



## Supreme Court of California

350 McAllister Street, San Francisco, California 94102-3688

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# INVITATION TO COMMENT

**[SP15-07]**

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Title	Action Requested
Terms and Term Limits for Membership and Leadership on the Committee on Judicial Ethics Opinions	Review and submit comments by Wednesday, November 18, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 9.80	January 1, 2016
Proposed by	Contact
Supreme Court of California	Frank A. McGuire, 415-865-7000 <a href="mailto:SupremeCourt.Comments@jud.ca.gov">SupremeCourt.Comments@jud.ca.gov</a>

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### Executive Summary and Origin

The California Supreme Court seeks comments on whether to amend the membership and leadership provisions of the rule governing the Committee on Judicial Ethics Opinions (CJEO)<sup>1</sup> to: (1) make CJEO members generally eligible to serve a third full term on the committee in

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<sup>1</sup> The current Supreme Court Committee on Judicial Ethics Opinions members are: Justice Ronald B. Robie of the Court of Appeal, Third Appellate District (chair); Justice Douglas P. Miller of the Court of Appeal, Fourth Appellate District, Division Two (vice-chair); Justice Maria Rivera of the Court of Appeal, First Appellate District, Division Four; Justice Judith L. Haller of the Court of Appeal, Fourth Appellate District, Division One; Presiding Judge Suzanne N. Kingsbury of the Superior Court of El Dorado County; Presiding Judge Robert J. Trentacosta of the Superior Court of San Diego County; Judge Kenneth K. So of the Superior Court of San Diego County; Judge Michael T. Garcia (Ret.) of the Superior Court of Sacramento County; Judge Joanne B. O'Donnell of the Superior Court of Los Angeles County; Judge George J. Abdallah, Jr. of the Superior Court of San Joaquin County; Judge Curtis E.A. Karnow of the Superior Court of San Francisco County; and Commissioner Lowell E. Richards of the Superior Court of Contra Costa County.

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the event the court wishes to reappoint them; (2) make initial CJEO members eligible to serve a second full term in the event the court wishes to reappoint them; (3) double the term of the chair from two years to four years, plus make the chair eligible to serve a third term in the event the court wishes to reappoint the chair; and (4) provide terms and term limits for the vice-chair that match those of the chair.

## **Background**

Title 9, division 6 of the California Rules of Court includes rule 9.80, which governs CJEO. Rule 9.80, which was adopted effective July 1, 2009, by the Supreme Court under section 18(m) of article VI of the California Constitution, authorizes CJEO to provide advisory opinions on ethics to judges and the public. The court's purpose in establishing CJEO was to encourage judges and judicial candidates to seek ethics advice, and, through written CJEO opinions, to provide guidance for compliance with the Code of Judicial Ethics. Rule 9.80(d) specifies the terms and term limits for CJEO members, who are appointed by the Supreme Court under rule 9.80(c). A chair and vice-chair are appointed by the Supreme Court under rule 9.80(g), which provides terms and term limits for the chair.

## **Current Membership and Leadership Provisions**

Rule 9.80 currently provides the following with regard to appointment and service by members, the chair, and the vice-chair:

### *1. Two-term Limit for Service by Members Generally*

Under rule 9.80(c), CJEO consists of 12 members appointed by the Supreme Court. Terms and term limits for members are provided in rule 9.80(d). The rule specifies that members are appointed to four-year terms and are limited to serving no more than two consecutive terms. (Rule 9.80(d)(1).) Thus, newly appointed members are generally eligible for only one reappointment and are generally limited to serving a total of eight consecutive years.

There are two exceptions to this general rule. First, rule 9.80(d)(1) specifies that a member continues to serve until a successor is appointed, which could potentially override the ordinary term lengths and limits. Second, the rule specifies that an appointment to fill a vacancy will be for the balance of the term vacated, so a member who is appointed to fill a vacancy is eligible to serve two full terms in addition to the remainder of the term for which the member was appointed. (Rule 9.80(d)(1).) Thus, a member might serve less than a four-year term if the court were to remove that member and appoint a successor. At the same time, the general eight-year service limit could potentially increase by up to four years for a new member appointed to replace a member who resigns or is removed, or could be overridden entirely if there were no appointment of a successor for a member whose term limit expires.

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## *2. One-term Limit for Service by Initial Members*

In order to stagger terms so that membership changes occur regularly and incrementally, the rule provides that CJEO's initial members were appointed to five-year, four-year, three-year, and two-year initial terms. (Rule 9.80(d)(2).) Initial members, most of whom are still serving, are eligible for reappointment to only one four-year term following their initial terms. (*Id.*) The creation of staggered initial terms ensures that the court considers reappointment or appointment of a successor for at least three members each year.

## *3. Two-year Term and Two-Term Limit for Service as Chair*

Under rule 9.80(g), the Supreme Court appoints the chair and vice-chair. The chair serves a two-year term and may be reappointed to a second term. Thus, a member is generally eligible to serve a total of four years as chair.

## *4. Unlimited Service as Vice-chair*

No terms or term limits are specified for the vice-chair.

## **The Proposal**

The proposed amendments would provide the following with regard to appointment and service by members, the chair, and the vice-chair:

### *1. Three-term Limit for Service by Members Generally*

The proposed amendment to rule 9.80(d)(1) would retain the four-year length of a member's term but increase the term limit from two full terms to three full terms. Although the amendment would allow a member to be reappointed or to serve until a successor is appointed, it proposes a new restriction in the event no successor is appointed, i.e., members are barred from serving more than three terms unless they were appointed to fill a vacancy for the balance of a term, in which case they will be eligible to serve the balance of that term plus three full terms.

