

The deadline for SCOCA justices to file for retention

Overview

California Chief Justice Tani Cantil-Sakauye assumed office on August 25, 2010, and secured retention in the November 2010 general election. Her current term ends on January 1, 2023. When asked at the recent SCOCA Conference 2022 whether she intended to seek another term, the Chief Justice said “I’m still thinking about it.” We confirmed how long the Chief Justice has to consider that question: the deadline for a SCOCA justice to file for retention in the November 2022 election is August 15, 2022.

Analysis

California appellate justices serve 12-year terms.^[1] Before their terms expire on the Monday after the twelfth January 1 from their last election, a justice may file to continue serving in the office they presently hold. Those elections — either the initial or a successive candidacy — are nonpartisan and uncontested retention elections.^[2] Because an appellate justice is a different kind of candidate than your standard politician, many of the Elections Code provisions for regular political candidates do not apply, and the deadline for a justice to file for retention is somewhat obscure. One key difference here is that regular political candidates have a date certain to file a declaration of candidacy — but a California Supreme Court justice, by contrast, has a window of time.

The first deadline (in date order) to arise is for filing a candidate statement. Under Elections Code section 9084 candidate statements are optional for California Supreme Court justices; that deadline is June 20.^[3] Filing a declaration of candidacy is also phrased in optional language because it’s a justice’s choice whether to stand for retention. This means that a justice can appear on a ballot with no candidate statement, which is consistent with the uncontested nature of the office. For a regular political candidate it would border on campaign malpractice to forgo a

statement.

The key date is the deadline to file a declaration of candidacy and pay a filing fee. Here, the California constitution has curious language: “**Within 30 days before August 16** preceding the expiration of the judge’s term, a judge of the Supreme Court or a court of appeal may file a declaration of candidacy to succeed to the office presently held by the judge. . . .”^[4] That language suggests a window, not a singular deadline.

And that is how the Secretary of State reads it: that office’s calendar for the November 2022 election brackets a corresponding window within which appellate justices may file declarations of candidacy: “16. 7/18/22 to 8/15/22 DECLARATION OF CANDIDACY — SUPREME AND APPELLATE COURTS.”^[5] This reading is consistent with Elections Code section 8023, which similarly provides a window for filing candidate statements — even those covered by article VI, section 16(d):

(b) No person may be a candidate nor have his or her name printed on any ballot as a candidate for judicial office **unless** he or she has filed the declaration of intention provided for in this section. If the incumbent of a judicial office fails to file a declaration of intention **by the end of the period** specified in subdivision (a), persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers.

Elections Code section 8023 makes the declaration of candidacy mandatory. It applies to SCOCA justices (“(d) This section shall apply to all judicial offices whether numerically designated or not.”), with the window modified by article VI, section 16(d). The “period specified in subdivision (a)” in this context links to the thirty-day window provided in article VI, section (d)(1) for those judicial offices.^[6] The thirty days specified by article VI, section 16(d)(1) from August 16 falls on July 17 — a Sunday, which Civil Code sections 7, 10, and 11 move to the next business day on July 18.^[7] That makes the real drop-dead-line August 15: to file the declaration of candidacy and pay the filing fee.

The filing fee is also mandatory. Elections Code section 8103 requires a California

Supreme Court justice who intends to stand for retention (only Court of Appeal justices are exempted) to lodge the fee:

(a) The following fees for filing declarations of candidacy **shall** be paid to the Secretary of State by each candidate:

(1) Two percent of the first-year salary for the office of United States Senator or for any state office. The fee prescribed in this subdivision does not apply to the office of state Senator, Member of the Assembly, member of the State Board of Equalization, or justice of the court of appeal.

Thus, there is a 30-day window of time for a California Supreme Court justice to file for retention, and the end of that period is marked by the deadline to file a candidacy declaration and pay the fee. In this instance the last day for the Chief Justice to file for her retention election is August 15, 2022.

Conclusion

That's *when* the Chief Justice must file. As for *whether* she should, our answer is an unqualified hard yes. As the center's analysis shows, Chief Justice Cantil-Sakauye is an essential element of the California Supreme Court's current decade of stability, comity, and consensus. The court needs a farsighted leader, and the judicial branch needs an experienced administrator's steady hand. Standing for retention means that California continues to benefit from those qualities, and securing another term allows the Chief Justice to decide which governor will choose her replacement. Calling it a career now forfeits those options, and potentially marks the end of a period of stability and consensus on the court. It's not time yet, Chief.

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Chief senior research fellow Stephen M. Duvernay contributed to this article.

1. Cal. Const., art. VI, section 16(a). ↑
2. Cal. Const., art. VI, section 16(d)(1). ↑
3. All dates herein are calculated from the November 2022 general election. ↑
4. Cal. Const., art. VI, section 16(d)(1). Emphasis in all constitutional and statutory provisions quoted here is added. ↑

5. California Secretary of State, Complete General Election Calendar (PDF download link). ↑
6. Elections Code § 8023: “(a) **Except in the case of a judicial office filled in accordance with subdivision (d) of Section 16 of Article VI of the Constitution**, every candidate for a judicial office, not more than 14 nor less than five days prior to the first day on which his or her nomination papers may be circulated and signed or may be presented for filing, shall file in the office of the elections official in which his or her nomination papers are required to be filed, a written and signed declaration of his or her intention to become a candidate for that office on a form to be supplied by the elections official. . . .” ↑
7. Civ. Code § 7 (“Holidays within the meaning of this code are every Sunday and such other days as are specified or provided for as holidays in the Government Code of the State of California.”), § 10 (“The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.”), § 11 (“Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.”). ↑