be an appellate court clerk, at the Chief Justice’s discretion),<sup>4</sup> the president of the California Judges Association, 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.

Rule 10.46(f), as amended in July 2013,<sup>5</sup> also provides for another advisory position for the chair of the Trial Court Presiding Judges Advisory Committee. The rule requires the committee to

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

<sup>2</sup> These four positions constitute one trial court administrator, one appellate court clerk, one court commissioner, and the president of the California Judges Association.

<sup>3</sup> In 1998 and 1999 circulating orders, these positions were described as “nonvoting.” In the 2000 circulating order, they were described as “advisory.”

<sup>4</sup> These three court administrators included the two identified in the state Constitution as a result of Proposition 220.

<sup>5</sup> Rule 10.46(f) was amended to require one nomination from the committee to the Chief Justice for the chair position of the Trial Court Presiding Judges Advisory Committee. Previously, the rule provided for three nominations from the committee to the Chief Justice from which to make a selection and an appointment to the Judicial Council.

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 positions on the council**

The Judicial Council has created advisory positions for single terms, as needed. Following is the recent history of advisory positions in reverse chronological order:

- In July 2022, the Executive Committee recommended, and the council approved, the addition of one nonvoting advisory position for a single three-year term, to which Judge Judith K. Dulcich was appointed.
- In May 2021, the Executive Committee recommended, and the council approved, the addition of two nonvoting advisory positions for a single three-year term, to which Justice Carin T. Fujisaki and Judge Ann C. Moorman were reappointed. Subsequently, in September 2021, Justice Fujisaki was appointed to a voting position to replace Justice Harry E. Hull, Jr.
- In September 2020, the Executive Committee recommended, and the council approved, the addition of one nonvoting advisory position for a limited, one-year term, to which Justice Fujisaki was reappointed.
- In March 2019, the Executive Committee recommended, and the council approved, the addition of two nonvoting advisory positions for a limited, one-year term, to which Justice Fujisaki and Judge Eric C. Taylor were appointed. Subsequently, in December 2019, Judge Taylor was appointed to a voting position to replace retired Judge Scott M. Gordon.
- In May 2018, the Executive Committee recommended, and the council approved, the addition of one nonvoting advisory position for a three-year term, to which Judge Moorman was appointed.
- In September 2016, the Executive Committee recommended, and the council approved, the addition of one nonvoting advisory position for a three-year term, to which Judge Kenneth K. So was reappointed.
- In February 2016, the Executive Committee recommended, and the council approved, the addition of one nonvoting advisory position for a three-year term, to which Justice Marsha G. Slough was appointed.
- In May 2015, the Executive Committee recommended, and the council approved, the addition of one nonvoting advisory position for a three-year term, to which Ms. Kimberly Flener was appointed.

- In September 2014, the Executive Committee recommended, and the council approved, the addition of one nonvoting advisory position for a three-year term, to which Judge Daniel J. Buckley was appointed.
- In May 2013, the Executive Committee recommended, and the council approved, the extension of the two nonvoting advisory positions, each for a three-year term, to which Judge James E. Herman and Judge So were appointed.
- In May 2012, the Executive Committee recommended, and the council approved, the addition of three nonvoting advisory positions, each for a three-year term, to which Judge Morris D. Jacobson, Judge Brian L. McCabe, and Judge Charles D. Wachob were appointed.
- In May 2010, the Executive Committee created on behalf of the council two additional advisory positions, to which Judge Teri L. Jackson and Judge Robert James Moss were appointed.
- In April 2010, the Executive Committee 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 2009, the Executive Committee created on behalf of the council another advisory position for a single three-year term, to which Mr. Frederick K. Ohlrich was appointed, returning the number of court administrators on the council to four.
- In 2007, the Executive Committee created on behalf of the council an advisory position for a limited, one-year term, to which Sen. Joseph Dunn (D-Santa Ana) was appointed. The position lapsed in December 2007.
- In May 2005, the Executive Committee created on behalf of the council an advisory position for a single three-year term. At that time, an additional court administrator was appointed to the Judicial Council, 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.

### **Analysis/Rationale**

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 policy implications of the issues brought before it, the council would benefit from an additional member.

Although the state 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. The council can be as small as the constitutionally required 23 members or as large as the voting membership chooses.

**Policy implications**

None.

**Comments**

Public comments were not solicited for this proposal because the recommendation is within the Judicial Council's purview to approve without circulation. (See Cal. Rules of Court, rule 10.2(a)(1).)

**Alternatives considered**

None.

**Fiscal and Operational Impacts**

There will be no fiscal or operational impact from the creation of this single advisory position on the council.

**Attachments and Links**

None.