



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: August 25–26, 2016

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Title	Agenda Item Type
Subordinate Judicial Officers: Update of the Policy for Deferrals of Conversions to Judgeships	Action Required
	Effective Date
	August 26, 2016
Rules, Forms, Standards, or Statutes Affected	Date of Report
None	August 15, 2016
Recommended by	Contact
Executive and Planning Committee	Leah Rose-Goodwin, 415-865-7708
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Hon. Marla O. Anderson, Vice-chair	
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Leah Rose-Goodwin, Manager	

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### Executive Summary

The Executive and Planning Committee (E&P) of the Judicial Council has authority to confirm conversions of subordinate judicial officer positions to judgeships under Government Code section 69615, using uniform criteria adopted by the Judicial Council to identify positions eligible for conversion. Under certain circumstances, E&P may grant a temporary exception to conversion at the request of a court that wishes to defer a conversion until a later time. The policy that established the criteria for deferring conversions was adopted by the Judicial Council in 2009 but needs to be updated in order to fit the current needs of courts. In order to meet the operational needs of courts and to provide clear guidance to both courts and E&P regarding the circumstances under which an exception may be granted, E&P recommends that the Judicial Council approve updated criteria under which a court may seek a deferral of a conversion.

## Recommendation

The Executive and Planning Committee recommends that the Judicial Council update the existing policy concerning deferrals of subordinate judicial officer (SJO) conversions in order to give E&P and the courts clear guidelines for reviewing and approving such requests. Specifically, the council should adopt the following criteria:

1. Assessed judicial need,
2. Vacancies and anticipated vacancies of judicial officers,
3. Workload growth in the court,
4. Economic hardship that affects a court's ability to maintain its current level of operations, and
5. Operational hardship.

In addition to expanding the criteria under which an exception could be granted, E&P recommends that the council direct courts seeking a deferral to choose between three options. Courts with a vacant SJO position eligible for conversion may:

**Option 1:** Request a permanent reduction in the number of authorized SJO positions instead of converting the position or filling it with another SJO.

**Option 2:** Seek a deferral of the conversion and choose to fill the position with a subordinate judicial officer.

**Option 3:** Seek a one-year deferral of the conversion, leaving the SJO position vacant during that time.

## Previous Council Action

Government Code section 69615 allows for the conversion of up to 162 subordinate judicial officer positions to judgeships and authorizes the Judicial Council to determine the criteria for establishing the need for converting those positions.<sup>1</sup> The goal of the conversions was to address the disproportionate growth in the number of SJO positions over a period of time when there was no corresponding growth in the number of judgeships. Absent new judge resources, some courts found it necessary to hire SJOs to meet growing judicial workloads. The conversion legislation helps to ensure that there are enough judicial officers of each type (judges and SJOs) in each court. Using workload measures approved by the Judicial Council and codified in statute, the Judicial Council approved a list of positions that were eligible for conversion. That list was

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<sup>1</sup> Assem. Bill 159 (Stats. 2007, Ch. 722, § 3).

utilized for several years until, at its August 2015 meeting, the Judicial Council approved an update to the list of courts with eligible conversions using more recent workload data.<sup>2</sup>

In December 2007, the council approved a policy to address issues related to timing and sequencing of conversions and delegated to E&P the responsibility for approving conversions.<sup>3</sup> The policy requires each of the courts with SJO positions eligible for conversion to notify the Judicial Council promptly upon confirmation that an eligible SJO position is or will become vacant and the date of the anticipated vacancy. It also requires that each court with an SJO position that is or will become vacant not fill that position until the Executive and Planning Committee makes a decision as to conversion of the position.

About two years after the conversion legislation went into effect, council staff conducted a comprehensive review of program outcomes and proposed some minor modifications to the policy guiding conversions to address a number of emerging issues.<sup>4</sup> The first had to do with expediting the timing during any fiscal year when courts could seek an SJO conversion even if their allocation group had already received the full number of conversions allotted to it. This policy was designed to help allocate available conversions equitably at a time when there were more conversions being sought than positions available to convert.

The second policy recommendation established criteria under which E&P could permit an exception to the conversion of a vacant SJO position. An April 2009 Judicial Council report explained the reasons for articulating the factors for exceptions to conversion as follows:

In making decisions about whether to grant courts an exception to the conversion policy, E&P has sought to strike a balance between the immediate needs of courts to fill vacant SJO positions and the long-term policy objective of achieving a more appropriate balance between the number of judges and SJOs in the trial courts. E&P may be assisted in its SJO conversion work if the Judicial Council adopts specific criteria to use in making decisions regarding exceptions to conversion policy. Establishing clear criteria to help guide E&P decisions will become more important moving forward as the number of courts with positions available for conversion declines, providing fewer options for courts seeking to retain particular SJO positions at the time of a vacancy.<sup>[5]</sup>

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<sup>2</sup> See Judicial Council of Cal., Executive and Planning Com. Rep., *Subordinate Judicial Officers: Update of Conversions Using More Current Workload Data* (Aug. 11, 2015), [www.courts.ca.gov/documents/jc-20150821-itemL.pdf](http://www.courts.ca.gov/documents/jc-20150821-itemL.pdf).

