

Hail and farewell, Madam Chief Justice

California's Chief Justice Tani Cantil-Sakauye will retire, she announced this morning in a media conference.

Chief Justice Cantil-Sakauye will not file for retention election, and will vacate her position when her term ends in January 2023, having served a full 12-year term as California's highest judicial officer. Appointed by Governor Arnold Schwarzenegger, she assumed office on January 3, 2011. She will be 63 when she leaves office, having served 32 years on the bench since Governor George Deukmejian first appointed her in 1990. Like her colleagues justices Carol Corrigan and Martin Jenkins, Cantil-Sakauye served at every level of California court in her career.

The Chief Justice leaves California's courts in a far better state than when she arrived in 2011, when the judicial branch budget struggled to absorb major funding and services cuts as the state grappled with the aftermath of the 2008 financial crisis. Since then the judicial branch budget has largely reversed course, after the Chief Justice secured substantial funding increases and pursued initiatives to expand remote court access during the coronavirus pandemic. And Chief Justice Cantil-Sakauye arguably leaves office at the peak of her influence, having presided over (and perhaps caused) a decade of increasingly consensus-driven decisions on the court, reversing a long trend of close vote splits and rancorous dissents.

More change may be in store, and soon, if the court's recent pattern holds. The Chief Justice noted at the recent SCOCA Conference 2022 that her experience on the court has been one of constant change. And now her departure may form part of that pattern: as a recent SCOCAblog article observed, annual justice retirements are the current norm, with one justice retiring on average every year or so for the past decade.

So there are now two burning questions: who will become Chief Justice, and who will leave next?

The “next departure” analysis is interesting. Three sitting members have been on the court for a decade: the Chief Justice (now retiring), Justice Liu, and Justice Corrigan (the most senior member in both service and age). Justice Corrigan turns 74 next month, so one might focus on her as next to retire. But she was retained in the November 2018 election, her current term runs for another eight years to January 2031, and her physical vigor and love for the law show no sign of waning. Justice Jenkins presents a similar picture: he turns 69 later this year, looks like he could still intercept a pass, and is on the ballot for a new 12-year term this November. The other justices — Liu, Kruger, Groban, Guerrero — are all either too young or too-recently-arrived on the court to be likely departure candidates. The upshot is that none of the other justices are sending departure signals.

The “next Chief” analysis has two likely scenarios:

- Governor Newsom could elevate a sitting justice. Two are obvious suspects here, particularly given this governor’s pattern of appointing bench officers who are first in a category. Justice Liu has been considered for (or been pushed for) positions on the Ninth Circuit and as California’s Attorney General, and would be the first Asian man to serve as Chief Justice. Justice Kruger was a finalist for the U.S. Supreme Court, and would be the first Black woman Chief Justice. Justice Liu would not be the first Asian (following Chief Justice Cantil-Sakauye), and Justice Kruger would not be the first woman (following Chief Justice Bird). Add a third prospect: Justice Guerrero would be the historic first Hispanic person (of any gender) to be Chief Justice. This scenario also gives Governor Newsom the appearance of making two appointments: one to elevate a new Chief Justice, and one to fill the vacated seat.
- Governor Newsom could appoint someone new to serve as Chief Justice. This is harder to game out, with a much wider field of possible candidates. Likely names include those who were in the running to replace Justice Cuéllar: Justice Elena Duarte, or Justice Therese Stewart, for example. An unlikely prospect: the current judicial appointments secretary Luis Céspedes, who will turn 70 this year. Past practice suggests that the likely candidate is younger, highly-credentialed, enjoys broad support, and is first of their name in some way. Expect all the usual interest groups to light up the governor’s

switchboard with helpful suggestions.

Regardless of how all this plays out, right now California must watch as Chief Justice Cantil-Sakauye rides off into a well-earned retirement. She no doubt will enjoy spending more time with family and less time squabbling with lawyers and politicians. But we are sad to see her go.

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