

**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  
Kenneth Kann, Managing Attorney, Office of the General Counsel  
Scott Gardner, Attorney, Office of the General Counsel

DATE: November 22, 2004

SUBJECT: Enforcement of agreements—petitions (Gov. Code, §§71639.5 and 71825.2) (amend Cal. Rules of Court, rule 2211)(Action Required)

Issue Statement

Senate Bill 1102, an August 2004 trailer bill to the 2004–2005 Budget Act (SB 1113), amends the Trial Court Employment Protection and Governance Act (TCEPGA) and the Trial Court Interpreter Employment and Labor Relations Act (TCIELRA), placing all unfair labor practice disputes under the jurisdiction of the Public Employment Relations Board (PERB). Formerly, Government Code sections 71639.1 (for TCEPGA) and 71825 (for TCIELRA) created a different mechanism for resolving alleged unfair labor practices and enforcing agreements reached between parties to a memorandum of understanding (MOU). Under this system, the aggrieved party filed a petition for writ of mandate to obtain relief. The Judicial Council adopted rule 2211 of the California Rules of Court, effective January 1, 2001, to govern this writ process.<sup>1</sup>

While SB 1102 removed unfair labor practice disputes from the rule 2211 writ process by repealing Government Code sections 71639.1 and 71825 (enacting new replacement sections authorizing PERB to adjudicate the disputes), the bill simultaneously enacted new Government Code sections 71639.5 and 71825.2. These new sections preserve the rule 2211 writ process as the sole means of enforcing MOUs and also provide for the filing of petitions to compel arbitration and confirm arbitration awards.

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<sup>1</sup> The TCIELRA, which took effect on January 1, 2003, specified that the hearing and appeal process for interpreter labor disputes would be governed by the rule adopted by the council pursuant to Gov. Code, §71639.1.

### Recommendation

Administrative Office of the Courts (AOC) staff recommends that the Judicial Council, effective December 10, 2004, amend rule 2211 of the California Rules of Court to establish the procedure for petitions filed under Government Code sections 71639.5 and 71825.2 for enforcing agreements reached between trial courts (or regional court interpreter employment relations committees) and recognized employee organizations. The rule, as amended, no longer would address unfair labor practices, now under PERB jurisdiction. The proposed text of the amended rule is at pages 4–5.

### Rationale for Recommendation

Rule 2211 of the California Rules of Court, adopted in 2000, provides a writ process mandated by Government Code sections 71639.1 and 71825. The recent 2004 budget trailer bill, SB 1102, repealed those two sections but also created new Government Code sections 71639.5 and 71825.2. These new sections are nearly identical to the former Gov. Code sections 71639.1(c) and 71825(b), permitting trial courts under the TCEPGA, regional interpreter labor relations committees under the TCIELRA, and recognized employee organizations under both acts, to file writ petitions to enforce labor agreements. The new statute also adds a provision allowing for the filing of petitions to compel arbitration and confirm arbitration awards. Thus, the need for rule 2211 continues, but the content of the rule must be changed to reflect the amended Government Code.

Proposed amended rule 2211, similar to the existing rule 2211, 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 to assign one justice from the panel to hear petitions filed under Government Code sections 71639.5 and 71825.2 in superior court. Most of the substance of the proposed rule is set forth in the nearly identical <sup>2</sup>Government Code sections 71639.5(c) and 71825.2(c) which require:

The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which 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 to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall further provide that appeals in those matters shall be heard in the court of appeal district where the matter was filed.

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<sup>2</sup> These sections are nearly identical, with one exception. The bracketed comma is located after “court” in section 71639.5(c), but falls after the following word “and” in section 71825.2(c).

The proposed amendment conforms to the legislative mandate of Government Code sections 71639.5 and 71825.2 and does not alter the writ and hearing procedures contained in existing rule 2211. Like existing rule 2211, the only provisions in the amended rule that are not contained in the statute are that (1) the justices on the panel will receive training, (2) a party filing a petition under section 71639.5 or 71825.2 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 AOC of the need to assign a justice from the panel.

#### Alternative Actions Considered

Because Government Code sections 71639.5 and 71825.2 require adoption of a rule, and because rule 2211 previously established a petition procedure to enforce the very same agreements, no alternative actions were considered.

#### Comments From Interested Parties

Three people responded to the invitation to comment. Two people supported the rule without modification. One person supported the rule with certain modifications. All comments received are summarized in the comment chart at page 8.

The commentator proposing a modification noted that on line 12 of the proposed rule, the word “writ” should be stricken because the referenced statutes provided for the filing of both petitions for writ of mandate (Gov. Code, §§71639.5(a) and 71825.2(a)) and petitions to compel arbitration and confirm arbitration awards (Gov. Code, §§71639.5(b) and 71825.2(b)). Thus, the more accurate word is “petition,” referring to the general filing of a petition.