### *2. Two-term Limit for Service by Initial Members*

Amendments are also proposed to the provisions applying only to initial members (rule 9.80(d)(2)(A)-(D) [specifying two-year, three-year, four-year, and five-year terms for initial members to allow for the staggering of terms]). These amendments would increase the reappointment limits for initial members from one full four-year term to two full four-year terms. This would preserve the staggered nature of the appointment and reappointment process but increase the initial members' term limits to generally correspond with the increase in potential service for subsequently appointed members. Thus, initial members, if reappointed, would be eligible to serve from 10 to 13 years, depending on the length of their initial terms.

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*3. Four-year Term and Three-Term Limit (Twelve Years Maximum) for Service as Chair*

The proposed amendments to rule 9.80(g) would specify that a committee member may be appointed as chair to serve a four-year term, and if reappointed may serve no more than three terms as chair. The proposed amendments also would clarify that the chair may continue to serve until a successor is appointed, as currently specified for members in rule 9.80(d)(1). However, in no event would a member be eligible to serve more than 12 years as chair.

*4. Four-year Term and Three-Term Limit (Twelve Years Maximum) for Service as Vice-chair*

Similar to the proposed chair amendments above, the proposed vice-chair amendments would specify that a committee member may be appointed as vice-chair to serve a four-year term, and if reappointed may serve no more than three terms as vice-chair. The proposed amendments also would clarify that the vice-chair may continue to serve until a successor is appointed, as currently specified for members in rule 9.80(d)(1). However, in no event would a member be eligible to serve more than 12 years as vice-chair.

**Rationale for Proposed Amendments**

Since CJEO's inception in 2010, the Supreme Court has had to replace one-fourth of the initial members due to resignation or replacement. There will continue to be such non-term-limit membership departures in the future alongside the changes that will regularly occur when membership terms formally run their course. The purpose of the proposed amendments is to provide the court with authority to allow for greater continuity and stability on the committee while retaining the court's discretion to make regular membership and leadership changes.

The court invites and would appreciate comments on whether to exercise its authority to amend the membership and leadership provisions of rule 9.80 as proposed.

The proposed amendments are provided in context immediately below. Comments may be submitted as described at the end of this invitation to comment.

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Rule 9.80 of the California Rules of Court would be amended, effective January 1, 2016, to read:

**Title 9. Rules on Law Practice, Attorneys, and Judges**

**Division 6. Judicial Ethics Opinions**

**Rule 9.80. Committee on Judicial Ethics Opinions**

(a) — (c) \* \* \*

(d) **Terms**

(1) Except as provided in (2), all full terms are for four years. Appointments to fill a vacancy will be for the balance of the term vacated. A member may be reappointed by the Supreme Court or may continue to serve until a successor is appointed. Members may serve no more than three terms, except that members who are appointed to fill a vacancy for the balance of a term are eligible to serve three full terms in addition to the remainder of the term for which they were appointed. ~~Members may not serve more than two consecutive full terms. Members may continue to serve until a successor is appointed. Appointments to fill a vacancy will be for the balance of the term vacated. Members who are appointed to fill a vacancy for the balance of a term are eligible to serve two full terms in addition to the remainder of the term for which they were appointed.~~

(2) To create staggered terms among the members of the committee, the Supreme Court ~~will~~ will appointed initial members of the committee as follows:

(A) Three members each to serve an initial term of five years. The Court may reappoint these members to ~~one~~ two full terms.

(B) Three members each to serve an initial term of four years. The Court may reappoint these members to ~~one~~ two full terms.

(C) Three members each to serve an initial term of three years. The Court may reappoint these members to ~~one~~ two full terms.

(D) Three members each to serve an initial term of two years. The Court may reappoint these members to ~~one~~ two full terms.

(3) Committee members may not simultaneously serve as members of the Commission on Judicial Performance or the California Judges Association's Judicial Ethics Committee. If a member of the committee accepts appointment to serve on one of these entities, that member will be deemed to have resigned from the committee and the Supreme Court will appoint a replacement.

(e) — (f) \* \* \*

1       **(g) Chair and vice-chair**  
2

3           The Supreme Court will appoint a chair and a vice-chair from the members of the  
4           committee to who will serve a term of two four years each. The chair and the vice-chair  
5           may be reappointed by the Supreme Court or may continue to serve until a successor is  
6           appointed. The chair and the vice-chair may serve no more than three terms each. The  
7           Supreme Court may reappoint the chair. The chair may not serve more than two terms as  
8           chair. The Supreme Court will also appoint a vice chair from the members of the  
9           committee. The chair is authorized to call meetings as needed, and to otherwise coordinate  
10          the work of the committee.  
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12       **(h) — (n) \* \* \***

### **To Submit Comments**

Comments may be submitted online, by email, or by regular mail.

Online:        [Comment Form](#)

Email:         [SupremeCourt.Comments@jud.ca.gov](mailto:SupremeCourt.Comments@jud.ca.gov)

Mail:         Frank A. McGuire  
                Court Administrator and  
                Clerk of the Supreme Court  
                Supreme Court of California  
                350 McAllister Street  
                San Francisco, California 94102

<b>DEADLINE FOR COMMENT:</b> 5:00 p.m., Wednesday, November 18, 2015
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***Please note that comments received may become part of the public record.***