



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688
Telephone 415-865-4200 . Fax 415-865-4205 . TDD 415-865-4272

MEMORANDUM

Date	Subject
May 21, 2018	Revisions to Assigned Judges Program
To	Action Requested
Administrative Presiding Justices of the Courts of Appeal	Please Review
Presiding Judges of the Superior Courts	Deadline
Clerk/Executive Officers of the Courts of Appeal	N/A
Court Executive Officers of the Superior Courts	Contact
From	Bob Lowney, Director, Appellate Court Services and Court Operations Services
Martin Hoshino	415-865-7833 phone
Administrative Director	bob.lowney@jud.ca.gov
Judicial Council	

The experienced and dedicated justices and judges who serve in the Assigned Judges Program (AJP) represent a tremendous resource for courts needing temporary assistance to help maintain timely access to justice for the public. At the direction of the Chief Justice, a review of AJP policies and procedures was conducted with the goal of improving how limited resources are managed and allocated to best meet court needs. This memorandum outlines pending policy and procedural changes to the program, to become effective July 1, 2018. We recognize that a period of transition will be necessary during the 2018–2019 fiscal year (FY); program staff will work directly with you and your staff on transitional issues affecting your court.

I. Background

Article 6, section 6(e) of the California Constitution gives the Chief Justice authority to assign retired judges to courts, as deemed necessary:

(e) The Chief Justice shall seek to expedite judicial business and to equalize the work of judges. The Chief Justice may provide for the assignment of any judge to another court but only with the judge's consent if the court is of lower jurisdiction. A retired judge who consents may be assigned to any court.

(Cal. Const., art. VI, § 6(e).)

Before 1996, judicial assignments were facilitated by the Chief Justice's chambers through periodic, temporary assignment to a court of an active or retired bench officer, at the court's request. As the gap between a growing population and a judicial position deficit in the state grew, the Judicial Council's Judicial Assignments Unit was established in 1996 to formally administer the program.

The Assigned Judges Program is designed to assist courts in avoiding case delays that could negatively affect court users and the public. Presiding judges initiate these assignments by making direct requests for the services of a retired judge or for a specific, named retired judge from the program. The program issues temporary judicial assignment orders, authorized by the Chief Justice, for retired as well as active judges to serve in courts that require assistance due to judicial absences resulting from vacancies, illness, vacation, disqualification, or other factors that could cause case delays.

Some 375 judges are currently enrolled in the program. Assigned judges provided approximately 33,000 service days to courts during FY 2016–17, which accounted for approximately 7.6 percent of the total service days in the branch. The annual program budget is nearly \$27 million.

II. Program Revisions

Effective July 1, 2018:

A. Equitable Workload Distribution

1. Assigned judges providing temporary judicial assistance may work on assignments for up to a maximum of 1,320 days, cumulatively (equivalent to a single, six-year term of an elected superior court judge). Some limited exceptions may apply.
2. For judges retiring on or after July 1, 2018, a 90-day waiting period will apply before the judge becomes eligible for his or her first temporary assignment. Some limited exceptions may apply.
3. Assigned judges may work a maximum of 120 days on assignment during a fiscal year. Some limited exceptions may apply.

B. Deployment of Assigned Judges Based on Greatest Need

In a restructuring of how program service days are allocated and budgeted:

1. Courts collectively will receive an initial allocation representing a floor of support equal to 50 percent of the program's budgeted 33,000 service days. The allocation will not be

below 20 days for any individual court. Initial allocation amounts will be shared with each court before the beginning of the new fiscal year.

2. Requests above the floor will be evaluated case by case, based on demonstrable need. Courts with a clear, demonstrable need for assistance (such as those with an insufficient number of judges based on the Judicial Needs Assessment) are more likely to receive additional AJP resources beyond their floor allocations.
3. Court requests for assistance based on judicial vacancies will be evaluated in the same manner as other requests for AJP resources and will be based on the court's demonstrable need for assistance.
4. The program may also serve as a resource in allocating service days when the service furthers judicial branch initiatives that deal with the timely resolution of particular case types (e.g., the Chief Justice's directive on focusing resources to improve civil case processing) or addressing any increased workload resulting from legislative mandates or voter initiatives (e.g., Proposition 47).

C. Assignment Tracking and Evaluation

1. Judicial Council staff will conduct periodic reviews of program usage within selected courts to inform decisionmaking on court-specific requests for assistance as well as any future program changes. Reviews will include, among other factors, frequency of requests, the types of justifications for requests, case types, and duration of assignments.
2. Once a judge is assigned to a court for a specific case assignment, the court must notify the program in writing if that assignment is to be changed for any reason. For example, if the original trial or work that triggered the assignment ends before the date of the order and the court needs the judge for a different assignment, the court must notify the program of this new assignment, providing a justification for the request, regardless of whether a new order would be needed.

