

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
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DATE: February 1, 2007

SUBJECT: Subordinate Judicial Officers: Policy for Approval of Number of
Subordinate Judicial Officers in Trial Courts (Action Required)

Issue Statement

In December 2000, the Judicial Council recognized that subordinate judicial officers are a valued part of the California court system because of the expertise they bring to the bench and the flexibility they allow local courts. Trial courts have the authority to appoint subordinate judicial officers (SJOs) to meet specified workload demands, but the number and type of SJO positions in each trial court have been subject to Judicial Council approval under Government Code section 71622(a)¹ since January 1, 2001.

To ensure a consistent statewide approach to creation of new SJO positions, AOC staff recommend that the council adopt a policy setting forth the specific, limited criteria for approving trial court requests for changes in the number of authorized SJO positions. The Executive and Planning Committee, on behalf of the council, in 2005 established a policy and procedures regarding changes in the type of existing SJO positions.² Staff further recommends that the council delegate to the Executive and Planning Committee the responsibility for approving trial court requests for additional SJO positions subject to the criteria set forth below.

¹ “Each trial court may establish and may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties, as authorized by law to be performed by subordinate judicial officers. *However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council.* Subordinate judicial officers shall serve at the pleasure of the trial court.” Gov. Code, §71622(a), emphasis supplied.

² The Executive and Planning Committee’s action is explained at page 3, below. See the attached memoranda of February 23 and May 5, 2005, attached at pages 6–9.

Recommendation

Consistent with council policy on the case types and proceedings that should be presided over by judges and the appropriate use of subordinate judicial officers, AOC staff recommend that the council adopt the following policy regarding review and approval of trial court requests for changes in the authorized number of SJO positions under Government Code section 71622(a), and delegate its authority to its Executive and Planning Committee (E&P) as follows:

1. To establish a new SJO position, eliminate an SJO position, or change the time base of an existing SJO position, a court must request and obtain approval from E&P. The requesting court must fund and bear all costs associated with an additional or augmented SJO position.
2. Courts must submit their requests in writing to the appropriate AOC Regional Administrative Director. A request must contain a certification by the presiding judge that the court has sufficient funds in its ongoing budget to cover the cost of any additional or augmented position. AOC staff must provide E&P with (a) an estimation of the requesting court's ability to fund one-time and ongoing costs resulting from the establishment or augmentation of a new position and (b) a confirmation of need, both SJO workload and overall judicial need, based on the most recent council-approved Judicial Needs Assessment.
3. E&P will authorize new or augmented SJO positions only if (a) the court can continually fund the associated increased costs, and (b) the most recent council-approved Judicial Needs Assessment demonstrates that the requesting court's SJO workload justifies additional SJO positions and cannot be handled with existing judicial resources. E&P's decision to change the number or type of SJO positions must be in writing and contain an analysis of the factors underlying the decision.
4. E&P will eliminate or decrease the time base of an SJO position upon the request of a trial court.
5. AOC staff is directed to work with all trial courts to establish an official baseline number of authorized SJO positions in each court and to report this information to E&P. Once a court's baseline is established, E&P may consider and approve according to these criteria that court's request to approve currently unauthorized SJO positions which have been added since January 1, 2001.
6. This policy applies to subordinate judicial officer positions authorized under section 22 of article VI of the California Constitution and that are paid from a trial court's budget. Court commissioner and court referee positions are subject to this policy. The following positions are not covered by this policy: mental health hearing officers serving under Welfare and Institutions Code sections 5256.1 or 5334(c), referees

appointed under Code of Civil Procedure sections 638 and 639, and child support commissioners supported by Assembly Bill 1058 funding.³

Rationale for Recommendation

This proposed policy limits new SJO positions to courts with (1) funding for the positions and (2) a demonstrated need—both SJO workload and overall judicial need. This policy retains the council’s authority to approve additional SJO positions and establishes some basic criteria against which requests would be measured. E&P will grant a trial court’s request to decrease authorized SJO positions.

