



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 23, 2016

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**Title**

Judicial Council: Nonvoting Council Position

**Agenda Item Type**

Action Required

**Recommended by**

Executive and Planning Committee  
Hon. Douglas P. Miller, Chair

**Effective Date**

September 15, 2016

**Date of Report**

June 14, 2016

**Contact**

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### Executive Summary

The Judicial Council consists of the Chief Justice and one other justice of the Supreme Court, three justices of Courts of Appeal, 10 judges of superior courts, two nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice to three-year terms.<sup>1</sup> The Chief Justice has requested the chair of the Executive and Planning Committee submit a request to create one advisory, nonvoting Judicial Council position for a single three-year term. With two advisory positions expiring in September 2016, the direct net effect of adding this advisory position, effective September 15, 2016, would be to decrease the Judicial Council's total membership by one member, to a total of 31 members.

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<sup>1</sup> Cal. Rules of Court, rule 10.3(a)

## **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 three-year term, from September 15, 2016, through September 14, 2019.

## **Previous Council Action**

### **2016 membership changes and recent appointments**

Effective April 4, 2016, appointments were made to fill three trial court judge vacancies that were created by the appointment of two trial court judges—Judges Martin J. Tangeman and Marsha G. Slough—to the Court of Appeal and the retirement of one other trial court judge, Judge Emilie H. Elias. Also effective on April 4, 2016, one additional appointment was made to fill the advisory position vacated by Judge Delila C. Lyons after she was appointed to the voting position held previously by Judge Elias. Another two advisory positions are set to expire on September 14, 2016.

### **History of advisory appointments on the council**

Effective July 1, 1993, the council approved rule 1005 of the California Rules of Court, which expressly authorized the Chief Justice to appoint advisory council members. Rule 1005(g)(1)–(3) required at least five nonvoting members: three trial court administrators,<sup>2</sup> one appellate court clerk, and one court commissioner. Advisory members on the Judicial Council, however, predate this rule, going back to 1987.<sup>3</sup>

Effective June 3, 1998, the California voters approved Proposition 220, which amended the California Constitution to require two “nonvoting court administrators” to serve on the Judicial Council and allow the council to establish other nonvoting positions.<sup>4</sup> Effective January 1, 1999, rule 6.2(a) incorporated the council membership list, as approved in Prop. 220. Rule 6.2(a) was renumbered as rule 10.2(a), effective January 1, 2007. At the time Prop. 220 passed, the council had six nonvoting members: the five listed in rule 1005 and the president of the California Judges Association (CJA), appointed under the general authority of the Chief Justice under rule 1005(g).

To preserve the four nonvoting positions that were not explicitly approved in Prop. 220, the council approved those positions through September 14, 1999, by circulating order on July 28,

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<sup>2</sup> Rule 1005 did not use the term *trial court administrator* but rather “either a superior court clerk or a trial court executive officer.”

<sup>3</sup> The Circulating Order memorandum from 2000, on which the current continuing advisory council positions are based, states: “All of the advisory positions . . . have existed since 1991. Some were established in 1987. Prior to 1987, there were no advisory positions on the council.”

<sup>4</sup> The text of Prop. 220 states, in pertinent part, “and such other nonvoting members as determined by the voting membership of the council.”

1998.<sup>5</sup> The following year, again by circulating order, the council preserved those positions for 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 (E&P) that the council have the following five advisory<sup>6</sup> positions: three court administrators (one allowed to be an appellate court clerk at the Chief Justice's discretion),<sup>7</sup> the CJA president, and a court commissioner. These positions do not have a term end, although the order states the council's intention to review the appropriateness of the court commissioner position.

Later in 2000, the council approved an additional advisory council position for the chair of the Trial Court Presiding Judges Advisory Committee by amendment to rule 6.46(f), now rule 10.46(f). The rule, as amended in 2013, provides that the advisory committee submit annually to the Chief Justice one nomination made by a majority of the full committee for its chair, for the Chief Justice to appoint as an advisory member of the council.

### **Single-term advisory council positions**

Although the California Constitution limits the number of voting members on the council to 21 and requires at least two nonvoting members, it does not limit the size or composition of the advisory membership of the council. The council can be as large as the voting membership chooses or as small as 23 members.

