

For information

**Legislative Council Panel on
Administration of Justice and Legal Services**

Review of the appointment of judges to offices outside the Judiciary

PURPOSE

This paper informs Members of the outcome of our review of the appointment of judges to offices outside the Judiciary.

BACKGROUND

2. The issue of appointment of judges to offices outside the Judiciary was discussed at the meeting of the Legislative Council Panel on Administration of Justice and Legal Services (AJLS Panel) on 13 January 2009. Members of the AJLS Panel were concerned about the potential adverse impact of these appointments on the normal judicial duties of judges, particularly for those cases involving appointment of serving judges to boards and committees whose nature was unrelated to judicial work. While Members did not rule out the need to appoint judges to certain boards and committees, they asked the Administration to review the policy for making such appointments, including the appropriateness of having one serving judge taking up several such appointments. They also requested that each of the non-statutory offices currently filled by serving judges should be reviewed.

THE REVIEW

Position of the Judiciary

3. For all offices outside the Judiciary, whether or not judicial in nature, if the relevant legislation provides that serving judges or other categories of persons (e.g. retired judges or senior legal practitioners) are eligible for appointment, the Judiciary's approach in recent years has been to request the Administration to look for a suitable person who is not a serving judge. It would agree to make a serving judge available only where no other suitable person is available. As regards those offices where relevant legislation stipulates that only a serving judge is eligible for appointment, it would be prepared to make a serving judge available for appointment. For details, please refer to LC paper No. CB(2)673/08-09(02) which provides an extract of the Chief Justice's speech at the Ceremonial Opening of the Legal Year 2009.

Views of the Hong Kong Bar Association

4. In its submission to the AJLS Panel, the Bar Association appreciates that where circumstances require, the Administration may wish to appoint serving judges for extra-judiciary functions (i.e. functions which are not judicial in nature nor concerned with law reform, legal education and the like). However, a proper balance should be struck. In particular, the Bar Association considers that judges should not be requested to take up any extra-judiciary function which may put the individual judge or the Judiciary as a whole in any actual, potential or perceived embarrassment or position of conflict. Besides, the alternative of appointing retired judges or members of the legal profession who command a reputable standing should be explored whenever possible and the assistance of judges should be sought when it is really necessary to do so.

Our view

5. The Government's policy is to appoint the most suitable person to a board/committee, having regard to its specific functions and requirements. This policy applies to appointment of any individual, including a serving judge. There is at present no guideline specifically applicable to appointment of judges to boards and committees.

6. Depending on the functions and requirements of individual boards and committees, there may be a need to appoint persons with legal background, judicial experience or reputable standing to these boards and committees. There may also be a need to appoint judges to boards and committees whose work is judicial in nature or is concerned with law reform, legal education and the like. It is noted that the AJLS Panel and the Bar Association have not ruled out the need to make such appointments. At the same time, we agree that it is necessary to avoid creating any real or perceived adverse impact on the normal judicial duties of the judges or the Judiciary as a whole when appointing judges to these offices. For boards and committees to which serving judges have been appointed, we consider it inappropriate to truncate their current terms of appointment pre-maturely. However, upon expiry of their current terms of appointment, critical examination regarding the appointment/re-appointment should be made in accordance with a set of guidelines. The same set of guidelines should apply if serving judges are contemplated for appointment to new boards and committees to be set up.

GUIDELINES FOR APPOINTMENT OF JUDGES TO BOARDS AND COMMITTEES

7. Taking into account views expressed by the AJLS Panel, the Bar Association and the Judiciary, we have worked out the following guidelines for considering appointment/re-appointment of judges to boards and committees -

- (a) When a new board/committee is being planned and a serving judge is considered suitable for appointment -
 - (i) the bureau concerned should consider whether apart from a serving judge, other categories of persons (e.g. a retired judge, a member of the legal profession, or a person who commands a reputable standing in the community) may also be suitable for appointment. A broader pool, where possible and where appropriate, is desirable to allow greater flexibility for appointment;

- (ii) if the bureau, after due consideration, concludes that a serving judge should be the sole category of eligible person to be appointed, it should consult the Judiciary to see if the latter has any objection in principle before proceeding;
 - (iii) the bureau should also consult the Judiciary on proposals which involve a serving judge in the categories of eligible persons for appointment to see if the Judiciary has any objection in principle before proceeding;
- (b) For an existing piece of legislation which stipulates that a serving judge is the sole category of eligible person to be appointed to a particular statutory board/committee, in case there are changes in circumstances which make such a requirement no longer necessary, the bureau concerned should consider whether the relevant legislation should be amended to broaden the pool of eligible candidates for appointment (for example, where appropriate, to include the categories of a retired judge, a member of the legal profession, or a person who commands a reputable standing in the community);
- (c) For an existing board/committee which has in its category of eligible persons for appointment a serving judge as well as others (such as a retired judge, a member of the legal profession, or a person who commands a reputable standing in the community), the bureau concerned should consider at the time of appointment whether a person other than a serving judge is suitable and available for appointment. Re-appointment of a serving judge to an office should not be automatic. It should be noted that the Judiciary would consider making a serving judge available for appointment/re-appointment only after the bureau could confirm that no other suitable person is available;
- (d) Where the Judiciary agrees to plan for the appointment of a serving judge to a board/committee, the bureau should proceed to consult the Judiciary on the nomination of judges and agree on operational matters, including workload and resources implications; and

- (e) When the bureau concerned is considering the appointment of a retired judge to a board/committee, it may, where appropriate, seek relevant information from the Judiciary. For example, the names of retired judges with suitable judicial experience and requisite language requirements for the appointment.

8. We will publish the guidelines in paragraph 7 above shortly for bureaux to follow when considering appointment and re-appointment of judges to boards and committees.

OTHERS

9. The posts of the Chairman of two non-statutory boards whose functions are not related to judicial work (i.e. the Advisory Committee on Post-office Employment for Former Chief Executive and Politically Appointed Officials, and the Advisory Committee on Post-service Employment of Civil Servants) were filled by serving judges at the time the AJLS Panel discussed the issue in January 2009. In this connection, Members may wish to note that a new Chairman, who is not a judge, has been appointed to each of the above committees.

10. There are also three statutory positions whose functions are not similar in nature to judicial work, nor concerned with law reform, legal education and the like, but are currently filled by a serving judge¹ (i.e. Commissioner on Interception of Communications and Surveillance; Panel Judges, Interception of Communications and Surveillance; and Chairman, Electoral Affairs Commission). Bureaux concerned have examined these cases and concluded that there remains a need for the relevant legislation to require/allow such offices to be filled by serving judges in view of the work involved and the need to reinforce public confidence in the impartiality and independence of the relevant statutory bodies.

¹ The offices of Panel Judges under the Interception of Communications and Surveillance Ordinance and Chairman, Electoral Affairs Commission, are required by law to be filled by serving judges. The office of the Commissioner on Interception of Communications and Surveillance may be filled by a serving judge or a retired judge under law.

Administration Wing
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