



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 22-123

For business meeting on: July 15, 2022

Title

Judicial Branch Administration: Sabbatical
Request for Judge Jo-Lynne Q. Lee

Agenda Item Type

Action Required

Effective Date

January 1, 2023

Rules, Forms, Standards, or Statutes Affected

None

Date of Report

July 15, 2022

Recommended by

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

Contact

Felizita Nava-Kardon, 415-865-4280
felizita.nava-kardon@jud.ca.gov

Executive Summary

The Executive and Planning Committee recommends the approval of an unpaid sabbatical leave for Judge Jo-Lynne Q. Lee, Superior Court of Alameda County, for the period of January 1, 2023, through May 31, 2023. During this sabbatical leave, Judge Lee intends to be a Visiting Fellow with the Commercial Law Center at Magdalen College, Oxford University to engage in a study comparing asbestos litigation as practiced in California with asbestos litigation as practiced in the United Kingdom and comparing the outcomes; she has now been formally invited since her April 15, 2022 letter. Judge Lee intends to share the information learned from the study with her colleagues on the bench and with the Alameda court's administrators in hopes that it will lead to improvements in the management of the asbestos caseload. She also intends to submit an article for publication in the journal of the Alameda County Bar Association.

Recommendation

The Executive and Planning Committee recommends that the Judicial Council, effective January 1, 2023, approve a request for an unpaid sabbatical leave for Judge Jo-Lynne Lee, Superior Court of Alameda County, from January 1 through May 31, 2023.

Relevant Previous Council Action

On April 15, 2022, Judge Lee sent a sabbatical request to the Executive and Planning Committee via an application letter to Martin Hoshino, Administrative Director, Judicial Council of California (see Attachment A).

Analysis/Rationale

Rule 10.502 of the California Rules of Court (see [Link A](#)) provides for a judicial sabbatical program, including eligibility criteria, application procedures, and evaluation standards. Rule 10.502(b) outlines the eligibility requirements for an unpaid sabbatical under Government Code section 68554.

Government Code section 68554 (see [Link B](#)) authorizes the Judicial Council to grant a leave of absence for a period not to exceed one year:

for the purpose of permitting study which will benefit the administration of justice and the individual's performance of judicial duties, upon a finding that the absence will not work to the detriment of the court. During a study leave, the judge shall receive no compensation, nor shall the period of absence count as service toward retirement, but the time of leave shall not toll the term of office.

Judge Lee is currently presiding over the Asbestos Litigation Department at the Superior Court of Alameda County and has held the assignment since January 2020. Judge Lee's participation as a Visiting Fellow at Magdalen College, Oxford University will allow her to interview British barristers who specialize in asbestos litigation, observe court proceedings, and consult with researchers and other academics at Oxford in developing her analysis. Judge Lee states that given the significant time, money, and personnel devoted to asbestos-related cases, she believes it would be beneficial to investigate how other courts process and resolve these complex, resource-intensive matters and to examine the difference, if any, in outcomes.

Judge Lee's sabbatical proposal contains all the documentation required by rule 10.502. Her application letter (Attachment A) elaborates how her study will lead to benefits to the administration of justice in California and the performance of her duties. Presiding Judge Charles A. Smiley of the Superior Court of Alameda County has written a letter of support for Judge Lee's sabbatical (see Attachment B).

Policy implications

This sabbatical request has no policy implications because it adheres to the requirements of the judicial sabbatical program provided for in rule 10.502 of the California Rules of Court.

Comments

Presiding Judge Smiley states his approval of Judge Lee's sabbatical leave of five months and recommends its submission to the Judicial Council. He states in his letter, "I support research that might provide insight as to how to better manage and process this type of litigation."

Alternatives considered

The alternative not to recommend the sabbatical request was dismissed by the Executive and Planning Committee because the request adheres to the guidelines provided in rule 10.502.

Fiscal and Operational Impacts

There is no fiscal impact. If the unpaid sabbatical leave is approved, Judge Lee will draw no salary during her sabbatical, and the period of absence does not count as service toward retirement.