Council interim policy to create SJO positions

At its December 15, 2000, meeting, the Judicial Council established the policy that the primary role of subordinate judicial officers is to perform subordinate judicial duties, but a subordinate judicial officer may sit as a temporary judge where lawful if his or her presiding judge determines that, because of a shortage of judges, it is necessary for the effective administration of justice. The council also created an interim process, through June 30, 2001, by which courts could apply to the council for the creation of a new subordinate judicial officer position if they documented the availability of continuing funding.⁴

Since that time, the Executive and Planning Committee has acted on behalf of the council between council meetings when presented with applications from specific courts to add a new SJO position. In March 2002, the council also delegated to the Administrative Director authority to approve “temporary” SJO positions or the increase of hours of part-time positions when those positions were established with appropriate statutory authority prior to January 1, 2001, and the court had contracted with individuals prior to January 1, 2001, to fill those positions.⁵ In January 2005, the Executive and Planning Committee adopted a policy, on behalf of the council, allowing the change of type⁶ of one or more SJO positions so long as any additional costs are absorbed by the court.

³ The council determines the number of AB 1058 child support commissioners under somewhat different criteria: in accordance with caseload, case processing, and staffing standards specifically for child support commissioners. Family Code sections 4252(a) & 4252(b)(3).

⁴ The council, also at that meeting, asked the Policy Coordination and Liaison Committee to develop legislation for council sponsorship for the conversion of vacant SJO positions to judgeships to be appointed by the Governor. It, further, made explicit that no subordinate judicial officer would lose his or her employment solely as a result of the policies, rules, and legislation proposed by the council’s actions and established a working group charged with making recommendations on other issues pertaining to SJOs.

⁵ Approval of those positions or the increase of hours for a part-time position required a demonstration of sufficient workload and sufficient funding.

⁶ A typical change of type would be from referee to commissioner or vice versa. This policy did not apply to child support commissioner positions funded by AB 1058 or to hearing officers. See the attached February 23 and May 5, 2005, memoranda.

SJO workload and judicial need

Two council goals bear on the proposed policy, which requires a demonstration of both SJO workload and overall judicial need: 1) improving access to justice by providing sufficient numbers of SJOs to perform subordinate judicial duties in trial courts where needed and 2) improving access to constitutionally empowered judges, who are accountable to the electorate in matters that are more appropriately handled by judges. In a court with a demonstrated need for judicial officers, and insufficient SJO positions to perform the identified subordinate judicial workload, increasing the number of SJO positions to perform SJO duties will serve both goals.

The demonstration of only one of these need factors would be inadequate to justify a new SJO position. A court with adequate judicial resources as demonstrated by the most recent Judicial Needs Assessment would be able to assign SJO duties to its existing judges or SJOs. Adding SJO positions to courts in excess of their SJO workload, even for courts which may assign some judicial duties to their SJOs, undercuts the council's goal of securing sufficient judgeships to meet judicial need.

Reporting and data collection requirements

The proposed policy would require that AOC staff work with the trial courts to establish baseline numbers of authorized SJO positions for each court. Research indicates that there may be a few courts that have added or augmented SJO positions without authorization subsequent to January 1, 2001. Once a court's baseline is established, all changes to the number of its authorized SJO positions will be made according to the policy established by the Judicial Council.

Alternative Actions Considered

In developing the proposed policy, AOC staff considered alternatives, as described below:

Either judicial need or SJO workload would be a sufficient basis for a new SJO position

Overall judicial need, it could be argued, is irrelevant to the establishment of SJO positions as long as the court demonstrates unfilled SJO workload. However, a court with adequate judicial resources as shown by the most recent Judicial Needs Assessment is able to assign SJO duties to its existing judges or SJOs. On the other hand, establishing SJOs on the basis of judicial need and without any demonstration of SJO workload undercuts the council's policy of SJOs performing defined subordinate judicial duties, not performing the work of judges.

Council could retain authority or delegate to the Administrative Director

The council could retain the authority to determine the number and type of SJO positions for trial courts as requested in the coming years. However, responding to regular requests from the trial courts to exercise this statutory authority may detract from the council's attention to policymaking for the branch. Tasks that the Legislature assigns to the council

may, at the council's discretion, be delegated to the council's Executive and Planning Committee, which acts on behalf of the council between its regular meetings.

Delegation to E&P is not the only option, however. The council could delegate its authority under this statute to the Administrative Director. The argument could be made that decisions to increase the number and type of SJO positions could be made by the council's staff within policies and procedures set by the council. However, the council may prefer that E&P, comprising a portion of the council membership, act on its behalf so that discretion, if requested or needed, can be applied.