<sup>3</sup> See Judicial Council of Cal., Office of Governmental Affairs Rep., *Subordinate Judicial Officers: Allocation of Conversions* (Dec. 4, 2007), [www.courts.ca.gov/documents/120707item14.pdf](http://www.courts.ca.gov/documents/120707item14.pdf).

<sup>4</sup> See Judicial Council of Cal., Office of Governmental Affairs Rep., *Proposal to Modify Subordinate Judicial Officer Conversion Policy* (Apr. 14, 2009), [www.courts.ca.gov/documents/042409itemh.pdf](http://www.courts.ca.gov/documents/042409itemh.pdf).

<sup>5</sup> *Id.* at p. 6.

The council adopted the proposed changes to the SJO conversion policy in April 2009. There have been no additional updates to the policy. As of July 1, 2016, 128 positions in 22 courts have been converted (see Attachment A).

### **Rationale for Recommendation**

While the Judicial Council is responsible for making policy decisions concerning SJO conversions, E&P was delegated the authority to oversee the process by which courts seek conversions or request exceptions to conversions. This delegation of authority was given because at the time the conversion legislation passed, E&P was meeting more frequently than the Judicial Council and could more quickly confirm a conversion, thus giving courts greater certainty about their ability to convert a position at a time when there was high demand to convert positions and a limited number of available conversions.

An exception to conversion allows a court with an SJO position identified as eligible for conversion to a judgeship to either keep the position vacant for a period of time or to fill the vacant position with a subordinate judicial officer. Over the years, E&P has approved several exceptions to conversion. In the years immediately following passage of the conversion legislation, courts sought exceptions principally in order to fill positions more quickly and to manage workload. At the time, the process of getting a judge appointed to a vacant judgeship was very lengthy, sometimes in excess of one year, and courts could not afford to have a judicial position vacant for so long and continue to effectively manage court workload. Filling the vacancy with a commissioner was much quicker because it could be handled locally.

The reasons for seeking an exception have since evolved, primarily in response to budgetary issues that were not anticipated when the policy on conversion and exceptions was first developed. More recent requests have specifically cited the uncertainty of the fiscal climate or the need to keep vacant positions unfilled until the fiscal climate improves. A key point to recall is that once a judge is appointed to a court's vacant converted position, the court must transfer a dollar amount—equivalent to that of the subordinate judicial officer's salary—from the court's budget to the judicial branch fund for judge compensation. Any additional monies needed for the judge's salary and benefits is appropriated by the state as part of the judicial branch budget.

In February 2016, at the direction of the chair of E&P, an ad hoc subcommittee of E&P members was convened to review the policy concerning granting exceptions to conversions and to make a recommendation to E&P—and ultimately the Judicial Council—as to whether the policy should be updated. The subcommittee reviewed the policy history and also considered several recent requests for exceptions that E&P had received but on which they had not yet made a determination.

Based on their review, the subcommittee concluded that a revision to the policy was warranted in order to (1) update the criteria under which courts could defer a conversion, (2) provide E&P and courts with clear direction as to how and when deferrals would be granted, and (3) complete all of the conversions authorized under the statute. At its July 14, 2016 meeting, E&P received the

subcommittee's report and voted unanimously to approve the subcommittee's recommendation to update the policy.

### **Existing Policy Governing Exceptions**

The existing policy governing exceptions lists three criteria, in descending order of importance, to guide E&P:

- Whether the exception would result in fewer conversions than the 16 positions eligible for conversion each year. If granting an exception to the conversion policy would mean that fewer than 16 vacant positions are converted, then the request for the exception should not be granted.
- Whether the court has already converted positions and is on schedule to convert all of its eligible positions within the timeframe for implementation. Courts that are not on schedule to convert all of their positions should not be granted exceptions.
- Whether converting an SJO position would constitute a hardship for the court, with an evaluation of hardship consisting of the following:
  - Assessed judicial need in the court,
  - Vacancies and anticipated vacancies of judicial officers, and
  - Workload growth in the court.