Attachments and Links

1. Attachment A: Judicial sabbatical program application letter from Judge Jo-Lynne Q. Lee to Martin Hoshino, Administrative Director, Judicial Council
2. Attachment B: Letter from Presiding Judge Charles A. Smiley, Superior Court of Alameda County, to Martin Hoshino, Administrative Director, Judicial Council
3. Link A: Cal. Rules of Court, rule 10.502,
https://courts.ca.gov/cms/rules/index.cfm?title=ten&linkid=rule10_502
4. Link B: Gov. Code, § 68554,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=68554.&lawCode=GOV



SUPERIOR COURT
STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CHAMBERS OF
JO-LYNNE Q. LEE
JUDGE

ADMINISTRATION BUILDING
1221 OAK STREET
OAKLAND, CALIFORNIA 94612
(510) 267-6938
FAX (510) 891-6276

April 15, 2022

Martin Hoshino, Administrative Director
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Request for Sabbatical Leave

Dear Mr. Hoshino,

Please accept this letter as my application for unpaid sabbatical pursuant to Government Code §68554 and California Rules of Court, Rule 10.502. I am a judge at the Alameda County Superior Court and have served in this capacity since 2002. I have never previously requested or taken sabbatical leave. The period of my requested sabbatical leave is five months, commencing on or about January 1, 2023, through May 30, 2023.

California Rule of Court 10.502(a) states: "The objective of sabbatical leave is to facilitate study, teaching, research, or another activity that will benefit the administration of justice and enhance judges' performance of their duties." I believe the study that I am interested in pursuing during this sabbatical would fully satisfy this requirement. I am proposing to engage in a study comparing asbestos litigation as practiced in California with asbestos litigation as practiced in the United Kingdom and comparing outcomes. In this regard, I have been in contact with the Commercial Law Center at Magdalen College, Oxford University, where I anticipate doing most of my research. They have indicated that they would welcome me as a Visiting Fellow during the Hilary Term, 2023, and I expect confirmation of that invitation shortly.

The Proposed Study

As you may be aware, Alameda County was home to a number of Naval shipyards during WWII that remained active military bases until the late 1990s. Asbestos containing products, such as insulation, were commonly specified and installed in Navy vessels and these shipyards employed thousands of men in our community over the years. Since the 1960s, after the relationship of asbestos exposure and disease became more commonly known and understood, there have been at least one hundred plus complaints filed annually in Alameda County Superior Court alleging asbestos-induced injury, the vast majority involving plaintiffs suffering from mesothelioma. Mesothelioma is the most

Martin Hoshino, Administrative Director
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serious cancer associated with asbestos exposure and it is a rare disease with only 2,000 diagnosed cases a year in the United States in total. Recently, plaintiff lawyers involved in this practice have brought lawsuits alleging asbestos contaminated cosmetic talc has caused ovarian cancer and colon cancer as well as mesothelioma. These lawsuits generally involve multiple parties, complex issues, and lengthy jury trials. Many of the plaintiffs filing these claims must be given preferential trial settings resulting in even greater burden on our court's already over-burdened docket. Judges in non-complex case departments, each with more than 800 matters on their dockets, are continually called upon to set aside their own assigned cases in order to preside over a preferential asbestos trial because I am already engaged in an asbestos preferential trial.

Past efforts to resolve asbestos claims through alternative dispute resolution has never succeeded and while many claims will result in a settlement, those settlements generally do not occur until the eve of trial or during trial. In other words, not only is there a substantial amount of judicial resources expended on these cases but they place an equally heavy burden on prospective jurors and the community at large.

The United Kingdom was home to some of the first scientists to document the relationship of asbestos exposure in the workplace and disease but the United States was ahead of the United Kingdom in enacting legislation addressing this hazard. Apparently, the United Kingdom possesses one of the highest rates of mesothelioma in the world and the annual number of cases of documented mesothelioma in the U.K. is at least equal to or greater than numbers reported in the U.S. In contrast to the U.S., under British law plaintiffs in civil actions are not entitled to a trial by jury, with the exception of claims for false imprisonment, malicious prosecution, and fraud. Some asbestos litigation might fall under the "fraud" claims exception. However, a judge may refuse a jury trial if the court concludes the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury.

With few exceptions, during COVID the only civil jury trials held in Alameda County were preferential trials in asbestos cases. These trials continue to dominate the court's civil jury trial calendar. There is an asbestos preference trial set every week through June in my department. Notwithstanding the Johnson and Johnson bankruptcy which has stayed pending actions involving J&J Baby Powder, talc-based asbestos complaints continue to be filed and tried. This is because talc is and was commonly used in industry, such as in printing and paper manufacture, and other brands of cosmetic talc products, such as Mennen After Shave and Cashmere Bouquet, have been manufactured and sold in the U.S. for decades. Given the significant time, money, and personnel devoted to the management and trial of these cases and the consequent impact on the community, I believe it would be beneficial to investigate how other courts process and resolve these complex, resource-intensive matters and to examine the difference, if any, in outcomes.

