



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: July 28, 2015

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<b>Title</b>	<b>Agenda Item Type</b>
Judicial Branch: Summit Report to Promote Diversity in the California Judiciary	Action Required
<b>Rules, Forms, Standards, or Statutes Affected</b>	<b>Effective Date</b>
None	July 28, 2015
<b>Recommended by</b>	<b>Date of Report</b>
Hon. Kathleen E. O’Leary, Cochair Hon. Laurie D. Zelon, Cochair Advisory Committee on Providing Access and Fairness	July 17, 2015
	<b>Contact</b>
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### Executive Summary

In September 2011, the Judicial Council and State Bar convened a summit on judicial diversity, which was attended by justices, judges, other branch leaders, bar leaders, and law school deans or their designees. At the summit’s conclusion, participants developed recommendations to further the goal of a more diverse bench. The Judicial Council reviewed those recommendations and, at its October 25, 2012 meeting, directed the Access and Fairness Advisory Committee—now the Advisory Committee on Providing Access and Fairness (PAF)—to initiate the review and approval process for those recommendations that merit council action. Accordingly, the committee provided the Executive and Planning Committee (E&P) with a status report addressing three of the six categories of recommendations outlined in the summit report: Judicial Appointments and Elections, Outreach and Education, and The Perceived Glass Ceiling (in judicial assignments). These three categories are the areas the committee believes are most appropriate for council action. On May 30, 2014, members of E&P met to review the report and requested that the chair contact the Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) to solicit their input on the proposed recommendations. As suggested by E&P members, PAF also incorporated considerations of

LGBT diversity into the recommendations. Justice Laurie Zelon, PAF cochair, presented the proposed recommendations to TCPJAC and CEAC during their January 29, 2015 joint meeting and members of those committees were invited to submit written comments on the recommendations. On June 4, 2015, TCPJAC and CEAC chairs provided a joint statement indicating their committees' support for the recommendations in PAF's report. PAF now seeks Judicial Council acceptance of the recommendations.

## **Recommendations**

The committee is proposing the following council actions to support the recommendations from the summit identified below.

1. Distribute the summit report to the Trial Court Presiding Judges and Court Executives Advisory Committees.
2. Refer for action to appropriate advisory groups and Judicial Council staff the following two summit recommendations related to Judicial Appointments and Elections:
  - *Judges and lawyers should reach out to law schools to educate students on how to become a judge, so that law students can begin at that early stage of their careers to lay the groundwork for serving as a judge. Where possible, judges should employ law students in the courtroom and should establish or participate in programs designed to bring high school students into the courts. (Summit report p. 3, recommendation 1, Judicial Appointments and Elections.)*
  - *So that applicants can better appreciate the level of commitment involved in the application process, judges should serve as mentors to coach potential applicants through the details of, and emotional barriers to, completing the application process. (Summit report p. 3, recommendation 2, Judicial Appointments and Elections.)*
3. Refer for action to appropriate advisory groups and Judicial Council staff the following two summit recommendations related to Outreach and Education:
  - *To address the underrepresentation of minorities and communities of color in the judiciary, the bench and bar should, to the extent funding permits, develop outreach programs targeting youth in at-risk and underrepresented communities. In this regard, each court should have its own community outreach program or committee to develop a community-specific program. The AOC's [now Judicial Council] Judicial Diversity Toolkit could be used as the foundation for such outreach programs. The membership of a court's outreach committee should include representatives from the education and business communities. In addition, courts should be encouraged to establish programs similar to the First Impressions Program in Los Angeles and other programs that provide youth opportunities to learn how our court system works. Courts should be encouraged to collaborate with California Partnership Law Academies and other organizations such as*

*AmeriCorps and Teach for America in presenting outreach and education programs. Finally, the Judicial Diversity Toolkit should be expanded to include model mock trials that teach young people about the court system (see e.g. the American Bar Association's mock trial, *The Big Bad Wolf v. The Three Little Pigs*). (Summit report pp. 4–5, recommendation 1, Outreach and Education.)*