Staff has incorporated that suggestion into the text of the proposed rule. Staff also altered the title of the rule to eliminate the word “writ” to conform to this expansion of jurisdiction.

During the recent public comment process for rule 6.710, a commentator suggested an addition to the proposed rule, to amend subdivision (d) by adding a sentence that would alert court clerks to the nature of the expedited appeal process. Staff believes that this suggested rule 6.710 modification would also improve rule 2211. Thus, staff incorporated this suggestion into the text of this proposed rule.

#### Implementation Requirements and Costs

The proposed rule would require the Chief Justice to continue 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 enforcement of agreement petitions. The AOC Judicial Assignments Unit will continue to administer the assignment of a justice from the panel, as it has under existing rule 2211, and anticipates that such continued responsibilities will not be burdensome.

Attachments

Rule 2211 of the California Rules of Court is amended, effective December 10, 2004, to read:

1 **Rule 2211. ~~Trial court labor relations disputes writ~~ Enforcement of agreements–**  
2 **petitions (Gov. ~~Code, §71639.1~~ Code, §§ 71639.5 and 71825.2)**

3  
4 (a) **[Applicability]** This rule applies to petitions filed under ~~subdivisions (c) and~~  
5 ~~(d) subdivision (a)~~ of Government Code ~~section 71639.1.~~ sections 71639.5 and  
6 71825.2.

7  
8 (b) **[Assignment of Court of Appeal justice to hear the petition]**

9  
10 (1) The petition must state the following on the first page, below the case  
11 number, in the statement of the character of the proceeding (see  
12 rule 201(f)(6)): ~~“Writ~~ Petition filed under Government Code sections  
13 71639.1-71639.5 and 71825.2—Assignment of Court of Appeal justice  
14 required.”

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

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

24  
25 (c) **[Superior court hearing]**

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

30  
31 (2) The petition must be heard by a judge assigned by the Chief Justice from  
32 the panel of hearing judges established under subdivision (e).

33  
34 (d) **[Appeal]** An appeal of the superior court decision must be heard and decided  
35 on an expedited basis in the Court of Appeal for the district in which the  
36 petition was heard and must be given priority over other matters to the extent  
37 permitted by law and the rules of court. The notice of appeal must state the  
38 following on the first page, below the case number, in the statement of the  
39 character of the proceeding (see rule 201(f)(6)): “Notice of Appeal on Petition  
40 filed under Government Code sections 71639.5 and 71825.2—Expedited  
41 Processing Requested.”

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

- (1) The panel must include at least one justice from each district of the Court of Appeal.
- (2) Each justice assigned to hear a petition under (c)(2) must have received training on hearing the petitions as specified by the Chief Justice.

## **Government Code section 71639.5**

- (a) Any written agreements reached through negotiations held pursuant to this article are binding upon the parties, upon adoption under Section 71634.3, and, notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, any of those agreements may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.
- (b) Written agreements reached through negotiations held pursuant to this article that contain provisions requiring the arbitration of controversies arising out of the agreement shall be subject to enforcement under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.
- (c) The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which 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 to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall further provide that appeals in such matters shall be heard in the court of appeal district where the matter was filed.

## **Government Code section 71825.2**

- (a) Any written agreements reached through negotiations held pursuant to this article are binding upon the parties, upon adoption under Section 71819, and, notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, any of those agreements may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.
- (b) Written agreements reached through negotiations held pursuant to this article that contain provisions requiring the arbitration of controversies arising out of the agreement, shall be subject to enforcement under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.
- (c) The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which 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, to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall further provide that appeals in those matters shall be heard in the court of appeal district where the matter was filed.

SP04-26

Enforcement of Agreements–Writ Petitions (Gov. Code §§ 71639.5 and 71825.2)  
(amend rule 2211 of the California Rules of Court)

|    | Commentator   | Position | Comment on behalf of group? | Comment   | Committee Response  |
|----|---|----------|-----------------------------|---|---|
| 1. | Ms. Michelle Castro<br>Government Relations<br>Advocate<br>Service Employees<br>International Union,<br>State Council<br>Sacramento | AM       | Y                           | The proposed rule of court should include one change to adequately reflect the intent of the statute. On line 12 of the proposed rule, the word “writ” should be stricken in that line so the sentence would begin “Petition filed...” This is because the referenced statutes provided for the filing of both petitions for writ of mandate and petitions to compel arbitration and confirm arbitration awards. Thus, the more accurate word is the general reference to the filing of a petition. | Staff agrees with this comment and has modified subdivision (b)(1) and the title of the rule to delete the word “writ.” |
| 2. | Hon. Raymond Cata<br>Presiding Judge<br>Superior Court of<br>California, County of<br>Imperial<br>El Centro                         | A        | N                           | No comment.   | No response necessary.  |
| 3. | Ms. Kiri Torre<br>Chief Executive Officer<br>Superior Court of<br>California, County of<br>Santa Clara<br>San Jose                  | A        | N                           | No comment.   | No response necessary.  |