



Judicial Council of California

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CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-23-01

Title

Criminal Law: Appointment to California Sex
Offender Management Board

Action Requested

VOTING MEMBERS ONLY: Submit votes
by responding to the transmittal email.

Rules, Forms, Standards, or Statutes Affected

None

Please Respond By

February 22, 2023

Recommended by

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

Date of Report

February 8, 2023

Contact

Judicial Council Support,
judicialcouncil@jud.ca.gov

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 Executive and Planning Committee recommends appointing Judge Frank L. Birchak, Superior Court of San Diego County, to the California Sex Offender Management Board. Enactment of Assembly Bill 1015 (Stats. 2006, ch. 338) created the board, under the jurisdiction of the Department of Corrections and Rehabilitation. The board is composed of 19 members and includes “[o]ne California state judge, appointed by the Judicial Council.” (Pen. Code, § 9001(b)(1)(D).)

Recommendation

The Executive and Planning Committee recommends that the Judicial Council appoint Judge Frank L. Birchak, Superior Court of San Diego County, to the California Sex Offender Management Board effective immediately.

Relevant Previous Council Action

The Legislature directed that appointees to the board have the following characteristics:

- (1) Substantial prior knowledge of issues related to sex offenders, at least insofar as related to the appointee's own agency's practices.
- (2) Decisionmaking authority for, or direct access to those who have decisionmaking authority for, the agency or constituency represented.
- (3) A willingness to serve on the board and a commitment to contribute to the board's work.

(Pen. Code, § 9001(a).)

The council appointed Judge Marian F. Gaston, Superior Court of San Diego County, to the board effective December 23, 2022. Judge Gaston has since been nominated to the federal court.

Analysis/Rationale

The mission of the board includes:

- (a) [Addressing] any issues, concerns, and problems related to the community management of sex offenders. The main objective of the board, which shall be used to guide the board in prioritizing resources and use of time, is to achieve safer communities by reducing victimization.
- (b) [Conducting] public hearings, as it deems necessary, to provide opportunities for gathering information and receiving input regarding the work of the board from concerned stakeholders and the public.

(Pen. Code, § 9002(a) & (b).)

Membership

The board consists of 19 members, as defined in Penal Code section 9001(b). This proposed appointment is to fulfill the statute requiring "[o]ne California state judge appointed by the Judicial Council." (Pen. Code, § 9001(b)(1)(D).)

Judge Birchak was selected because of his extensive leadership experience within the judicial branch and knowledge of sex offender issues. He currently serves as assistant site supervisor of the East County Division of the Superior Court of San Diego County, where he previously served as site supervisor for family judges. Before his appointment to the bench, he served as a public defender for the San Diego County Office of the Alternate Public Defender for 10 years and as the director of Training, Recruitment, and Career Development for the San Diego County Office of the Public Defender. Judge Birchak currently serves as chair of the California Judges Association's Family Law Committee. He also currently serves as a member of the Judicial Council's Criminal Law Curriculum Committee and Judicial Branch Access, Ethics and Fairness

Curriculum Committee, and recently conducted a training on sex offender registration termination. He currently serves on Superior Court of San Diego County committees responsible for judicial education, rules, and family law.

Policy implications

None.

Comments

This proposal was not circulated for comment.

Alternatives considered

Because the nomination serves to meet the legal obligation under Penal Code section 9001(b)(D), the alternative not to appoint a judge for the California Sex Offender Management Board was not considered.

Fiscal and Operational Impacts

The board members serve without compensation. (Pen. Code, § 9001(d).)

Attachments and Links

1. Voting instructions, at page 4
2. Vote and signature pages, at pages 5–6
3. Link A, Pen. Code, §§ 9000–9003,
[https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=
&title=9.&part=3.&chapter=3.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=9.&part=3.&chapter=3.&article=)

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 **February 22, 2023**.
- If you are unable to reply by **February 22, 2023**, 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 appointment of Judge Frank L. Birchak, Superior Court of San Diego County, to the California Sex Offender Management Board.

My vote is as follows:

☒ Approve

☐ Disapprove

☐ Abstain

 Patricia Guerrero, Chair

_____/s/
 Marla O. Anderson

 Maria Lucy Armendariz

_____/s/
 C. Todd Bottke

_____/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

_____/s/
 Brad R. Hill

 Rachel W. Hill

_____/s/
 Harold W. Hopp

My vote is as follows:

☒ Approve

☐ Disapprove

☐ Abstain

_____/s/
Ann C. Moorman

_____/s/
Gretchen Nelson

_____/s/
Maxwell V. Pritt

_____/s/
David M. Rubin

Marsha G. Slough

_____/s/
Thomas J. Umberg

Date: February 24, 2023

Attest:

Mellicent A. Tidwell
Acting Administrative Director and
Secretary of the Judicial Council