

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Administrative Office of the Courts
Office of the General Counsel
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DATE: September 29, 2004

SUBJECT: Information Access Disputes: Writ Petitions (Gov. Code, § 71675) (adopt Cal. Rules of Court, rule 6.710) (Action Required)

Issue Statement

Senate Bill 128 (D-Burton), the September 2001 “cleanup” bill to the Trial Court Employment Protection and Governance Act (the act), establishes a procedure for a trial court employee, an employee organization, or a member of the public to seek relief for an alleged violation of rule 6.702 of the California Rules of Court, on the maintenance of, and public access to, budget and management information concerning the Judicial Council or the trial courts. Government Code section 71675(c) requires the Judicial Council to adopt rules of court that provide for the hearing and appeal process and specifies the procedures for hearing writ petitions that should be included in the rule of court.¹

Recommendation

Administrative Office of the Courts (AOC) staff recommends that the Judicial Council, effective October 15, 2004, adopt rule 6.710 of the California Rules of Court to establish the procedure for writ petitions filed under Government Code section 71675 for

¹ Gov. Code, §71675 took effect on January 1, 2002, but the council never adopted the required companion rule. [The Administrative Office of the Courts inadvertently failed to prepare the proposed rule of court mandated by the 2001 statute and has established additional procedures to ensure timely compliance with statutory mandates for rules, forms, and reports to the Legislature.] The Fourth Appellate District recently noted the absence of the required rule in *Orange County Employees Association v. Superior Court of Orange County*, 2004 Cal. App. LEXIS 1036 (June 30, 2004). In its decision, the Court of Appeal dismissed a labor union’s writ petition because the union filed the writ directly with the appellate court. The court dismissed the case without prejudice for the union to refile the petition in the superior court.

violations of rule 6.702 of the California Rules of Court, on the maintenance of, and public access to, budget and management information concerning the Judicial Council or the trial courts.

Rationale for Recommendation

In 2001, the Legislature enacted Government Code section 71675 as part of SB 128 concerning rule 6.702 of the California Rules of Court. Rule 6.702 requires that trial courts and the AOC maintain, and make available upon request by the public, budget and management information for a period of three years. The Legislature enacted SB 128 to permit enforcement of rule 6.702, when a requesting party believes that the trial courts or the AOC failed to properly maintain or provide access to this information. The enforcement procedure enumerated in Government Code section 71675 includes a writ petition and appeal process, whereby a justice from a specially appointed Court of Appeal panel hears the matter in superior court as a superior court judge on an expedited basis. Government Code section 71675 also requires that the council enact a rule that creates “a mechanism for the establishment of a panel of Court of Appeal justices who shall be qualified to hear these matters.”

Proposed rule 6.710 would satisfy the mandate of Government Code section 71675. It is patterned after rule 2211 of the California Rules of Court, which the council adopted in 2000 in response to the mandate of the Trial Court Employment Protection and Governance Act. Rule 2211 addresses petitions concerning trial court labor relations disputes.

Proposed rule 6.710 would establish a similar writ petition and hearing procedure for alleged violations of rule 6.702. Like rule 2211, the proposed rule sets forth a procedure for the Chief Justice to create a panel consisting of one justice from each district of the Court of Appeal and assign one justice from the panel to hear petitions filed under section 71675 in superior court. Most of the substance of the rule is set forth in Government Code section 71675(c), which requires:

The Judicial Council shall adopt rules of court to implement this hearing and appeal process. The rules of court shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear these matters, as specified in the rules of court, from which panel a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court, and, if applicable, the court of appeal, on an expedited basis. To the extent permitted by law or rule of court, these rules shall provide that the justice assigned to hear the matter shall not be from the court of appeal district in which the action is filed, and shall provide that appeals in these matters shall be heard in the court of appeal district where the matter was filed.

The proposed rule conforms to the legislative mandate of Government Code section 71675 and is consistent with the writ and hearing procedures in rule 2211 of the California Rules of Court. The only provisions in the proposed rule that are not contained in the statute are that (1) the justices on the panel will receive training, (2) a party filing a writ petition under section 71675 must clearly identify it on the cover page of the petition and any notice of appeal, and (3) the clerk of the court must notify the Administrative Office of the Courts of the need to assign a justice from the panel.

Alternative Actions Considered

Because Government Code section 71675 requires adoption of a rule, no alternative actions were considered.

Comments From Interested Parties

Seven people responded to the invitation to comment. Three people supported the rule without modification. One person supported the rule and did not request modification, but provided a comment. Two additional persons supported the rule with certain modifications. One person opposed the proposal. All comments received are summarized in the comment chart at pages 8 to 11.

One commentator suggested that it should not be necessary to assign a Court of Appeal Justice from an appellate district outside the district of the superior court involved in the dispute, especially given the likely cost of such an assignment in these difficult budgetary times. The statute is clear: Government Code section 71675(c), requires that “the justice assigned to hear the matter shall not be from the court of appeal district in which the action is filed.” The rule conforms to this legislative requirement.

