

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

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
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DATE: November 5, 2007

SUBJECT: Subordinate Judicial Officers: Definition Updated to Exclude Temporary Judges (Gov. Code, §71601) (Action Required)

Issue Statement

Government Code section 71601 defines the term subordinate judicial officer (SJO), for purposes of the Trial Court Employment Protection and Governance Act, to include temporary judges. Although the definition is expressly limited for purposes of the act and is not intended to otherwise define temporary judges as subordinate judicial officers, temporary judges are not SJOs. The reference is confusing and legally inaccurate and should be corrected.

Recommendation

The Policy Coordination and Liaison Committee and staff recommend that the Judicial Council sponsor legislation to amend the Trial Court Employment Protection and Governance Act to remove temporary judges from the definition of SJO while continuing to provide that temporary judges are not covered by the protections of the act.

The text of the proposed amendment is attached at page 3.

Rationale for Recommendation

Current law, Government Code section 71601, defines subordinate judicial officer, for purposes of the Trial Court Employment Protection and Governance Act, as “an officer appointed to perform subordinate judicial duties as authorized by Section 22 of Article VI of the California Constitution, including, but not limited to, a court commissioner, probate commissioner, referee, traffic referee, juvenile referee, and judge pro tempore.”

This definition was included to be able to exclude SJOs from the act's provisions, where appropriate, without having to list all the types of individuals intended. However, temporary judges are not SJOs, and thus the reference is confusing and legally inaccurate. Temporary judges and SJOs are legally distinct. The California Constitution describes each category separately and specifies different requirements and authority for each. (Cal. Const., art. VI, § 21 [temporary judges]; *id.*, art. VI, § 22 [SJOs]; see also, e.g., *In re Mark L.* (1983) 34 Cal.3d 171, 178 [temporary judges have “full judicial powers”; their orders are “as final and nonreviewable as those of a permanent judge”]; *People v. Superior Court (Laff)* (2001) 25 Cal.4th 703, 721 [SJOs may only perform subordinate judicial duties].)

Staff attorneys in the Administrative Office of the Courts, Office of the General Counsel conducted research and informally surveyed several courts. They concluded that temporary judges generally are not being treated as employees, and thus this change would not have any substantive impact.

The Joint Legislative Working Group of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee reviewed this proposal at its September 24, 2007, meeting and concurred with the staff recommendation. Members of the joint working group agreed that temporary judges are not court employees and this clarification in the statute would have no substantive impact but should be addressed to prevent future confusion or misclassification.

Alternative Actions Considered

The statute could remain unchanged. The characterization of temporary judges as SJOs for purposes of the Trial Court Employment Protection and Governance Act does not appear to have caused any confusion or problems. However, as it is not an accurate classification of temporary judges and could lead to confusion in other contexts, staff recommends the statute be corrected to clarify that temporary judges are not subordinate judicial officers.

Comments From Interested Parties

Comments on this proposal were not solicited.

Implementation Requirements and Costs

There are no implementation requirements or costs associated with this proposed amendment.

Attachments

Government Code section 71601 would be amended to read:

1 **§ 71601**

2

3 (a)–(h) ***

4

5 (i) “Subordinate judicial officer” means an officer appointed to perform subordinate
6 judicial duties as authorized by Section 22 of Article VI of the California
7 Constitution, including, but not limited to, a court commissioner, probate
8 commissioner, referee, traffic referee, and juvenile referee, ~~and judge pro tempore~~.

9

10 (j)–(l) ***

11

12 (m) A person is a “trial court employee” if and only if both paragraphs (1) and (2) of
13 subdivision (l) are true irrespective of job classification or whether the functions
14 performed by that person are identified in Rule 810 of the California Rules of
15 Court. The phrase “trial court employee” includes those subordinate judicial
16 officers who satisfy paragraphs (1) and (2) of subdivision (l). The phrase “trial court
17 employee” does not include temporary employees hired through agencies, jurors,
18 individuals hired by the trial court pursuant to an independent contractor agreement,
19 individuals for whom the county or trial court reports income to the Internal
20 Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs,
21 temporary judges, and judges whether elected or appointed. Any temporary
22 employee, whether hired through an agency or not, shall not be employed in the
23 trial court for a period exceeding 180 calendar days, except that for court reporters
24 in a county of the first class, a trial court and a recognized employee organization
25 may provide otherwise by mutual agreement in a memorandum of understanding or
26 other agreement.