Martin Hoshino, Administrative Director
Judicial Council of California
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Proposed Sabbatical Term and Approvals

As noted above, I am requesting five months sabbatical leave, commencing on or about January 1, 2023, through May 30, 2023. This coincides with Hilary Term at Oxford University, where I propose conducting the study. I intend to use my vacation time at the front end of my sabbatical tenure and on the end, if necessary.

This project will involve meeting with and interviewing British barristers who specialize in asbestos litigation, observing court proceedings, and consulting with researchers and other academics at Oxford for assistance in developing a robust analysis. I hope to arrange meetings between American and British lawyers involved in asbestos litigation who can share their experiences and perspectives with each other and with me. I will be collaborating with ACIC, an American consulting firm that collects and analyzes data on asbestos filings and verdicts in courts throughout the U.S. That firm has expressed interest in obtaining similar statistics, if possible, for asbestos cases litigated in the British courts for purposes of this study.

Although it is contemplated that I will return to a general civil direct calendar upon completion of the sabbatical, I will be sharing information learned from the study with my colleagues on the bench and with our court administrators that hopefully will lead to improvements in the management of the asbestos caseload. Additionally, I intend to submit an article for publication in the journal of the Alameda County Bar Association and, if given the opportunity, share my experience and findings at judicial meetings or forums.

This sabbatical is supported by Presiding Judge Charles Smiley and Civil Division Supervising Judge Brad Seligman of the Alameda County Superior Court.

I appreciate the Judicial Council's consideration of this request. If you or any member of the Executive & Planning Committee have any questions, or desire further information, please do not hesitate to contact me at the numbers listed above. I look forward to the Council's response.

Thank you.

Very truly yours,

Jo-Lynne Q. Lee



SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

CHAMBERS OF
CHARLES A. SMILEY
Presiding Judge
Department 1

Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

April 12, 2022

Martin Hoshino
Administrative Director
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Statement of Approval
Request for Sabbatical Leave
Judge Jo-Lynne Q. Lee

Dear Mr. Hoshino,

I am the Presiding Judge of the Superior Court of Alameda County. Please be advised that I approve the application submitted by Judge Jo-Lynne Q. Lee for sabbatical leave of five months, commencing on or about January 1, 2023, through May 30, 2023. Pursuant to Rules of Court, Rule 10.502 please forward this Statement of Approval to the Executive and Planning Committee for recommendation to the Judicial Council regarding Judge Lee's sabbatical request.

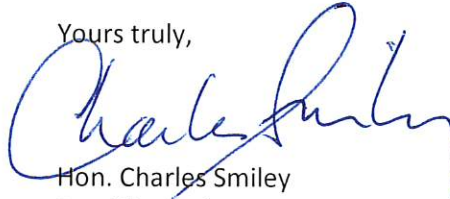
It is my understanding that Judge Lee intends to use this sabbatical to conduct a comparative analysis of proceedings and practices in asbestos litigation in the United Kingdom and California. Judge Lee is currently presiding over the Asbestos Litigation Department at our court and has held this assignment since January 2020. She also headed that department for approximately four years in a previous assignment. Our court is one of three in the State with a specialty department devoted to the management and trial of asbestos litigation. In our court, most asbestos claims involve plaintiffs suffering from mesothelioma, the most serious cancer identified with asbestos exposure. These cases involve numerous parties and complex issues. For instance, in one case recently tried in Alameda County, the number of defendants appearing in that action started with over 80 named entities. Recent motions filed in this court often involve complex and sometimes novel issues. In one case, plaintiffs are seeking a protective order to preclude defense experts from using medical information to which they have become privy for purposes outside of litigation, including scientific research. Jury trials in these cases generally take 4-6 weeks to complete to verdict.

While it is always difficult when a judicial officer is absent from the court, given the judicial time and resources commanded by these matters, I support research that might provide insight as to how to

better manage and process this type of litigation. The results might also prove helpful in improving our own management of other complex case types. I anticipate placing another civil judge in the asbestos department in 2023 and when Judge Lee returns from sabbatical she will take on a calendar that avoids conflicts of interest in connection with her sabbatical study.

Thank you for your consideration of this statement of support for Judge Lee's sabbatical leave request. Please feel free to contact me for further information if needed.

Yours truly,

A handwritten signature in blue ink, appearing to read "Charles Smiley", written over the printed name.

Hon. Charles Smiley
Presiding Judge
Superior Court of California
County of Alameda

cc. Jo-Lynne Q. Lee