III. Rationale

A. Program Membership Term

Membership in the program will be limited to no more 1,320 days, cumulatively—the equivalent of a single term of a full-time, elected superior court judge. This change is intended to ensure that, cumulatively, retired judges serve no longer than active, full-time judges elected or retained by the state's voters, while underscoring the temporary nature of the judicial assistance provided through the AJP. The change also will create opportunities for more recently retired judges to serve in the program.

Of the approximately 33,000 assigned judge service days claimed in FY 2016–17, a little more than 30 percent of service days were provided by judges who have exceeded 1,320 days of service.

Courts with currently serving assigned judges who have exceeded the program's service limit will be notified by AJP staff. Staff will work with them to develop a reasonable transition plan that will avoid any negative impact on services to the public. Limited, justifiable exceptions to this service cap will be based on the availability of judges to serve in courts with a demonstrable need for program assistance.

Assigned judges who have exceeded the 1,320-day service limit also will be contacted directly by staff.

B. 120-Day Limit on Assignment Work Days in a Fiscal Year

The temporary nature of program assignments will be reinforced through implementation of a 120-day annual limit on the number of days a judge may work in a given fiscal year. Similar to implementation of the cumulative 1,320-day limit for program membership, implementation of a 120-day annual service limit is also likely to create opportunities for more recently retired judges to serve in the program.

Once a judge reaches the 120-day limit, the judge will be listed as capped out for the remainder of the fiscal year on the AJP homepage on Judicial Resources Network. Please note, however, that the 120-day limit may be exceeded on a case-by-case basis, as justified by the situation for a particular judge serving in a particular court. Courts may continue to request retired judges who have already exceeded this limit, but doing so will require compelling reasons for why a particular judge is best suited to address the court's needs: for example, a retired judge's unique expertise in a given area of the law or an extended trial. Absent a compelling reason for requesting a particular judge, courts should generally expect assignment of another retired judge. Judges under the 120-day limit will be prioritized for assignment.

C. 90-Day Waiting Period Between Official Date of Retirement and Date of First Assignment in the Program

For judges retiring on or after July 1, 2018, there will be a 90-day waiting period between the date of retirement and the first program assignment. The Public Employees' Pension Reform Act of 2013 generally imposes a 180-day waiting period on retired annuitants working for other state agencies. Although the Legislature had sound reasons to explicitly exempt judicial officers from this requirement, a 90-day period strikes an appropriate balance between the public's pension reform goals and the judicial branch's need for timely access to experienced judges. This change will provide sufficient time to carry out administrative requirements related to AJP enrollment applications and may assist courts in planning for transitions. Exceptions may be made to this 90-day waiting period, if warranted by circumstance.

D. Allocation of a Floor of Judicial Service Days to Courts

In prior budget years, each court received an allocation of the potential number of service days that could be made available to them based on their historical use of the program, and other

factors such as special circumstances at a court. It was also made clear that requests would be fulfilled based on the availability of resources and that the full allocation of days was not guaranteed.

Beginning in FY 2018–19, courts will be provided with an initial allocation that cumulatively represents 50 percent of the program’s roughly 33,000 available program days. An initial number of service days will be allocated to each court following a formula that is primarily driven by the number of authorized judges at each court. The allocation will not be below 20 days for any individual court.

Beyond the floor allocation to all courts, the remaining program service days will be allocated based on the evaluation of an individual court’s request for program assistance or to further judicial branch initiatives related to the timely resolution of particular case types. This will include the Chief Justice’s directive on focusing resources to improve civil case processing as well as addressing any increased workload resulting from legislative mandates or voter initiatives such as Proposition 47.

IV. Next Steps

The Assigned Judges Program is an extremely valuable resource for courts and for the public. The service days provided by the program’s justices and judges enable many courts to maintain timely access to justice for court users. The new and revised program procedures aim to ensure that the public and the courts with the greatest need receive the most value from the program.

Program changes will be reviewed at the May 30, 2018, joint business meeting of the Trial Court Presiding Judges and Court Executives Advisory Committees. Administrative presiding justices and clerk/executive officers of the appellate courts will be briefed separately at the June 18, 2018, meeting of the Administrative Presiding Justices Advisory Committee. In addition, an updated *Assigned Judges Handbook* with more detailed information on current and revised program procedures will be disseminated to all courts.

Once again, we recognize that a period of transition will be necessary during the 2018–19 fiscal year to ensure continuity of assigned judge services. We are committed to working with individual courts and assigned judges on transitional issues to maintain the value of the program in serving the public.

MH/TC

cc: Judicial Officers of the Assigned Judges Program
Ms. Millicent Tidwell, Chief Deputy Director, Judicial Council
Mr. Robert Oyung, Chief Operating Officer, Judicial Council
Mr. John Wordlaw, Chief Administrative Officer, Judicial Council