
REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 23, 2010

Title	Agenda Item Type
Subordinate Judicial Officers: Reporting Disciplinary Action to the Commission on Judicial Performance	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 10.603 and 10.703	July 1, 2010
Recommended by	Date of Report
Trial Court Presiding Judges Advisory Committee	March 9, 2010
Hon. Mary Ann O'Malley, Chair	Contact
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Executive Summary

The Trial Court Presiding Judges Advisory Committee recommends amending rule 10.703, which addresses complaints about subordinate judicial officers (SJOs), to clarify the circumstances under which a report to the Commission on Judicial Performance (commission) must be made. The amended rule would require a presiding judge to report to the commission certain types of disciplinary action against an SJO regardless of whether that action was the result of a written complaint. It would also clarify that a presiding judge must notify the commission whenever an SJO resigns while a preliminary or formal investigation is pending, or whenever an SJO resigns under circumstances that would lead a reasonable person to conclude that the resignation was due to a complaint or allegation of misconduct. In addition, the committee recommends amending rule 10.603, which addresses the duties of a presiding judge, to add a cross-reference to rule 10.703.

Recommendation

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council, effective July 1, 2010:

(1) Amend rule 10.703 to:

- Require a presiding judge to notify the Commission on Judicial Performance (commission) whenever a subordinate judicial officer (SJO) is disciplined by written reprimand, suspension, or removal for conduct that, if alleged against a judge, would

be within the commission’s jurisdiction, whether or not the discipline results from a written complaint;

- Require a presiding judge to notify the commission whenever an SJO resigns while a preliminary or formal investigation under rule 10.703(i) or (j) is pending, or whenever an SJO resigns under circumstances that would lead a reasonable person to conclude that the resignation is due to a complaint or allegation of misconduct;
- Require a presiding judge to comply with any request by the commission for information about a complaint or allegation of misconduct committed by an SJO;
- Change the title from “Complaints against subordinate judicial officers” to “Subordinate judicial officers: Complaints and notice requirements” to accurately reflect the proposed revisions to the rule; and

(2) Amend rule 10.603, which describes the duties of presiding judges, to reference the reporting requirements in rule 10.703(k).

The text of the proposed amendments to the rules is attached at pages 5–7.

Previous Council Action

The Judicial Council adopted rule 10.703 in 1998 after voters approved Proposition 221 (codified as article VI, section 18.1, of the California Constitution), which gave the commission discretionary jurisdiction with regard to the oversight and discipline of SJOs under the same standards applicable to judges. Rule 10.703 implements this constitutional provision by setting forth procedures for courts and presiding judges to follow with respect to complaints about SJOs. The council has revised the rule three times since its adoption. The rule also was renumbered in 2007. The revisions are unrelated to the subsections at issue here.

Rationale for Recommendation

Rule 10.703(k)(1) currently provides that a presiding judge must notify the commission if (1) after a formal investigation, a complaint about an SJO results in written reprimand, suspension, or removal of the SJO; or (2) an SJO resigns while an investigation by the court is pending. There is no definition of “complaint” or “formal investigation” in the rule. Rule 10.703(f)(1) requires that a complaint be written unless the complainant is disabled. Subsections (i)(2) and (j)(1)(A) state that an investigation “may include interviews of witnesses and a review of court records.”

Due to a lack of clarity in the rule, concerns have been raised that some courts have interpreted the reporting provisions in rule 10.703 to mean that reporting is not required when the matter under investigation did not come to the court’s attention as a result of a written complaint. For example, a court might investigate and discipline an SJO based on conduct reported to the

presiding judge by another judge or court staff or based on a news report. Such an interpretation affects the commission's ability to comply with its constitutional mandate to oversee the discipline of SJOs. The proposed amendments would facilitate the commission's discretionary oversight of SJOs.

Rule 10.703(k)(2) currently states that if an SJO "resigns while an investigation is pending," the presiding judge must forward to the CJP "the entire court file on any pending complaint." Because the term "investigation" is not defined, concerns have arisen about the lack of clarity regarding the circumstances under which a court must report to the commission the resignation of an SJO under this subsection.

