



The State Bar of California

OPEN SESSION AGENDA ITEM 50-4 JULY 2020

DATE: July 16, 2020

TO: Members, Board of Trustees

FROM: Steve Mazer, Chief Administrative Officer

SUBJECT: Approval of Revisions to Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms, and Conditions Governing State Bar Court Judge Service

EXECUTIVE SUMMARY

This agenda item requests the Board of Trustees to approve revisions to the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms, and Conditions Governing State Bar Court Judge Service (Judge Rules), to make certain benefits provided to Judges consistent with those provided to State Bar Executive Staff.

BACKGROUND

On May 14, 2020, the Board of Trustees approved revisions to the Rules and Regulations Pertaining to the Employment of Executive Staff (Executive Staff Rules) and to the Rules and Regulations Pertaining to the Employment of Confidential Staff (Confidential Staff Rules). These revisions: 1) provided changes to benefits and terms and conditions of employment that were comparable or related to those provided to Bargaining Unit staff in the new 2020–2022 Memoranda of Understanding (MOUs) with the employees' union; (2) aligned certain Confidential Staff Rules to the existing Executive Staff Rules; and (3) made various technical cleanup changes required for clarity, accuracy, and consistency. On May 14, 2020, the Board also approved revisions to the Judge Rules, to reflect changes made to the State Bar's Post-Retirement Welfare Benefits Plan, which aligned the post-retirement medical and vision insurance benefits provided to State Bar Court judges with those provided to State Bar Executive Staff.

DISCUSSION

The action proposed here will complete the series of revisions necessary to align or update, where applicable, certain benefits or other terms and conditions of employment for Bargaining Unit Staff, Confidential Staff, Executive Staff, and State Bar Court Judges.

Staff recommends the Judge Rules be revised as discussed below. A redline version of the proposed revisions is included as Attachment A.

Vacation

Staff recommends the Judge Rules be revised at Section 6, to increase the vacation accrual cap from 55 to 80 days regardless of length of service; and to provide the option to cash in up to three weeks of vacation per year, which is a benefit not currently provided to Judges. These changes are consistent with the Executive Staff Rules.

Paid Personal Days

Staff recommends a new Section 9 be added to the Judge Rules, to provide three paid personal days to Judges with less than ten years of continuous service, and four paid personal days to Judges with ten or more years of continuous services. Paid personal days are currently provided to Executive Staff but not to Judges, while Judges currently have a more generous vacation accrual plan. When considering vacation and paid personal days together, the proposed revision will generally equalize the number of paid time off days per year between Judges and Executive Staff.

Paid Child Bonding Leave

Staff recommends that a new Section 10 be added to the Judge Rules, to provide the new Paid Child Bonding Leave benefit (160 hours) that was recently provided to Bargaining Unit, Confidential, and Executive Staff.

Bereavement Leave

Staff recommends that the Judge Rules be revised at (renumbered) Section 16 to add aunts, uncles, nieces, and nephews to the definition of “immediate family” for the purpose of Bereavement Leave, as was done in the new MOUs, and in the Executive and Confidential Staff Rules.

Parking

The current language of (renumbered) Section 21 is no longer relevant, as it relates to parking that was provided in the State Bar’s former Los Angeles location. Staff recommends that the

language be revised to state that parking and transit benefits will be provided to Judges on the same terms as provided to Executive Staff.

FISCAL/PERSONNEL IMPACT

The proposed changes have a minimal fiscal impact.

AMENDMENTS TO RULES OF THE STATE BAR

Yes. Amendments are sought to the Judge Rules as described above and in Attachment A.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees adopt the amended Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, as set forth above and in Attachment A.

ATTACHMENT(S)

- A.** Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, revised May 14, 2020, with redlined changes reflecting the revisions proposed by this item.

