



## JUDICIAL COUNCIL OF CALIFORNIA

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# CIRCULATING ORDER MEMORANDUM TO THE JUDICIAL COUNCIL

Circulating Order Number: CO-20-12

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**Title**

Judicial Council: Nonvoting Council Position

**Action Requested**

VOTING MEMBERS ONLY: Submit votes by responding to the transmittal e-mail.

**Rules, Forms, Standards, or Statutes Affected**

None

**Please Respond By**

September 3, 2020

**Recommended by**

Executive and Planning Committee

Hon. Marsha G. Slough, Chair

**Date of Report**

September 1, 2020

**Contact**

Judicial Council Support,

[judicialcouncil@jud.ca.gov](mailto:judicialcouncil@jud.ca.gov)

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### Executive Summary

The chair of the Executive and Planning Committee recommends approving one advisory, nonvoting Judicial Council position for a single three-year term. This position would be designated for Associate Justice Carin T. Fujisaki, Court of Appeal, First Appellate District, to continue serving on the council as a nonvoting advisory member. The Judicial Council has the authority to add nonvoting positions under the California Constitution and rule 10.2 of the California Rules of Court. This advisory position will allow for the reappointment of Justice Fujisaki and enable the Judicial Council to maintain continuity and leadership for addressing critical judicial branch policy issues related to the COVID-19 pandemic and the administration of justice.

### 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 one-year

term, from September 15, 2020, through September 14, 2021, to be assigned to Associate Justice Carin T. Fujisaki. This will allow the council to continue to benefit from her participation.

### **Relevant Previous Council Action**

Effective July 1, 1993, the Judicial Council adopted rule 1005 of the California Rules of Court, which expressly authorized the Chief Justice to appoint nonvoting advisory members to the council. Rule 1005(g)(1)–(3) required the following five nonvoting members: three trial court administrators,<sup>1</sup> one appellate court clerk, and one court commissioner.

Effective June 3, 1998, California voters approved Proposition 220, which, among other things, amended article VI, section 6 of 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>2</sup> Effective January 1, 1999, rule 6.2(a) incorporated the council membership list as approved in Proposition 220.<sup>3</sup> At the time Proposition 220 was passed, the council had six nonvoting members: the five specified in rule 1005 and the president of the California Judges Association, appointed under the general authority of the Chief Justice under rule 1005(g).

To preserve the four nonvoting positions<sup>4</sup> not specified under amended article VI, section 6, the council approved those positions through September 14, 1999, by circulating order on July 28, 1998. The following year, another circulating order extended those positions by 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 (Executive Committee) that the council have the following five advisory<sup>5</sup> positions: three court administrators (one of which may be an appellate court clerk at the Chief Justice’s discretion),<sup>6</sup> the president of the California Judges Association, and a superior court commissioner. The terms of these positions are open-ended, although the circulating order states that the council intends to review the appropriateness of the commissioner’s position.

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<sup>1</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>2</sup> Proposition 220 added to the list of council members contained in article VI, section 6 “two nonvoting court administrators and any other nonvoting members as determined by the membership of the council.”

<sup>3</sup> Rule 6.2(a) was renumbered as rule 10.2(a) effective January 1, 2007.

<sup>4</sup> These four positions comprise one trial court administrator, one appellate court clerk, one court commissioner, and the president of the California Judges Association.

<sup>5</sup> In 1998 and 1999 circulating orders, these positions were described as “nonvoting.” In the 2000 circulating order, these positions were described as “advisory.”

<sup>6</sup> These three court administrators included the two identified in the state Constitution as a result of Proposition 220.

Rule 10.46(f), as amended in July 2013,<sup>7</sup> also provides for another advisory council position for the chair of the Trial Court Presiding Judges Advisory Committee. The rule requires the committee to submit one nomination for its chair each year to the Chief Justice. The Chief Justice appoints the chair to serve as an advisory member of the council.

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

From time to time, the council has created advisory positions for single terms.

- In May 2005, the Executive Committee 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 was left with three court administrators as advisory members.
- In 2007, the Executive Committee created on behalf of the Judicial Council an advisory position for a limited, one-year term. The Chief Justice subsequently appointed the Executive Committee's nominee, Sen. Joseph Dunn (D-Santa Ana), to the position. The position lapsed in December 2007.
- In May 2009, the Executive Committee created on behalf of the council another advisory position for a single term. The Chief Justice appointed an additional court administrator, Mr. Frederick K. Ohlrich, for a three-year term, returning the number of court administrators on the council to four.
- In April 2010, the Executive Committee created on behalf of the council a limited-term advisory position and nominated Judge Terry B. Friedman (Ret.) to fill the position. The position lapsed in September 2012.
- In May 2010, the Executive Committee created on behalf of the council two additional advisory member positions, to which the Chief Justice appointed Judges Teri L. Jackson and Robert J. Moss.<sup>8</sup>
- In May 2012, the Executive Committee recommended, and the Judicial Council approved, the addition of three nonvoting advisory council positions, each for a three-year term. The Chief Justice subsequently appointed Judges Morris D. Jacobson, Brian L. McCabe, and Charles D. Wachob to fill the three positions.

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<sup>7</sup> Rule 10.46(f) was amended to require one nomination from the committee to the Chief Justice for the chair position of the Trial Court Presiding Judges Advisory Committee. Previously, the rule provided for three nominations from the committee to the Chief Justice from which to make a selection and an appointment to the Judicial Council.

<sup>8</sup> The Executive Committee also created on that date an additional short-term advisory position that allowed the Chief Justice to appoint Judge Mary Ann O'Malley as an advisory member for another three and a half months after she completed her year on the council as chair of the Trial Court Presiding Judges Advisory Committee.