This ambiguity in the rule may result in complaints against or investigations of presiding judges for failure to comply with the rules. To clarify a presiding judge's reporting requirements and to promote the reporting that is necessary for the commission to fulfill its constitutional obligation to oversee conduct by SJOs, the Trial Court Presiding Judges Advisory Committee recommends elucidating the circumstances under which a report to the commission must be made.

The advisory committee believes the rule should be amended to provide specifically that certain disciplinary action must be reported regardless of whether the action arose out of a written complaint. Because the title of the rule refers to "complaints," the committee also recommends that the title be changed to eliminate that term. In addition, the committee concluded that (k)(3), which states that a presiding judge must, on request by the commission, forward any requested information "about a complaint against" an SJO, should be amended to refer to "a complaint about *or allegation of* misconduct." This amendment is consistent with the proposal that the reporting responsibility not be limited to situations in which a written complaint is filed.

The committee also concluded that the current language pertaining to the reporting of resignations is vague and that the courts and the commission would benefit from an amendment that clarifies the circumstances under which a resignation must be reported. Finally, the committee recommends that rule 10.603, which addresses a presiding judge's responsibilities, be amended to include a reference to the duty to report SJO discipline and resignations.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the winter 2010 invitation-to-comment cycle. Both of the comments received agreed with the proposal.¹

Implementation Requirements, Costs, and Operational Impacts

Because the proposed rule would clarify the circumstances under which a presiding judge must report disciplinary actions and resignations, there may be slight increase in the number of disciplinary actions and resignations that presiding judges must report to the CJP. As to the

¹ A chart providing the full text of the comments and the committee's responses is attached at pages 8–9.

reporting of an SJO's resignation, the presiding judge will need to determine whether the resignation fits within the circumstances described in proposed rule 10.703(k)(2) that mandate reporting to the CJP.

There may be a slight cost impact on Administrative Office of the Courts, Education Division training programs because the annual presiding judges orientation and court management program would need to be updated to incorporate information about the revised rules. Finally, regarding operational impacts, the proposed amendments could possibly create minor concerns among some SJOs, who may worry about being reported to the commission based on conduct not set forth in a written complaint.

Attachments

1. Cal. Rules of Court, rules 10.603 and 10.703, at pages 5–7
2. Chart of comments, at pages 8–9

Rules 10.603 and 10.703 of the California Rules of Court would be amended, effective July 1, 2010, to read as follows:

1 **Rule 10.603. Authority and duties of presiding judge**

2
3 (a)–(b) * * *

4
5 (c) **Duties**

6
7 (1)–(3) * * *

8
9 (4) *Oversight of judicial officers*

10
11 The presiding judge must:

12
13 (A)–(B) * * *

14
15 (C) *Commissioners*

16
17 (i) Prepare and submit to the judges for consideration and
18 adoption procedures for receiving, inquiring into, and resolving
19 complaints lodged against court commissioners and referees, consistent
20 with rule 10.703; and

21
22 (ii) Notify the Commission on Judicial Performance if a commissioner or
23 referee is disciplined or resigns, consistent with rule 10.703(k).

24
25 (D)–(E)

26
27 (5)–(11) * * *

28
29 (d) * * *

30
31 **Rule 10.703. ~~Complaints against subordinate judicial officers~~ Subordinate judicial**
32 **officers: complaints and notice requirements**

33
34 (a)–(h) * * *

35
36 (i) **Complaints requiring preliminary investigation**

37
38 (1)–(3) * * *

- 1 (4) After completing the preliminary investigation, the presiding judge must:
2
3 (A) Terminate the investigation and close action on the complaint if the presiding
4 judge finds the complaint lacks merit; or
5
6 (B) Terminate the investigation and close action on the complaint by taking
7 appropriate informal action, which may include a reprimand or warning to the
8 subordinate judicial officer, if the presiding judge finds a basis for taking
9 informal action; or
10
11 (C) Proceed with a formal investigation under (j) if the presiding judge finds a
12 basis for proceeding further.
13