Another commentator noted that the proposed rule does not specify what pre-writ dispute resolution mechanism a trial court should adopt in order to provide an alternative before the filing of a writ. In addition, the commentator noted that the rule does not include a Judicial Council pre-writ dispute resolution policy. This rule mirrors rule 2211, which permits each trial court the discretion to create a procedure (e.g., a “grievance process”) for resolving disputes before a writ is filed. After experience with the rule, staff will review whether to recommend that the council adopt a pre-writ dispute resolution process separate from this rule.

The same commentator asked whether the rule should require that petitioners show compliance with an established pre-writ dispute resolution process before they may file a petition. Government Code section 71675(a) requires that, before filing a writ, a party exhaust an established pre-writ dispute resolution procedure. Because the assigned justice will determine whether the petitioning party has properly exhausted this remedy as required by statute, the proposed rule of court does not address this point.

Another commentator suggested an addition to the proposed rule, to amend subdivision (d) to alert court clerks to the nature of the expedited appeal process. Staff has incorporated that suggestion into the text of the proposed rule.

A final commentator opposed the rule on the grounds that subdivisions (c)(1) and (c)(2) and subdivision (e) of the proposed rule permit the Legislature to invade the province of the judicial branch, as established under the “separation of powers” doctrine. The courts were confronted with the identical question in 2000, upon passage of the Trial Court Employment Protection and Governance Act (Senate Bill 2140). Under SB 2140, the Legislature adopted this same assigned justice system. It was determined at that time that the system required by the Legislature was a reasonable restriction placed on the constitutional functions of the courts, given that it did not defeat or materially impair the exercise of those functions.

Implementation Requirements and Costs

The proposed rule would require the Chief Justice to select at least one appellate justice from each district of the Court of Appeal to serve on a panel of judges who may hear such information access petitions. The Administrative Office of the Courts’ Judicial Assignments Unit will administer the assignment of a justice from the panel and anticipates that such assignment will not be burdensome.

Attachments

Rule 6.710 of the California Rules of Court is adopted, effective October 15, 2004, to read:

1 **Rule 6.710. Information access disputes—writ petitions (Gov. Code, § 71675)**

2
3 **(a) [Applicability]** This rule applies to petitions filed under Government Code section
4 71675(b).

5
6 **(b) [Assignment of Court of Appeal justice to hear the petition]**

7
8 (1) The petition must state the following on the first page, below the case
9 number, in the statement of the character of the proceeding (see
10 rule 201(f)(6)): “Writ petition filed under Government Code
11 section 71675—Assignment of Court of Appeal justice required.”

12
13 (2) When the petition is filed, the clerk of the court must immediately request of
14 the Judicial Assignments Unit of the Administrative Office of the Courts the
15 assignment of a hearing judge from the panel established under subdivision
16 (e).

17
18 (3) The judge assigned to hear the petition in the superior court must be a justice
19 from a Court of Appeal for a district other than the district for that superior
20 court.

21
22 **(c) [Superior court hearing]**

23
24 (1) The superior court must hear and decide the petition on an expedited basis
25 and must give the petition priority over other matters to the extent permitted
26 by law and the rules of court.

27
28 (2) The petition must be heard by a judge assigned by the Chief Justice from the
29 panel of hearing judges established under subdivision (e).

30
31 **(d) [Appeal]** An appeal of the superior court decision must be heard and decided on an
32 expedited basis in the Court of Appeal for the district in which the petition was
33 heard and must be given priority over other matters to the extent permitted by law
34 and the rules of court. The notice of appeal must state the following on the first
35 page, below the case number, in the statement of the character of the proceeding
36 (see rule 201(f)(6)): “Notice of Appeal on Writ Petition filed under Government
37 Code section 71675—Expedited Processing Requested.”

1 **(e) [Panel of hearing judges]** The panel of judges who may hear the petitions in the
2 superior court must consist of Court of Appeal justices selected by the Chief Justice
3 as follows:

4
5 (1) The panel must include at least one justice from each district of the Court of
6 Appeal.

7
8 (2) Each justice assigned to hear a petition under (c)(2) must have received
9 training on hearing the petitions as specified by the Chief Justice.

Government Code section 71675

- (a) Any trial court may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) in matters concerning the release of information by that trial court. The Judicial Council may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) in matters concerning the release of information by the Judicial Council.

- (b) Notwithstanding Sections 1085 and 1003 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, in the event that a trial court employee, an employee organization, or a member of the public believes there has been a violation of Rule 6.702 of the California Rules of Court concerning the maintenance of, and public access to, budget and management information concerning the Judicial Council or the trial courts, that party may petition the superior court for relief.