- *The Judicial Council, the State Bar, and the Governor's Office should, to the extent funding permits, hold an annual judicial diversity summit. One focus of the summit should be to encourage lawyers from underrepresented groups to apply for judicial appointment. The summit should include a presentation from the Governor's Judicial Appointments Secretary, or equivalent staff person, to identify attributes the Governor is seeking in judicial applicants. (Summit report p. 5, recommendation 2, Outreach and Education.)*
4. Refer for action to appropriate advisory groups and Judicial Council staff the following four summit recommendations related to The Perceived Glass Ceiling:
- *Presiding judges should educate the bar about how judicial assignments are made, so that there is more transparency about the process and the bar understands that assignments are governed by rule 10.603(c)(1) of the Cal. Rules of Court. (Summit report p. 5, recommendation 1, The Perceived Glass Ceiling.)*
  - *Judges who mentor judicial applicants should ensure the applicant understands that all of the work of the court is significant and important and that the first few years on the bench are devoted to training the new judge on how to manage a courtroom and make fair judicial decisions. (Summit report p. 5, recommendation 2, The Perceived Glass Ceiling.)*
  - *Data should be collected on the level of diversity in the civil, felony trials, law and motion, and complex litigation assignments. (Summit report p. 5, recommendation 4, The Perceived Glass Ceiling.)*
  - *Courts should consider mandatory rotation of judges in assignments. This will serve to level the playing field in terms of judicial experience. Women and ethnic minority trial court judges who seek elevation have found that their judicial résumés are seen as less impressive than those of their Caucasian and male counterparts because they lack experience in what are deemed to be challenging and intellectually stimulating assignments. (Summit report p. 6, recommendation 6, The Perceived Glass Ceiling.)*

### **Proposals for implementing summit recommendations on Judicial Appointments and Elections**

The committee recognizes that the Governor, not the council, is the sole arbiter of judicial appointments. Therefore, the series of proposals related to these summit recommendations

focuses on how the council and jurists can play a role in stimulating more diversity in the pipeline of potential judicial applicants and encouraging diverse students and lawyers in their communities to embrace the notion of a legal career as a pathway to the bench.

Judges throughout the state already are engaged in a variety of efforts designed to inform students about the process of becoming a judicial officer and many currently invite students to become interns in their courts. The committee believes the council and staff can support these and more expanded efforts in a number of ways:

- First, the committee recommends that as part of its annual agenda, the committee include working with Judicial Council staff to develop a program modeled on the American Bar Association's Judicial Intern Opportunity Program to provide opportunities for law students of color to gain exposure to the work of California judges. Once that program has been developed, the committee can provide information to all the appellate courts to assist courts in expanding both intern and externship programs.<sup>1</sup>
- Second, Judicial Council staff currently working with the State Bar should include as part of this partnership identifying opportunities for outreach to minority law students for judicial clerkship and externship programs in all courts. In conjunction with ongoing efforts to increase access to justice, the committee works closely with members representing the State Bar and will propose additional work on these efforts in its annual agenda.
- Third, the committee recommends that this second proposal (above) be shared with court leadership at every level so that greater support may be provided to all sitting judges who participate in externship programs, with particular emphasis on supporting judges of color and programs that reach out to students of color to further a commitment to a more diverse bench.
- Finally, the committee recommends that courts consider ways of assisting judges who wish to participate in or support the creation of law academy programs in the high schools in their jurisdictions. The committee recommends providing information on Serranus—and through other educational and technical assistance efforts—about existing law academies and ways courts and judges may become involved.

### **Proposals for implementing summit recommendations on Outreach and Education**

The committee has considered the following options for implementing the summit recommendations from this category:

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<sup>1</sup> Information on the ABA's Judicial Intern Opportunity Program may be found here: [http://www.americanbar.org/groups/litigation/initiatives/good\\_works/judicial\\_intern\\_opportunity\\_program.html](http://www.americanbar.org/groups/litigation/initiatives/good_works/judicial_intern_opportunity_program.html)

- While the 2011 summit participants recommended that a statewide diversity summit be held annually, the advisory committee has concluded that, given the branch’s current limited resources and budget challenges, a more reasonable approach is to convene regional summits as resources permit in the years between statewide summits and to work with the bar’s Council on Access and Fairness (COAF) to plan the currently scheduled next statewide summit in 2016. (The first statewide summit was held in June 2006 and the second in September 2011.) The interagency Judicial Summit Planning Committee, which includes members of COAF, the California Judges Association, a representative from the Judicial Council, and Judicial Council and State Bar staff, is currently planning this event. This two-pronged approach should permit more participation by judges and justice system stakeholders statewide while allowing flexibility in planning and consideration of resources available at the time each regional or statewide summit is contemplated.
- The council can also support efforts designed to encourage judges to work with high schools in their area to build curricula on civics education and the functions and duties of courts, as well as to engage with students, which can be a very effective way of building court-community connections and increasing diversity among law students and, eventually, judicial applicants.
- Additionally, to assist in moving forward with these recommendations, the council through its advisory committees can collaborate with the State Bar and local and affinity bars to encourage programming to develop candidates for judicial office and to provide information about the appointment process.

**Proposals for implementing summit recommendations on the perceived glass ceiling (in judicial appointments)**

The third set of proposals addresses the summit recommendations regarding “the perceived glass ceiling,” a reported perception by some attorneys and judicial officers that, in general, new judges, judges of color, and women judges are relegated to assignments that are under resourced and too often are not seen as pathways to local or branchwide leadership. Such perceptions may deter attorneys in private practice and in the public sector from seeking judicial appointments.

