

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT

### SPR13-30

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Title	Action Requested
Attorney Misconduct: Notification to State Bar	Review and submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes Adopt Cal. Rules of Court, rules 10.609 and 10.1017	Proposed Effective Date January 1, 2014
Proposed by Administrative Presiding Justices Advisory Committee Hon. Tani G. Cantil-Sakauye, Chair Trial Court Presiding Judges Advisory Committee Hon. Laurie M. Earl, Chair	Contact Mark Jacobson, 415-865-7898 mark.jacobson@jud.ca.gov

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### Executive Summary and Origin

The California Commission on the Fair Administration of Justice (CCFAJ) suggested that the Judicial Council adopt a rule of court addressing court compliance with a statutory mandate to notify the State Bar of instances of misconduct by and incompetence of prosecutors and criminal defense lawyers. The Administrative Presiding Justices Advisory Committee and the Trial Court Presiding Judges Advisory Committee propose separate rules of court to address the reporting responsibilities of appellate justices (rule 10.1017) and superior court judges (rule 10.609). The rules specify who must report misconduct under certain circumstances.

### The Proposal

The CCFAJ was appointed by the State Senate to study and recommend ways to reduce the rate of wrongful convictions in California. In late 2007, the CCFAJ issued its final report and recommendations on “Professional Responsibility and Accountability of Prosecutors and Defense Lawyers.” The report addressed, among other things, court compliance with Business and Professions Code section 6086.7(a), which requires “[a] court” to notify the State Bar of any of the following:

- A final order of contempt imposed on an attorney;

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

- Modification or reversal of a judgment based on misconduct, incompetent representation, or willful misrepresentation by an attorney;
- Imposition of sanctions on an attorney of \$1,000 or more, except sanctions for failure to make discovery; or
- Imposition of any civil penalty on an attorney under Family Code section 8620.

Section 6086.7(b) adds that whenever a court notifies the State Bar under subdivision (a), the court “shall also notify the attorney involved that the matter has been referred to the State Bar.”

Based on a comparison of reported appellate decisions in California and actual notifications to the State Bar, the CCFAJ concluded that courts have been underreporting misconduct as required by section 6086.7(a). The CCFAJ noted that because the statute assigns the notification responsibility to “[a] court,” the failure to comply may be attributable to confusion as to who has the actual duty to report under the statute.

In an effort to improve compliance with section 6086.7, the CCFAJ recommended that the Judicial Council consider a rule of court that would clearly define which judge or justice has the duty to notify the State Bar. This proposal includes one such rule for appellate justices and one for superior court judges.

**Proposed rule 10.1017—Appellate court justices**

There may be confusion about who must notify the State Bar when a judgment is reversed by the Court of Appeal. It could be the trial judge who rendered the judgment and to whom a case has been remanded, the appellate justice who authored the reversing opinion, or the presiding justice of the Court of Appeal that rendered the reversing judgment. To clarify who is responsible for notifying the State Bar when an appellate court reverses a judgment, the Administrative Presiding Justices Advisory Committee proposes adoption of rule 10.1017, which would specify that the justice signing the order or authoring the opinion that triggers the notification requirement under section 6086.7 is responsible for notifying the State Bar. Under the rule, the justice may direct the Clerk to notify the State Bar. As used in this rule, “Clerk” is intended to refer to the Clerk of the Supreme Court and the clerk/administrators of the Courts of Appeal. The rule would also state that the notice to the State Bar must include the attorney’s name and, if known, the attorney’s State Bar number.

As noted, section 6086.7(b) requires that the court also notify the attorney involved that the matter has been referred to the State Bar. To comply with that statutory requirement and to specify who must notify the attorney, the rule would state that the person, i.e., the justice or clerk who notified the State Bar, must also notify the attorney who was the subject of the referral.

The Advisory Committee Comment would state the provisions of section 6086.7 and explain that the rule is intended to clarify who is responsible for complying with the statutory requirement. Finally, the comment would contain a cross-reference to canon 3D(2) of the California Code of Judicial Ethics, which provides that a judge must take “appropriate corrective action” when the judge has personal knowledge or concludes in a judicial decision that a lawyer has committed

misconduct or has violated any provision of the California Rules of Professional Conduct. The Advisory Committee Commentary to that canon contains a specific reference to section 6086.7.