The criteria described no longer fit the current environment. The first criterion—whether the judicial branch is on track to convert all 16 eligible positions each year—has not been applicable since fiscal year 2011–2012. Starting in fiscal year 2012–2013 through the present, fewer than 16 conversions have taken place each year, whether because of a lack of vacant positions or for other reasons. With two fiscal years remaining until the conversions were anticipated to be completed and with 34 conversions left to complete, the judicial branch is slightly behind in its efforts to complete them in the anticipated timeframe. However, it should be noted that there is no sunset provision for the conversions or a penalty if conversions take longer to complete than expected; the only limiting language related to the timeframe is that no more than 16 may be converted each fiscal year.

The second criterion of the existing policy is whether the court requesting the exception is on track to complete its conversions within the 10-year timeframe. Again, this criterion is no longer as relevant as it may have been several years ago. Since conversions are predicated on a vacancy occurring, it may not be possible to complete them all within 10 years if the subordinate judicial officer holding the position eligible for conversion is still actively employed, since a conversion can take place only if a position becomes vacant.

The third criterion is whether the exception would constitute a hardship for the court. The grounds for hardship are based on workload need and growth, as well as the number of vacant positions. This definition of hardship was a product of the time in which the policy was developed. Immediately following passage of the conversion legislation, many of the requests for

temporary exceptions were granted due to high workload demand and because the court anticipated it would take a long time for the Governor to fill the converted positions.

### **Proposed Policy for Exceptions to Conversion**

E&P recommends that the policy be revised to eliminate the first two criteria of the existing policy (whether the judicial branch is on track to convert 16 positions per fiscal year and whether a court is on track to complete all of its conversions) because they are no longer applicable in the current environment. In addition, the policy should be updated to broaden the definition of hardship, the third criterion, to include economic and operational hardship as reasons for deferring a conversion. In recent years, as the court funding situation has worsened, some courts have had to utilize the salary savings from vacant SJO positions to manage operations until funding for the court improved and stabilized. Expanding the definition gives courts the leeway to manage resources locally.

Thus, to provide better guidance to courts seeking deferrals and to E&P as they evaluate the requests, E&P recommends that the council adopt the following criteria to be considered in determining hardship:

1. ***Assessed judicial need:*** What is the current assessed judicial need for the requesting court and how will a deferral assist the court in meeting its workload needs? How will the court be impacted with or without a deferral? Will the court maintain a workload-based balance between SJO positions and judicial positions?
2. ***Vacancies and anticipated vacancies of judicial officers:*** How is the court impacted by current vacancies or anticipated vacancies? How will a deferral assist the court in managing its workload?
3. ***Workload growth in the court:*** How has workload grown or shifted? How will a deferral assist the court in managing its workload?
4. ***Economic hardship that affects a court's ability to maintain its current level of operations:*** How is the court economically impacted by the conversion of an SJO position? How will a deferral assist the court in managing its economic resources and in managing its workload?
5. ***Operational hardship:*** How will the court be impacted with or without a deferral?

In addition to expanding the criteria under which an exception could be granted, E&P recommends that the council direct courts seeking a deferral to choose between three options (detailed below) for implementing the deferral. This is to ensure that the intent of the statute is followed and to give courts that do not presently wish to convert an SJO position clear guidance regarding the deferral.

***Option 1:*** Courts with a vacant SJO position eligible for conversion may opt to request a permanent reduction in the number of authorized SJO positions instead of converting the position or filling it with another SJO. Those courts would have the opportunity, in the future, to

seek authority for an increase in the number of SJOs if needed and justified by workload measurement through existing council policies regarding the number and type of SJO positions.<sup>6</sup>

**Option 2:** Courts with a vacant SJO position eligible for conversion may seek a deferral of the conversion and choose to fill the position with a subordinate judicial officer. The deferring court could convert a position later on if (1) the court’s workload need qualifies them for a conversion; (2) the court has a vacant SJO position; and (3) a conversion under Government Code section 69615 is available at that time, anticipating that in a few years the conversions under that authority will run out.

**Option 3:** Courts with a vacant SJO position eligible for conversion may seek a one-year deferral of the conversion, leaving the SJO position vacant during that time. The conversion would then be available to other courts with eligible positions to convert. The court exercising that option may not have another opportunity to convert a position if all of the authorized conversions under Government Code section 69615 are used by other courts during that one-year period. At the conclusion of the one-year period, the court would need to report back to E&P whether it wishes to then convert the position or seek a permanent reduction in the number of authorized SJO positions.