When courts do not rotate assignments, the exposure judges have to only certain assignments may interfere with those judges having the opportunity to be considered for elevation to the appellate bench. Thus the committee proposes that by rotating judges and appropriately supporting all case types, the bar and the public’s perception of the courts may be improved and the likelihood that any individual or group would perceive the assignment process as biased or unfair may be reduced.

Implementation of this proposal can be addressed in a variety of ways, including ensuring that presiding judges are aware of perceptions about how assignments are made and the importance of having a fair process that the bench, bar, and public can trust—leading to a diverse and well-respected bench. In 2014, the committee provided the Trial Court Presiding Judges Advisory

Committee with input that was utilized in updating *Making Judicial Assignments*. This updated publication includes information on the various benefits of rotating assignments and ways to make that rotation a more positive experience, while at the same time ensuring that assignments last long enough to support consistency and expertise as indicated by, for example, Standards of Judicial Administration 5.30 and 5.40, which both recommend a minimum of three years in family and juvenile law assignments.

In an effort to more widely distribute information on how assignments are made, the committee provided *Making Judicial Assignments* to State Bar staff working on access and fairness issues and to the members of the Council on Access and Fairness (COAF), with the intent that COAF also share the information in the publication with those working on related issues throughout the branch and the bar. The committee recognizes that having attorneys and the public better understand considerations presiding judges take into account in making assignments may improve relationships with the bar and may help expand the pool of judicial applicants.

The advisory committee proposes working with the Trial Court Presiding Judges Advisory Committee to identify methods already available to assist local courts with finding or collecting demographic data, as well as ways of effectively using that data in making assignments or in conducting outreach efforts. Where tools are lacking, the committee proposes working with other council advisory groups to identify promising practices nationally and to obtain input from presiding judges on the benefit of developing tools, guidelines, or other approaches that support the overarching goals articulated in the diversity summit report.

The committee proposes working closely with its liaisons from the Trial Court Presiding Judges and Court Executives Advisory Committees to continue to identify opportunities to discuss this issue in greater detail and identify ways—through publications, training, and policy development—to most effectively propose appropriate changes.

### **Previous Council Action**

In June 2006, the State Bar of California, in collaboration with the Judicial Council’s Access and Fairness Advisory Committee, convened a statewide summit on diversity in the judiciary. Five years later, the State Bar and the Judicial Council held a second summit on judicial diversity, “Continuing a Legacy of Excellence: A Summit on Achieving Diversity in the Judiciary,” to assess progress made toward achieving the goal of having a judiciary that reflects the rich diversity of California’s population. That September 7, 2011 summit was held at the Judicial Council of California’s San Francisco headquarters at the invitation of Chief Justice Tani G. Cantil-Sakauye and then-State Bar President William Hebert. The invitation to the summit described its focus:

*As California’s demographics change, it is important that our judiciary reflect the state’s growing diversity and that the bench and bar participate in the dialogue that may contribute to achieving greater judicial diversity and increased public trust and confidence in the judicial system.*

On October 25, 2012, the interagency Judicial Summit Planning Committee, including Judge Brenda Harbin-Forte, Justice James Lambden, and Senator Joseph Dunn (Ret.), presented the final report from the September 2011 summit.<sup>2</sup> At that meeting, the Judicial Council reviewed the recommendations and directed the Access and Fairness Advisory Committee to initiate the review and approval process for those recommendations that merit council action.

### **Rationale for Recommendation**

These recommendations support a diverse judiciary, and a diverse judiciary is an important component of equal access and public confidence in the justice system. “Access, Fairness and Diversity” is Goal I of *The Strategic Plan for California’s Judicial Branch*. The plan states that, “in order to serve the state of California effectively, the judicial branch should reflect the diversity of the state. The judicial branch must continue efforts to enhance public trust and confidence by working with other branches of government toward a judicial branch that mirrors the state’s diversity.” In reference to the Access 3D initiative, Chief Justice Tani G. Cantil-Sakauye explained, “Access should be physical, remote, and equal. . . . Equal access means supporting a diverse judicial branch at all levels to benefit the public and to reflect the vast diversity of the state.” (August 17, 2013 speech: “Restoring Access to Justice: Access 3D.” <http://www.courts.ca.gov/25417.htm>.) California, its residents, and the state’s justice system all benefit from a judicial branch that mirrors the state’s diversity and these recommendations help achieve that goal.