Rule 10.4(a) observes that nominees for positions on the Judicial Council should be drawn from "diverse backgrounds, experiences, and geographic locations." Advisory positions provide a means to vary the diversity and range of subject matter expertise that is available to the council as specific needs arise on the council.

Over the past five years, the council has included between 10 and 12 advisory members. The following is a recent history of new advisory positions created for single terms:

- In May 2005, E&P 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 returned to having three court administrator advisory members.

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<sup>5</sup> These four positions are one additional trial court administrator, one appellate court clerk, one court commissioner, and the president of the California Judges Association.

<sup>6</sup> In the 1998 and 1999 circulating orders, these positions were described as "nonvoting." In the 2000 circulating order, these positions were described as "advisory."

<sup>7</sup> These three court administrators included the two identified in the state Constitution, as a result of Prop. 220.

- In May 2009, E&P created on behalf of the council another advisory position for a single term. The Chief Justice again appointed an additional court administrator for a three-year term, bringing the total number of court administrators on the council back to four. This position lapsed in September 2012.
- In April 2010, E&P created an advisory position on behalf of the council and recommended that retired Judge Terry B. Friedman be appointed to this advisory position.<sup>8</sup> This advisory position also lapsed in September 2012.
- In May 2010, E&P created two additional advisory member positions on behalf of the council, to which the Chief Justice appointed Judges Teri L. Jackson and Robert James Moss, with terms ending September 14, 2013.<sup>9</sup>
- In May 2011, the Chief Justice appointed Judge Jackson to a three-year term as a voting member of the council, effective September 15, 2011, and appointed Judge David De Alba to complete the advisory term of Judge Jackson, ending September 14, 2013.
- In May 2012, the council created three additional advisory positions for a single term, to which the Chief Justice appointed Judges Morris D. Jacobson, Brian L. McCabe, and Charles D. Wachob. The Chief Justice also appointed Judge Kenneth K. So to the final year of the advisory position previously held by Judge De Alba and, before him, Judge Jackson.
- In May 2014, the council created an advisory position, to which Judge Daniel J. Buckley was appointed, to fulfill a need for court technology experience relevant to the branchwide technology plan that was being developed at the council's direction. This position ends in September 2017.
- In May 2015, the council created an advisory position designated for another trial court executive officer to serve on the council and prepare for the ongoing line of succession in the Court Executives Advisory Committee leadership while also sharing the committee-related workload associated with council membership. Ms. Kimberly Flener was appointed to that position.

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<sup>8</sup> Judge Friedman had to give up his three-year *voting* position on the council earlier in 2010 when he took his judicial retirement.

<sup>9</sup> E&P also created, on that date, an additional advisory member position, which allowed the Chief Justice to appoint Judge Mary Ann O'Malley as an advisory member for three and a half months after the completion of her year on the council as chair of the Trial Court Presiding Judges Advisory Committee. At that time, the Chief Justice appointed Judge O'Malley to a voting position effective January 1, 2011, to succeed the council member who was expected to become the next presiding judge of the Superior Court of Los Angeles County, Judge Lee Smalley Edmon. Judge Edmon left the council on the effective date of her becoming the presiding judge in Los Angeles, January 1, 2011. Her departure was eight and a half months before the completion of her three-year term.

- In February 2016, the council created an advisory position that was designated for Associate Justice Marsha G. Slough, Court of Appeal, Fourth Appellate District, to continue serving on the council as a nonvoting advisory member, as a result of her appointment to the appellate court and consequent change in the basis for her membership on the Judicial Council.

### **Rationale for Recommendation**

Advisory positions provide complementary and diverse sources of expertise on the council in the many subject areas of the council's policymaking process.

### **Comments, Alternatives Considered, and Policy Implications**

This proposal was not circulated for comment because the number of nonvoting advisory positions on the council is authorized in the California Rules of Court and subject to the authority of the Chief Justice and the Judicial Council.

### **Implementation Requirements, Costs, and Operational Impacts**

Approval of this proposal to add one new advisory position to the Judicial Council would result in a net reduction of council membership this year by one position. The implementation requirements and operational costs of this proposal are negligible. Costs budgeted for council activities can be expected to be lower by a relatively minor sum with respect to the overall budget for council activities.