**RULES AND REGULATIONS OF THE
STATE BAR OF CALIFORNIA
PERTAINING TO THE BENEFITS, TERMS, AND
CONDITIONS GOVERNING
STATE BAR COURT JUDGE SERVICE**

[Revised ~~May 14~~July 16, 2020]

Section 1. GENERAL PROVISIONS

- A. The following Rules and Regulations are adopted to govern the benefits, terms and conditions under which the judges appointed by the Supreme Court, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly serve the State Bar Court.
- B. These Rules and Regulations are promulgated by the Board of Trustees of the State Bar and may be amended from time to time by the Board.
- C. Nothing herein shall be construed as limiting or altering the plenary authority of the Supreme Court over the admissions and disciplinary system including but not limited to the service of State Bar Court judges.

Section 2. DEFINITIONS

- A. “Board” is the Board of Trustees of the State Bar of California.
- B. “Day(s)” are calendar days unless otherwise specified.
- C. “Executive Staff” is the Executive Staff of the State Bar governed by the Rules and Regulations Pertaining to the Employment of Executive Staff Employees.
- D. “Judge” is a judge of the State Bar Court appointed pursuant to Bus. & Prof. Code §§ 6079.1 and/or 6086.65. Pro Tem judges are not subject to these Rules and Regulations.
- E. “Rules and Regulations” are these Rules and Regulations Pertaining to the Benefits, Terms and Conditions Governing the State Bar Court Judge Service.
- F. “State Bar” is the State Bar of California

- G. “State Bar Court” is the State Bar Court established by the Board of Trustees pursuant to Bus. & Prof. Code § 6086.5.
- H. “Supreme Court” is the Supreme Court of California.

Section 3. **APPOINTMENT, TERM, DISCIPLINE**

As set forth in Bus. & Prof. Code §§ 6079.1, 6086.65, and rule 9.61, California Rules of Court, judges are appointed and reappointed by the Supreme Court, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly. Judges are subject to admonition, censure, removal, or retirement by the Supreme Court on the same grounds as provided for judges of California courts of record.

Section 4. **STATUS**

- A. Judges are, during their term, to be “Inactive” members of the State Bar not entitled to practice law.
- B. Judges are not judges of a court of record as defined in California Constitution, article 6, section 1. For salary and benefit purposes, judges are employees of the State Bar. With respect to the performance of their adjudicatory responsibilities, judges are independent from the State Bar.
- C. By directive of the Supreme Court, State Bar Court judges are subject to the provisions of the California Code of Judicial Ethics.

Section 5. **SALARY AND BENEFITS**

- A. The Board shall fix and pay the salary and benefits of judges. In accordance with Business and Professions Code §§ 6079.1(d) and 6086.65(a), the salary for Hearing Department judges shall be 91.3225 percent of the salary of Superior Court judges and the salary for Review Department judges, including the Presiding Judge, shall be the same as Superior Court judges.
- B. The salary of judges shall adjust automatically in accordance with salary increases received by Superior Court judges.
- C. The Board shall also fix and provide benefits of employment to judges at levels to be determined and adjusted from time to time in the discretion of the Board.

Section 6. **VACATION**

A. Throughout their terms, judges shall accrue vacation at the following rates:

Less than fifteen (15) years of service	1 and 2/3 <u>1.67</u> days per month (20 working days per year)
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Fifteen (15) or more years of service	2 and 1/2 <u>2.08</u> days per month (25 working days per year)
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B. Vacation accrual shall be ~~limited as follows~~capped at 80 days. Upon accruing this maximum, a judge shall cease accruing vacation and shall not commence to accrue vacation again until the accrual is reduced below the maximum.

~~1. A judge with less than ten (10) years of continuous service may accrue a maximum of forty five (45) working days of vacation;~~

~~2. A judge with at least ten (10) but less than fifteen (15) years of continuous service may accrue a maximum of fifty (50) working days of vacation;~~

~~3. A judge with fifteen (15) or more years of continuous service may accrue a maximum of fifty five (55) working days of vacation.~~

~~— Upon accruing this maximum, a judge shall cease accruing vacation and shall not commence to accrue vacation again until the accrual is reduced below the maximum.~~

C. Judges may cash in accrued and unused vacation in increments of one week, not to exceed a total of three weeks per calendar year.

