



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on November 16–17, 2017

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Title

Subordinate Judicial Officers: Deferrals of  
Conversions to Judgeships

Agenda Item Type

Action Required

Effective Date

November 17, 2017

Rules, Forms, Standards, or Statutes Affected  
None

Date of Report

November 3, 2017

Recommended by

Executive and Planning Committee  
Hon. Marla O. Anderson, Vice-chair

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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 the Government Code 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. E&P now proposes the refinement of an existing criterion for granting exceptions that would allow for a one-year extension of an original deferral if good cause can be shown by the court.

### Recommendation

The Executive and Planning Committee recommends that the Judicial Council refine existing policy concerning the granting of deferrals of subordinate judicial officer (SJO) conversions in order to allow a court that has previously been granted a one-year deferral to extend the deferral for an additional year, if the court can show good cause for this action.

## 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 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 council approved a list of positions that were eligible for conversion. That list was utilized for several years until the Judicial Council, at its August 2015 meeting, 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 E&P 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. The second policy recommendation established criteria under which E&P could permit an exception to the conversion of a vacant SJO position.<sup>5</sup> The council adopted the proposed changes to the SJO conversion policy in April 2009.

## 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

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

<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.

Council and could more quickly confirm a conversion. This gave 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. 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.

In February 2016, the chair of E&P convened an ad hoc subcommittee 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. The council subsequently reviewed and adopted E&P's recommendations during its August 26, 2016 meeting.<sup>6</sup>

### **Existing policy governing exceptions**

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

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.

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<sup>6</sup> See Judicial Council of Cal., Executive and Planning Com. Rep., *Subordinate Judicial Officers: Update of the Policy for Deferrals of Conversions to Judgeships* (Aug. 25, 2016), <https://jcc.legistar.com/View.ashx?M=F&ID=4625050&GUID=80FC1733-CB19-4468-9822-E63668EBC1C4>.

In addition to expanding the criteria under which an exception could be granted, the council directed courts seeking a deferral to choose between three options. These optional courses of action are intended to provide E&P and the courts with greater flexibility in the implementation of existing policy. Courts with a vacant SJO position eligible for conversion may:

1. *Request a permanent reduction in the number of authorized SJO positions rather than convert the position or fill it with another SJO.*

Courts choosing this option have the opportunity, at some future date, to seek authority for an increase in the number of SJO positions if justified by a workload assessment that is based on existing council policies regarding the number and type of SJO positions.

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

Courts choosing this option can convert a position at a later date if the court's workload qualifies it for such a conversion, the court has a vacant SJO position, and a conversion under Government Code section 69615 is available at that time.

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

Courts choosing this option must report back to E&P at the end of the one-year deferral period to indicate whether they wish to convert the vacant position or seek a permanent reduction in the number of authorized SJO positions. The subsequent conversion of a deferred SJO position will depend on the availability of authorized conversions under Government Code section 69615.

### **Proposed refinement of the policy**

E&P recommends that the policy concerning the third option above be refined to allow E&P to confirm a court's request to extend a previously confirmed deferral for an additional year if the court can show good cause. This would result in the modification of this criteria to read thus:

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

Courts choosing this option must report back to E&P at the end of the one-year deferral period to indicate whether they wish to convert the vacant position, seek a permanent reduction in the number of authorized SJO positions, *or have good cause to extend the deferral an additional year.* The subsequent conversion of a deferred SJO position will depend on the availability of authorized conversions under Government Code section 69615.

The reason for making this change to the policy stems from a request from a court with an SJO conversion that is currently deferred. Recognizing that the judicial branch may be updating the workload standards for judicial officers in the coming year, the court asked whether they would still be eligible for conversion if the workload standards were updated. Since that is unknown at

this time, the request for an extension seems a reasonable course of action until there is more certainty about the court's eligibility.

### **Policy Implications**

If the modification of the policy on temporary exceptions to SJO conversions is approved by the council, the court would incur no new costs, while the requirement for eventual conversion of the aforementioned positions would continue to be in effect. The granting of a temporary exception to SJO conversions in the court is designed to help minimize the adverse operational impact that state funding cuts have had on the court's budget, with the provision by E&P of an additional year of deferral having the same objective. On that basis, the operational impact is projected to be minimal. The granting of a temporary exception is accompanied by an expectation by E&P that the court will report back at the end of the final deferral year to indicate whether it wishes to convert the position or seek a permanent reduction in the number of authorized SJO positions.

### **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 and Links**

1. Attachment A: Subordinate Judicial Officer Conversions Completed (updated Sept. 2017).

**Attachment A: Subordinate Judicial Officer Conversions Completed as of September 1, 2017**

	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	16-17			
Courts Still Eligible for SJO Conversions														
Los Angeles	79	4	5	7	7	8	6	7	7	7	5	63	16	
Napa	1	0	0	0	0	0	0	0	0	0	0	0	1	
Placer	2	0	0	0	0	0	0	0	0	0	0	0	2	
San Diego	7	2	0	0	0	0	1	1	0	2	0	6	1	
San Mateo	2	0	0	0	0	0	0	0	0	0	0	0	2	
Orange	17	1	2	2	2	3	2	2	0	0	0	14	3	
Unallocated SJO Conversion Positions**														
	3												3	
Courts That Have Completed Their SJO Conversions														
Alameda	6	0	0	1	2	3	0	0	0	0	0	6	0	
Contra Costa	4	3	0	1	0	0	0	0	0	0	0	4	0	
El Dorado	2	0	1	0	1	0	0	0	0	0	0	2	0	
Fresno	3	0	1	0	1	0	0	1	0	0	0	3	0	
Imperial	1	0	0	0	1	0	0	0	0	0	0	1	0	
Kern	1	0	1	0	0	0	0	0	0	0	0	1	0	
Marin	2	0	0	0	0	1	1	0	0	0	0	2	0	
Merced	2	0	1	0	0	1	0	0	0	0	0	2	0	
Riverside	6	1	1	0	0	1	3	0	0	0	0	6	0	
Sacramento	6	1	2	0	0	2	0	0	0	0	1	6	0	
San Francisco	2	1	0	1	0	0	0	0	0	0	0	2	0	
San Luis Obispo	2	1	0	0	0	0	0	0	0	1	0	2	0	
Santa Barbara	2	0	0	2	0	0	0	0	0	0	0	2	0	
Santa Cruz	2	0	0	0	0	1	0	0	0	1	0	2	0	
Solano	3	1	2	0	0	0	0	0	0	0	0	3	0	
Sonoma	2	0	0	1	1	0	0	0	0	0	0	2	0	
Stanislaus	1	0	0	0	1	0	0	0	0	0	0	1	0	
Tulare	2	0	0	1	0	0	0	0	1	0	0	2	0	
Yolo	2	1	0	0	0	0	0	0	1	0	0	2	0	
Total	162	16	16	16	16	20	13	11	9	11	6	134	28	
Last Updated: September, 2017														
* Note: The 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.														
conversion eligible SJO positions.														
Shaded rows represent courts that have completed all of the conversions for which they are eligible.														