Comments From Interested Parties

None; the proposal was not circulated for comment.

Implementation Requirements and Costs

The trial courts must fund any additional SJO positions from their existing and future budgets. Trial courts maintain autonomy over how to spend their funds, and as a result, have leeway to identify funds for the requested SJO positions out of their local budgets.

Attachments

Government Code section 71622(a)

Each trial court may establish and may appoint any subordinate judicial officers that are deemed necessary for the performance of subordinate judicial duties, as authorized by law to be performed by subordinate judicial officers. However, the number and type of subordinate judicial officers in a trial court shall be subject to approval by the Judicial Council. Subordinate judicial officers shall serve at the pleasure of the trial court.



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date	Action Requested
February 23, 2005	Please Review
To	Deadline
Presiding Judges of the Superior Courts Executive Officers of the Superior Courts	N/A
From	Contact
William C. Vickrey Administrative Director of the Courts	Pat Sweeten, Director Executive Office Programs Division 415-865-7560 phone 415-865-4332 fax pat.sweeten@jud.ca.gov
Subject	
New Judicial Council Policy on Reclassification of SJO Positions	

I am writing to announce a new policy regarding the authority of presiding judges of the trial courts to determine the type of subordinate judicial officers (SJOs) employed by each court (e.g., referees and commissioners). On January 28, 2005, on behalf of the Judicial Council, the Executive and Planning Committee (E&P) adopted the following policy regarding the authority over the type of SJO positions in the trial courts:

1. The presiding judge of a trial court may change the type of one or more of the court's subordinate judicial officer (SJO) positions, except for child support commissioner positions supported by Assembly Bill (AB) 1058 funding. The court may not change AB 1058 commissioner positions to other types of SJO positions.
2. If a change in SJO type entails additional salary costs, the court must be able to absorb those costs within its existing budget. The Judicial Council and the Finance Division of the Administrative Office of the Courts (AOC) will not be able to consider trial court requests for additional budget allocations that are requested for the purpose of changing the type of one or more SJO positions.

3. When a trial court changes the type of its SJOs, court staff must notify the appropriate AOC regional administrative director, who will in turn notify E&P of the change at its next regular meeting. Courts must also report such changes as part of their regular reports on judicial positions.

This new policy further clarifies the roles of the Judicial Council and of presiding judges with regard to authority over the number and type of SJOs employed by each court (as outlined in Gov. Code, § 71622(a)) and is effective as of January 28, 2005.

The AOC's Finance Division and Office of the General Counsel are available to serve as resources for your court should you need assistance in evaluating whether to change the type of one or more positions. Please contact your regional administrative director if you would like such assistance.

Thank you.

WCV/PS/new



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MEMORANDUM

Date	Action Requested
May 5, 2005	Please Review
To	Deadline
Presiding Judges of the Superior Courts Executive Officers of the Superior Courts	N/A
From	Contact
William C. Vickrey Administrative Director of the Courts	Pat Sweeten, Director Executive Office Programs Division 415-865-7560 phone 415-865-4332 fax pat.sweeten@jud.ca.gov
Subject	
CLARIFICATION: New Judicial Council Policy on Reclassification of SJO Positions	

In response to questions from the courts, I am writing to clarify a policy that was adopted by the Judicial Council's Executive and Planning Committee (E&P) on January 28, 2005. On February 23, 2005, I sent you a memorandum reporting that E&P granted authority to presiding judges to determine the type of subordinate judicial officers (SJOs) employed by each court.

This policy applies *only* to the reclassification of regular employees of the court who serve as referees or commissioners. It does *not* apply to any other type of subordinate judicial officer, such as hearing officers.

As explained in my initial correspondence on this matter, child support commissioners supported by Assembly Bill 1058 funding are excluded and may not be reclassified. Also as referenced in the February 23 memorandum, if a change in SJO type entails additional salary costs, the court must be able to absorb those costs within its existing budget. I have attached the original memorandum for your reference.

Presiding Judges of the Superior Courts
Executive Officers of the Superior Courts
May 5, 2005
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Please contact Pat Sweeten, Director of the AOC's Executive Office Programs Division, if you have any further questions regarding this policy. Thank you.

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Attachment