- In May 2013, the Executive Committee recommended, and the Judicial Council approved, the extension of the two nonvoting advisory council positions, each for a three-year term, to which the Chief Justice appointed Judges James E. Herman and Kenneth K. So.
- In September 2014, the Executive Committee recommended, and the Judicial Council approved, the addition of one nonvoting advisory council position for a three-year term, to which the Chief Justice appointed Judge Daniel J. Buckley.
- In May 2015, the Executive Committee recommended, and the Judicial Council approved, the addition of one nonvoting advisory council position for a three-year term, to which the Chief Justice appointed Ms. Kimberly Flener.
- In February 2016, the Executive Committee recommended, and the Judicial Council approved, the addition of one nonvoting advisory council position for a three-year term, to which the Chief Justice appointed Justice Marsha G. Slough.
- In September 2016, the Executive Committee recommended, and the Judicial Council approved, the addition of one nonvoting advisory council position for a three-year term, to which the Chief Justice reappointed Judge Kenneth K. So.
- In May 2018, the Executive Committee recommended, and the Judicial Council approved, the addition of one nonvoting advisory council position for a three-year term, to which the Chief Justice appointed Judge Ann C. Moorman.
- In March 2019, the Executive Committee recommended, and the Judicial Council approved, the addition of two nonvoting advisory council positions for a limited, one-year term, to which the Chief Justice appointed Justice Carin T. Fujisaki and Judge Eric C. Taylor. Subsequently, in December 2019, the Chief Justice appointed Judge Taylor to a voting position to replace retired Judge Scott M. Gordon.

### **Analysis/Rationale**

Rule 10.4(a) observes that nominees for positions on the Judicial Council should be drawn from diverse backgrounds, experiences, and geographical locations. The Judicial Council has recognized that it benefits from a diverse group of members with a blend of professional expertise and other experience on a variety of leadership issues. With the complexity and far-ranging policy implications of the issues before the Judicial Council, the council would benefit from an additional member.

Although the state Constitution limits the number of voting members on the council to 21, and requires two nonvoting court administrator members, there is no upper limit on the size or

composition of the advisory membership of the council.<sup>9</sup> The council can be as small as the constitutionally required 23 members, or as large as the voting membership chooses.

The Chief Justice will be making appointments to this year's vacancies on the council: one Supreme Court justice (voting), one appellate court justice (voting), one appellate court justice (advisory), four superior court judge positions (voting), one superior court commissioner position (advisory), and two court administrator positions (advisory). The Judicial Council's approval would present the Chief Justice with the opportunity to appoint a total of four advisory members.

### **Policy implications**

None.

### **Comments**

This proposal was not circulated for comment.

### **Alternatives considered**

None.

### **Fiscal and Operational Impacts**

The creation of this position will result in no additional expense associated with council travel and administrative support. There will be no implementation or operational impacts, as council membership will remain at 30.

### **Attachments and Links**

1. Voting instructions, at page 6
2. Vote and signature pages, at pages 7–8

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<sup>9</sup> “The Judicial Council consists of the Chief Justice and one other judge of the Supreme Court, three judges of courts of appeal, 10 judges of superior courts, two nonvoting court administrators, and any other nonvoting members as determined by the voting membership of the council, each appointed by the Chief Justice for a three-year term pursuant to procedures established by the council; four members of the State Bar appointed by its governing body for three-year terms; and one member of each house of the Legislature appointed as provided by the house.” (Cal. Const., art. VI, § 6(a).)

## **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 **3 p.m., Thursday, September 3, 2020**.
- If you are unable to reply by **Thursday, September 3, 2020**, 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 creation of one new advisory, nonvoting Judicial Council position for a one-year term, from September 15, 2020, through September 14, 2021.

My vote is as follows:

☒ Approve

☐ Disapprove

☐ Abstain

\_\_\_\_\_  
Tani G. Cantil-Sakauye, Chair

\_\_\_\_\_/s/  
Marla O. Anderson

\_\_\_\_\_/s/  
Richard Bloom

\_\_\_\_\_/s/  
C. Todd Bottke

\_\_\_\_\_/s/  
Stacy Boulware Eurie

\_\_\_\_\_/s/  
Kyle S. Brodie

\_\_\_\_\_/s/  
Jonathan B. Conklin

\_\_\_\_\_/s/  
Samuel K. Feng

\_\_\_\_\_/s/  
Brad R. Hill

\_\_\_\_\_/s/  
Rachel W. Hill

\_\_\_\_\_/s/  
Harold W. Hopp

\_\_\_\_\_/s/  
Harry E. Hull, Jr.

\_\_\_\_\_  
Hannah-Beth Jackson

\_\_\_\_\_/s/  
Patrick M. Kelly

My vote is as follows:

☒ Approve

☐ Disapprove

☐ Abstain

\_\_\_\_\_/s/  
Dalila Corral Lyons

\_\_\_\_\_/s/  
Gretchen Nelson

\_\_\_\_\_/s/  
Maxwell V. Pritt

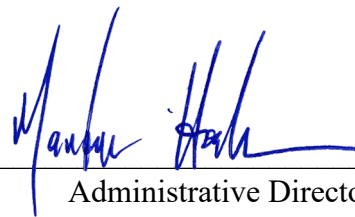
\_\_\_\_\_/s/  
David M. Rubin

\_\_\_\_\_/s/  
Marsha G. Slough

\_\_\_\_\_/s/  
Eric C. Taylor

Date: September 4, 2020

Attest:



\_\_\_\_\_  
Administrative Director and  
Secretary of the Judicial Council