14 (5) * * *

15
16 **(j) Complaints requiring formal investigation**

17
18 (1)–(2) * * *

19
20 (3) Final action on the complaint may include:

- 21
22 (A) A finding that no further action need be taken on the complaint;
23
24 (B) An oral or written warning to the subordinate judicial officer;
25
26 (C) A private written reprimand to the subordinate judicial officer;
27
28 (D) A public written reprimand to the subordinate judicial officer;
29
30 (E) Suspension of the subordinate judicial officer;
31
32 (F) Termination of the subordinate judicial officer; and
33
34 (G) Any other action the court may deem appropriate.
35

36 (4)–(7) * * *

37
38 **(k) Report Notice to the Commission on Judicial Performance**

- 39
40 (1) ~~If after a formal investigation under (j) the complaint results in the a court disciplines~~
41 a subordinate judicial officer by written reprimand under (i)(4)(B) or (j)(3)(C) or (D),
42 ~~suspension, or removal of the subordinate judicial officer for conduct that, if alleged~~

1 against a judge, would be within the jurisdiction of the commission under article VI,
2 section 18 of the California Constitution, the presiding judge must promptly forward
3 to the commission a copy of the portions of the court file ~~on the complaint~~ that
4 reasonably reflect the basis of the action taken by the court, including the complaint
5 or allegations of misconduct and the subordinate judicial officer's response. This
6 provision is applicable even when the disciplinary action does not result from a
7 written complaint.
8

9 (2) If ~~the~~ a subordinate judicial officer resigns (A) while ~~an~~ preliminary or formal
10 investigation under (i) or (j) is pending concerning conduct that, if alleged against a
11 judge, would be within the jurisdiction of the commission under article VI, section
12 18 of the California Constitution, or (B) under circumstances that would lead a
13 reasonable person to conclude that the resignation was due, at least in part, to a
14 complaint or allegation of misconduct that, if alleged against a judge, would be
15 within the jurisdiction of the commission under article VI, section 18 of the
16 California Constitution, the presiding judge must, within 15 days of the resignation,
17 or as soon thereafter as is reasonably possible, forward to the commission the entire
18 court file on any pending complaint about or allegation of misconduct committed by
19 the subordinate judicial officer.
20

21 (3) On request by the commission, the presiding judge must forward to the commission
22 any requested information ~~about~~ regarding a complaint ~~against~~ about or allegation of
23 misconduct committed by a subordinate judicial officer.
24

25 (I) * * *

W10-03**Reporting Subordinate Judicial Officers to the Commission on Judicial Performance** (amend Cal. Rules of Court, rules 10.603 and 10.703)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	No additional comments.	No response necessary.
2.	TCPJAC/CEAC Joint Rules Working Group	A	<p>Operational impacts identified by working group:</p> <ol style="list-style-type: none"> 1. The proposed amendments to the rule could possibly create minor concerns amongst some SJOs who may feel they could be reported to CJP based on conduct reported other than the result of a written complaint brought to the court's attention about the SJO. 2. Minimal impact to training needs, as training for the presiding judges at the AOC's CJER Annual Presiding Judges Orientation and Court Management program would probably need to be updated if the proposed amendments to rule 10.703(k) are adopted by the Judicial Council. 3. Possible minimal impact to the responsibilities of the PJ/Supervising Judge. There may be a slight increase in the reporting of SJO disciplinary actions to CJP by the presiding judge. This anticipated minimal impact is a result of the low frequency of reported SJO disciplinary actions to CJP by the courts 	<p>The rule is intended to assist presiding judges in better understanding their reporting obligations.</p> <p>This comment will be forwarded to the AOC's Education Division for consideration.</p> <p>The rule is intended to provide clearer guidance on a presiding judge's reporting obligation to ensure that the CJP has the information it needs to meet its constitutional duty to oversee the discipline of SJOs.</p>

W10-03

Reporting Subordinate Judicial Officers to the Commission on Judicial Performance (amend Cal. Rules of Court, rules 10.603 and 10.703)

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	Commentator	Position	Comment	Committee Response
			statewide.	