### **Implementation efforts**

Since 1994, the committee has submitted recommendations to the Judicial Council that have assisted the council in achieving Goal I of its strategic plan: Access, Fairness, and Diversity. Since October 2012, when the council asked the committee to review the summit recommendations, the committee has taken many important steps to address the issues identified in the summit report. Most recently, at the invitation of the Trial Court Presiding Judges Advisory Committee (TCPJAC), the committee recommended ways that TCPJAC’s publication titled *Making Judicial Assignments* could be updated to address several of the recommendations from the summit. Recommendations for updating included making changes in procedures to increase transparency in how assignments are made (see summit recommendation 1 under The Perceived Glass Ceiling); encouraging presiding judges to take a careful look at whether there may be reasons for the bar, the public, or the bench to perceive the assignment process in a given local court as biased; and the importance of working on improving the status of all assignments and increasing the opportunities for leadership to take full advantage of the diverse viewpoints and experience jurists bring to the courts (see summit recommendation 6 under The Perceived Glass Ceiling).

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<sup>2</sup> The full summit report and the report to the Judicial Council that accompanied it can be found on the California Courts website at [www.courts.ca.gov/documents/jc-20121026-item1.pdf](http://www.courts.ca.gov/documents/jc-20121026-item1.pdf).

The Advisory Committee on Providing Access and Fairness also continues to work closely with its liaisons from the Center for Judiciary Education and Research and with staff at the Center for Families, Children & the Courts to provide input into judicial training to address many of the issues raised at the summit and in the final report. The summit recommendations provide a wealth of information that has been and should continue to be incorporated into primary assignment, new judge orientation, domestic violence, and ethics courses.

Additionally, based on input and direction from the council's Executive and Planning Committee, the Advisory Committee on Providing Access and Fairness would like to highlight that the committee's work is addressing a wide range of issues impacting diversity and that work is informed by the important information from the summit. For example, the committee plans to work on a number of efforts to educate and inform the branch about lesbian, gay, bisexual, and transgender (LGBT) issues. The areas of focus from the summit will inform that work going forward. Likewise, the committee plans on including LGBT issues in its focus, as well as addressing issues related to gender, race, economic access, and access and fairness for people with disabilities.

The committee has discussed the value of an important existing branch resource: *Pathways to Achieving Judicial Diversity in the California Courts: A Toolkit of Programs Designed to Increase the Diversity of Applicants for Judicial Appointment in California* (December 2010), which the committee created in collaboration with the State Bar and which is currently underutilized. The wide variety of strategies and programs in the toolkit can help judicial officers (individually or as a group) promote pipeline programs in their communities, promote awareness of legal and judicial careers in local high schools, and mentor attorneys who are interested in judicial appointments.

### **Comments, Alternatives Considered, and Policy Implications**

Implementation of the identified summit recommendations could have policy implications for the branch. An alternative to providing information and guidance through distribution of the summit report, updating publications, and developing or improving training would be the council's adoption of a rule of court setting out more specific procedures for presiding judges with respect to the assignment process. The committee ruled out this alternative, in light of the council's preference to allow management flexibility for presiding judges. Recognizing that implementation of these recommendations might create additional duties for local trial courts, the advisory committee proposes asking for ongoing input from the Trial Court Presiding Judges Advisory Committee.

### **Implementation Requirements, Costs, and Operational Impacts**

Implementation of these recommendations will be a long-term project and require collaborative efforts across the judicial branch. The committee recognizes that local bar associations and COAF can be effective partners in implementation efforts. Given the current fiscal climate, it is



important that efforts be undertaken to support this important work despite limited or no resources.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

These recommendations support “Access, Fairness, and Diversity” which are identified as Goal I of *Justice in Focus: The Strategic Plan for California’s Judicial Branch*. In order to achieve access, fairness, and diversity in the branch, the plan makes a number of policy recommendations, including: identifying and working to eliminate all barriers to access; collaborating with other branches of government and justice system partners to identify, recruit, and retain highly qualified appellate court justices, trial court judges, commissioners, referees, and other members of the judicial branch workforce, who reflect the state’s diversity; and collaborating with law schools, the State Bar, local bar associations, and specialty bars to achieve greater diversity in the legal profession.

### **Attachments and Links**

1. Executive Summary and Final Recommendations from the “Final Report and Recommendations” from the 2011 summit on judicial diversity (dated August 1, 2012). The document is available at <http://www.courts.ca.gov/documents/jc-20121026-item1.pdf>.
2. *Justice in Focus: The Strategic Plan for California’s Judicial Branch, 2006–2012*; Section VI: Strategic Goals and Policy Directions; Goal I: Access, Fairness, and Diversity. The document is available at [http://www.courts.ca.gov/documents/strategic\\_plan\\_2006-2012.pdf](http://www.courts.ca.gov/documents/strategic_plan_2006-2012.pdf).