~~ED.~~ Upon termination of service, a judge shall be paid for all unused, accrued vacation time.

Section 7. **HOURS OF EMPLOYMENT**

The hours of employment of judges are those reasonably necessary to perform their duties. By the nature of their duties, judges are exempt from the overtime provisions of state or federal law and are not entitled to overtime payments or compensatory time.

Section 8. **PAID SICK AND DISABILITY LEAVE**

Paid sick leave, short term and long term disability coverage shall be provided to active judges on the same terms and to the same extent as such benefits are provided to active State Bar Executive Staff.

Section 9. PAID PERSONAL DAYS

Judges with less than ten (10) years of continuous service may take a maximum of three (3) Paid Personal Days per calendar year. Judges with ten (10) or more years of continuous service may take a maximum of four (4) Paid Personal Days per calendar year. Judges will not be paid for Paid Personal Days not taken and Personal Days will not accumulate or carry over from year to year.

Section 10. PAID CHILD BONDING LEAVE

Judges who have been employed with the State Bar for at least one calendar year and who have worked at least 1,250 hours in the preceding twelve (12) months, shall be eligible to receive, in a lump sum amount, one hundred sixty (160) hours of paid leave to be used after the birth, adoption, or foster care placement of a child of the judge, and/or being unable to work due to pregnancy or childbirth (paid bonding leave). Judges eligible for paid bonding leave need not exhaust any of their other accrued paid leave balances before accessing or using the 160 hours of paid bonding leave. Judges remain eligible to use available paid sick leave, paid vacation, and paid personal days for child bonding purposes or not, at their option. While judges may coordinate the use of paid bonding leave to supplement their salaries while receiving Long Term Disability Insurance benefits, there is no requirement that they do so. Eligible judges may use the 160 hours of paid bonding leave intermittently, although not in increments of less than a full eight (8) hour workday. Eligible judges must use the 160 hours of paid bonding leave within twelve (12) months of either the day of birth, adoption or foster-placement of the child, or the day judges take leave from work due to a pregnancy or childbirth related condition. Paid bonding leave not used at the end of this twelve month period will expire and be lost. Any remaining paid bonding leave that a judge may have will not be paid upon termination of employment, but will be lost.

Judges shall also be permitted to use paid sick leave, vacation leave, and personal days to cover leave taken for the same reasons the paid bonding leave may be taken, either to supplement Long Term Disability Insurance benefits or to take additional time for bonding with a new child.

Section 911. HEALTH AND LIFE INSURANCE BENEFITS

The State Bar shall provide the same health and life insurance benefits to active judges as are provided to active State Bar Executive Staff (which may include medical/hospital, vision care, dental, and life coverage).

Section 1012. **HOLIDAYS**

- A. The following are recognized as paid holidays for judges:
1. New Year's Day
 2. Martin Luther King's Birthday
 3. Presidents' Day
 4. César Chávez Day
 5. Memorial Day
 6. Independence Day
 7. Labor Day
 8. Columbus Day
 9. Veteran's Day
 10. Thanksgiving Day
 11. Day after Thanksgiving Day
 12. Christmas Eve
 13. Christmas Day
 14. New Year's Eve
- B. Holidays falling on Sunday shall be observed the following Monday. Holidays falling on Saturday shall be observed the preceding Friday.
- C. Judges not on paid status will not receive holiday time off or holiday pay.

Section 1113. **BEREAVEMENT LEAVE**

In the event of a death in the immediate family (i.e., spouse, including domestic partner; children, including foster, step or adopted; parents; brother; sister; father-in-law, including father of domestic partner; mother-in-law, including mother of domestic partner; grandparents; grandchild; ~~ren and person assuming the role of spouse~~ aunt; uncle; niece; or nephew) judges shall be entitled to bereavement leave of five (5) work days with pay. Such leave shall not be charged to vacation or to paid sick leave.