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

### **Comments**

This proposal was presented to the Executive Committee of the Court Executives Advisory Committee at its June 8, 2016 meeting and to the Executive Committee of the Trial Court Presiding Judges Advisory Committee on June 15, 2016. At each meeting, attendees heard a brief introduction of the topic and an oral presentation of the proposed policy. Members were invited to contact Judicial Council staff with any questions or comments following the meetings.

One comment received concerning the scope of the proposed policy asked whether it would be limited to circumstances of economic hardship only. A similar comment was raised when E&P received the subcommittee’s report at its July 14, 2016 meeting. In response to both comments, the subcommittee added an additional criterion—“operational hardship”—meant to encompass any unforeseen situations not covered by the other.

### **Policy Implications**

Allowing courts to defer conversions is not contrary to the judicial branch’s efforts to obtain new judgeships. While the two issues both relate to judicial resources, that is where the similarity ends. New judgeships are urgently needed in courts where resources have not kept pace with workload need. On the other hand, conversions of subordinate judicial officer positions to judgeships are needed in courts where there are more SJOs than the identified workload-based

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<sup>6</sup> See Judicial Council of Cal., Executive Office Programs Division Rep., *Subordinate Judicial Officers: Policy for Approval of Number of Subordinate Judicial Officers in Trial Courts* (Feb. 1, 2007), [www.courts.ca.gov/documents/022307item10.pdf](http://www.courts.ca.gov/documents/022307item10.pdf).

need for SJOs. Because SJO conversions only shift resources (SJOs and judges) *within* a court and not among or between the courts, a policy to defer conversions does not contradict the judicial branch's efforts to seek new judgeships.

The existing policy concerning deferrals is out of date and in need of revision. In developing its recommendation, E&P has been careful to ensure that any modifications of the policy on deferrals would not prevent the branch from achieving its overall goal of converting all 162 positions authorized by the statute. At the same time, E&P's proposed policy changes recognize that courts require some greater measure of flexibility in managing their resources. The recommendation reflects careful thinking about the outcomes associated with various courses of action.

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

Adopting this recommendation would update an existing policy and does not carry any costs to implement. In terms of operational impacts, it may take somewhat longer than anticipated for the judicial branch to complete all of the conversions under Government Code section 69615. However, there is no date by which all conversions must be completed, only the stipulation that a maximum of 10 may be converted each fiscal year.

### **Attachments**

1. Attachment A: Subordinate Judicial Officer Conversions Completed as of July 1, 2016



## Attachment A: Subordinate Judicial Officer Conversions Completed as of July 1, 2016

	Positions Eligible for Conversion	Conversions									Total Conversions to Date	Positions Remaining to Convert
		07-08	08-09	09-10	10-11	11-12*	12-13	13-14	14-15	15-16		
Courts Still Eligible for SJO Conversions												
Contra Costa	7	3	0	1	0	0	0				4	3
Los Angeles*	79	4	5	7	7	8	6	7	7	7	58	21
Napa	1	0	0	0	0	0	0				0	1
Placer	2	0	0	0	0	0	0				0	2
San Diego	7	2	0	0	0	0	1			2	6	1
San Luis Obispo	2	1	0	0	0	0	0			1	2	0
San Mateo	2	0	0	0	0	0	0				0	2
Orange	17	1	2	2	2	3	2	2			14	3
Sacramento*	6	1	2	0	0	2	0				5	1
Santa Cruz	2	0	0	0	0	1	0			1	2	0
Courts That Have Completed Their SJO Conversions												
Alameda*	6	0	0	1	2	3	0				6	0
El Dorado	2	0	1	0	1	0	0				2	0
Fresno	3	0	1	0	1	0	0	1			3	0
Imperial	1	0	0	0	1	0	0				1	0
Kern	1	0	1	0	0	0	0				1	0
Marin	2	0	0	0	0	1	1				2	0
Merced	2	0	1	0	0	1	0				2	0
Riverside	6	1	1	0	0	1	3				6	0
San Francisco	2	1	0	1	0	0	0				2	0
Santa Barbara	2	0	0	2	0	0	0				2	0
Solano	3	1	2	0	0	0	0				3	0
Sonoma	2	0	0	1	1	0	0				2	0
Stanislaus	1	0	0	0	1	0	0				1	0
Tulare	2	0	0	1	0	0	0		1		2	0
Yolo	2	1	0	0	0	0	0	0	1		2	0
Total	162	16	16	16	16	20	13	11	9	11	128	34
Last Updated: July 1, 2016												

**Last Updated: July 1, 2016**

\* Note that total conversions in FY 2011-2012 exceed 16 because of the enactment of Senate Bill 405, which increased the number of allowable conversions in specific circumstances for this fiscal year.

Shaded rows represent courts that have completed all of the conversions for which they are eligible.