- (c) The Judicial Council shall adopt rules of court to implement this hearing and appeal process. The rules of court shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear these matters, as specified in the rules of court, from which panel a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court, and, if applicable, the court of appeal, on an expedited basis. To the extent permitted by law or rule of court, these rules shall provide that the justice assigned to hear the matter shall not be from the court of appeal district in which the action is filed, and shall provide that appeals in these matters shall be heard in the court of appeal district where the matter was filed.

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Information Access Disputes—Writ Petitions (Gov. Code, § 71675) (new rule 6.710 of the California Rules of Court)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Mr. Todd Barton Executive Officer Superior Court of California, Kings County	A	N	No comment.	No response necessary.
2.	Mr. Richard Haeussler Haeussler & Associates Attorney Newport Beach	A	N	I am not sure that it would be necessary to assign a Court of Appeals Justice from a District that was not over the Superior Court, especially in this time of limited budgets.	The language of the rule conforms to Gov. Code, §71675(c), which requires that “the justice assigned to hear the matter shall not be from the court of appeal district in which the action is filed.” The Legislature initially created this “out of district” assignment requirement under Gov. Code, §71639.1 to ensure that the assigned justice would not be required to resolve a labor dispute within his or her own district, especially given that any appeal may later be heard by colleagues at the same court of appeal district. The Legislature tried to address these same concerns when passing section 71675.

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3.	Mr. John Healy President/Owner @ Court Alameda	A	Y	No comment.	No response necessary.
4.	Ms. Hannah Inouye Manager Superior Court of California, Los Angeles County	AM	N	An appeal on a writ petition filed under Government Code §71675 should be obviously identifiable to ensure that the appeal is expedited. Appeals on writs of mandate matters are not uncommon. It would be helpful to modify Rule 6.710(d) to require that the first page of an appeal of this nature must state “Appeal on Writ Petition Filed Under Government Code §71675” which would be consistent with how the petition is identified in subsection (b)(1) of Rule 6.710.	Staff agrees with this comment and has modified subdivision (d) to add a second sentence, which requires that the notice of appeal contain a short statement on the first page, specifying that the appeal is being filed under Gov. Code, §71675, and that appellant requests expedited processing.
5.	Mr. Stephen V. Love Executive Officer Superior Court of California, San Diego County	AM	N	The following comment was received from one of our court’s Legal Services staff: The proposed rule does not address resolution short of filing a writ petition. Is the Judicial Council going to adopt a preliminary step before petitioning the court for information or should local procedures be established? Subdivision (a) of GC	When the Judicial Council adopted rule 2211 in response to former Gov. Code section 71639.1(a), the rule permitted each trial court to create a procedure (e.g., a “grievance process”) for resolving the dispute prior to a party filing a writ petition. This rule

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				<p>§71675 seems to allow either the Council or a local court to adopt these procedures: “Any trial court may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) in matters concerning the release of information by that trial court....The Judicial Council may adopt a procedure to be used as a preliminary step before petitioning the superior court for relief...” Please provide direction so that we may implement a “preliminary step.”</p> <p>Should the rule require petitioners to show compliance with Government Code section 71675, subdivision (a), before they can file a petition?</p>	<p>provides the same flexibility. Courts may wish to consult with the AOC’s Human Resources Division or Office of the General Counsel for suggestions on pre-writ dispute resolution procedures.</p> <p>After experience with the rule, staff will review whether to recommend that the council adopt a pre-writ dispute resolution process separate from this rule.</p> <p>Gov. Code, §71675(a) requires that a party use a pre-writ dispute resolution procedure if it exists, before filing a writ. The text of the code section specifies that this process is “to be used.” The assigned justice will determine if the petitioning party exhausted an established remedy. Therefore, the rule of court need not include that text.</p>

Information Access Disputes—Writ Petitions (Gov. Code, § 71675) (new rule 6.710 of the California Rules of Court)

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
6.	Hon. Dennis Murray Presiding Judge Superior Court of California, Tehama County	N	N	The Constitutional issues presented by Government Code §71675 and subdivisions (c)(1) & (c)(2) and subdivision (e) of this proposed rule are obvious. Both may have considerable practical appeal. However, the “separation of powers” issues are too substantial to warrant support.	In 2000, when the Governor signed the Trial Court Employment Protection and Governance Act (SB 2140), the courts were confronted with the identical question, because the Legislature adopted this same assigned justice system for the review of alleged unfair labor practices and enforcement of agreements. At that time, it was concluded that the Legislature’s assigned justice system was a reasonable restriction placed upon the constitutional functions of the courts, because the system did not defeat or materially impair the exercise of those functions. See <i>Brydonjack v. State Bar</i> (1929) 208 Cal. 439, 442.
7.	Mr. Kent Yeargin Assistant Court Executive Officer Superior Court of California, Monterey County	A	N	No comment.	No response necessary.