



JUDICIAL COUNCIL OF CALIFORNIA

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-22-03

Title

Judicial Council: Nonvoting Council Position

Action Requested

VOTING MEMBERS ONLY: Submit votes by responding to the transmittal e-mail.

Rules, Forms, Standards, or Statutes Affected

None

Please Respond By

Noon on July 28, 2022

Recommended by

Executive and Planning Committee
Hon. Marsha G. Slough, Chair

Date of Report

July 15, 2022

Contact

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California Rules of Court, rules 10.5(h) and 10.13(d) allow the Judicial Council to act on business between meetings, including urgent matters, by circulating order. This memorandum is not a Judicial Council meeting, circulating orders are conducted via electronic communications. Prior public notice of a proposed circulating order is not required.

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, 2022, through September 14, 2025, to be assigned to Judge Judith K. Dulcich of the Superior Court of Kern County.

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 220.¹ 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 positions² 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 advisory³ positions: three court administrators (one of which may be an appellate court clerk, at the Chief Justice’s discretion),⁴ 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.

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

² These four positions comprise one trial court administrator, one appellate court clerk, one court commissioner, and the president of the California Judges Association.

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

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

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

From time to time, the Judicial Council has created advisory positions for single terms:

- In May 2005, the Executive Committee 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 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.
- In 2007, the Executive Committee created on behalf of the council an advisory position for a limited, one-year term. The Chief Justice subsequently appointed the Executive Committee's nominee, Sen. Joseph Dunn (D-Santa Ana), to the position. The position lapsed in December 2007.
- In May 2009, the Executive Committee created on behalf of the council another advisory position for a single term. The Chief Justice appointed an additional court administrator, Mr. Frederick K. Ohlrich, for a three-year term, returning the number of court administrators on the council to four.
- 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 2010, the Executive Committee created on behalf of the council two additional advisory positions, to which the Chief Justice appointed then Judge Teri L. Jackson and Judge Robert J. Moss.
- In May 2012, the Executive Committee recommended, and the council approved, the addition of three nonvoting advisory positions, each for a three-year term. The Chief Justice subsequently appointed Judges Morris D. Jacobson, Brian L. McCabe, and Charles D. Wachob to fill the three positions.

⁵ 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.

- 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 the Chief Justice appointed Judges James E. Herman and Kenneth K. So.
- 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 the Chief Justice appointed Judge Daniel J. Buckley.
- 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 the Chief Justice appointed Ms. Kimberly Flener.
- 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 the Chief Justice appointed Justice Marsha G. Slough.
- 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 the Chief Justice reappointed Judge So.
- 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 the Chief Justice appointed Presiding Judge Ann C. Moorman.
- 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 the Chief Justice appointed Justice Carin T. Fujisaki and Judge Eric C. Taylor. Subsequently, in December 2019, the Chief Justice appointed Judge Taylor to a voting position to replace retired Judge Scott M. Gordon.
- 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 the Chief Justice reappointed Justice Fujisaki.
- 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 the Chief Justice reappointed Justice Fujisaki and Presiding Judge Moorman. Subsequently, in September 2021, the Chief Justice appointed Justice Fujisaki to a voting position to replace Justice Harry E. Hull, Jr.

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

This proposal was not circulated for comment.

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 because the Judicial Council’s total membership will remain at 28.

Attachments and Links

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

Author

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Instructions for Review and Action by Circulating Order

Voting members

- Please reply to the email message with “I approve,” “I disapprove,” or “I abstain,” by **noon on July 28, 2022**.
- If you are unable to reply by **noon on July 28, 2022**, please do so as soon as possible thereafter.

Advisory members

The circulating order is being emailed 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 the creation of one new advisory, nonvoting Judicial Council position for a single three-year term, from September 15, 2022, through September 14, 2025.

My vote is as follows:

Approve Disapprove Abstain

Tani G. Cantil-Sakauye, Chair

_____/s/
Marla O. Anderson

_____/s/
Richard Bloom

_____/s/
C. Todd Bottke

_____/s/
Stacy Boulware Eurie

_____/s/
Kevin C. Brazile

_____/s/
Kyle S. Brodie

_____/s/
Jonathan B. Conklin

_____/s/
Carol A. Corrigan

_____/s/
Samuel K. Feng

_____/s/
David D. Fu

_____/s/
Carin T. Fujisaki

Brad R. Hill

_____/s/
Rachel W. Hill

My vote is as follows:

Approve Disapprove Abstain

_____/s/
Harold W. Hopp

_____/s/
Dalila Corral Lyons

_____/s/
Gretchen Nelson

_____/s/
Maxwell V. Pritt

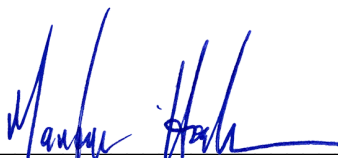
_____/s/
David M. Rubin

_____/s/
Marsha G. Slough

_____/s/
Thomas J. Umberg

Date: July 28, 2022

Attest:



Administrative Director and
Secretary of the Judicial Council