Section 1214. **JURY DUTY**

In the event that a judge is called for jury duty or is subpoenaed to appear as a witness in a state or federal court proceeding in which the judge is not a party nor has an economic interest, the judge will receive his/her salary less that amount to

which the judge is entitled as “juror’s compensation” or “witness fees”. In no instance will the judge realize less salary than he/she would have otherwise received, had the judge not been called for jury duty or subpoenaed to appear as a witness.

Section 1315. **MILITARY LEAVE**

Military leave and accompanying rights will be granted as provided by law.

Section 1416. **PROFESSIONAL DUES AND FEES**

- A. The State Bar shall pay annual State Bar membership fees at the level required for “Inactive” membership for judges who are members of the State Bar.
- B. The State Bar shall also pay annual membership fees in job-related professional associations for judges in an amount not to exceed the difference between “Inactive” fees actually paid for a judge and the highest amount of annual membership fees that must be paid in order to maintain “Active” membership status in the State Bar.

Section 1517. **OUTSIDE EMPLOYMENT**

During his/her term, a judge may not engage in any conduct which constitutes the practice of law or which is otherwise inconsistent with the Code of Judicial Conduct, which by Supreme Court directive, is applicable to State Bar Court judges.

Section 1618. **EDUCATION AND TRAINING**

- A. Subject to budgetary constraints, the Board of Trustees shall provide funding for the education and training of judges consistent with the standards set forth in rule 10.451 et seq., California Rules of Court.
- B. Subject to the efficient administration of justice and in the discretion of the Presiding Judge, State Bar Court judges shall be entitled to paid leave for education and training consistent with the standards set forth in rule 10.451 et seq., California Rules of Court.

Section 1719. **PERSONNEL FILES**

- A. The State Bar shall maintain, in its Office of Human Resources, personnel files containing the personnel records of judges. At reasonable times, upon

request, the State Bar shall permit a judge to inspect his/her personnel file and any material referred to in such personnel file. A judge's personnel file shall also be made available to the Supreme Court.

- B. Documents and materials pertaining to the evaluation and appointment of judges shall not be part of the judge's personnel file and shall be maintained in accordance with the directives of the Supreme Court.

Section 1820. **TRAVEL REIMBURSEMENT**

Judges shall be reimbursed for travel and related expenses in the course of performing their duties in accordance with the travel reimbursement policies adopted by the Board and applicable to all who travel on State Bar business.

Section 1921. **PARKING**

~~To the extent the State Bar continues to provide parking to employees, parking shall be provided to active judges to the same extent and on the same basis as is provided for active Executive Staff employees. The State Bar, however, retains the right to eliminate free parking entirely or charge for parking, upon reasonable notice. Parking and/or transit benefits shall be provided to active judges on the same terms and to the same extent as such benefits are provided to active State Bar Executive Staff~~

Section 2022. **RETIREMENT**

- A. For any judge whose State Bar Court terms begins before November 1, 2018, the State Bar shall pay to the California Public Employees' Retirement System ("CalPERS") the full amount of the employer and employee contribution for each such judge who is or becomes a member of CalPERS. For any judge whose State Bar Court terms begins on or after November 1, 2018, the employer and the employee contributions to CalPERS shall be shared between the judge and the State Bar in the same manner as provided for State Bar Executive Staff.
- B. Nothing contained in this section shall be deemed to abrogate the right of the State Bar to require a waiting period of ninety (90) days prior to enrolling a judge into CalPERS.
- C. The State Bar will offer judges a medical insurance benefit and a vision insurance benefit in retirement pursuant to the terms of (a) the Public Employees' Medical and Hospital Care Act, and (b) The State Bar of California Post-Retirement Welfare Benefits Plan. A copy of the State Bar

of California Post-Retirement Welfare Benefits Plan is available from the Office of Human Resources upon request.

| **Section 2123.**

DEFERRED COMPENSATION PLAN

Judges shall be eligible to participate in an Internal Revenue Code section 457B deferred compensation plan to the same extent and on the same terms as State Bar employees.