### **Proposed rule 10.609—Trial court judges**

When a superior court judge signs a final order of contempt, modifies a judgment based on attorney misconduct or incompetence, imposes sanctions, or imposes a civil penalty under Family Code section 8620, section 6086.7 requires “[a] court” to report the attorney to the State Bar. Because the statute requires “[a] court” to notify the State Bar, whether it is the judge’s responsibility or whether the judge may delegate the task to someone else is unclear. The Trial Court Presiding Judges Advisory Committee proposes adoption of rule 10.609, which is nearly identical to proposed rule 10.1017. Like proposed rule 10.1017, proposed rule 10.609 would allow the judge who signs the order that triggers the reporting requirement to direct court staff to notify the State Bar.

### **Alternatives Considered**

The Administrative Presiding Justices Advisory Committee and the Trial Court Presiding Judges Advisory Committee considered and rejected a suggestion by the CCFAJ that the rules include a provision requiring the courts, after reporting an attorney to the State Bar, to notify the attorney’s supervisor, if known.

### **Implementation Requirements, Costs, and Operational Impacts**

The proposal will result in no costs. Section 6086.7 reporting requirements are mandatory. The proposed rules simply clarify individual responsibility within a court for reporting. The operational impact should be minimal because reports to the State Bar required by section 6086.7 are rare.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public’s access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committees also seek comments from *courts* on the following cost and implementation matter:

- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training) or revising processes and procedures (please describe)?

### **Attachments**

1. Text of proposed Cal. Rules of Court, rules 10.609 and 10.1017.

Rules 10.609 and 10.1017 of the California Rules of Court would be adopted, effective January 1, 2014, to read:

1 **Rule 10.609. Notification to State Bar of attorney misconduct**

2  
3 **(a) Notification by judge**

4  
5 When notification to the State Bar is required under Business and Professions Code section  
6 6086.7, the judge issuing the order that triggers the notification requirement under section  
7 6086.7 is responsible for notifying the State Bar. The judge may direct court staff to notify  
8 the State Bar.

9  
10 **(b) Contents of notice**

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12 The notice must include the State Bar member’s full name and State Bar number, if  
13 known.

14  
15 **(c) Notification to attorney**

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17 If notification to the State Bar is made under this rule, the person who notified the State  
18 Bar must also inform the attorney who is the subject of the notification that the matter has  
19 been referred to the State Bar.

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21 **Advisory Committee Comment**

22  
23 Business and Professions Code section 6086.7 requires a court to notify the State Bar of any of the  
24 following: (1) a final order of contempt imposed on an attorney; (2) a modification or reversal of a  
25 judgment in a judicial proceeding based in whole or in part on the misconduct, incompetent  
26 representation, or willful misrepresentation of an attorney; (3) the imposition of any judicial sanctions on  
27 an attorney of \$1,000 or more, except sanctions for failure to make discovery; or (4) the imposition of any  
28 civil penalty on an attorney under Family Code section 8620. If the notification pertains to a final order of  
29 contempt, Business and Professions Code section 6086.7(a)(1) requires the court to transmit to the State  
30 Bar a copy of the relevant minutes, final order, and transcript, if one exists. This rule is intended to clarify  
31 who has the responsibility of notifying the State Bar under section 6086.7 and the required contents of the  
32 notice.

33  
34 In addition to the requirements stated in Business and Professions Code section 6086.7, judges are subject  
35 to canon 3D(2) of the California Code of Judicial Ethics, which states: “Whenever a judge has personal  
36 knowledge, or concludes in a judicial decision, that a lawyer has committed misconduct or has violated  
37 any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action,  
38 which may include reporting the violation to the appropriate authority.” The Advisory Committee  
39 Commentary states: “Appropriate corrective action could include direct communication with the judge or  
40 lawyer who has committed the violation, other direct action, such as a confidential referral to a judicial or  
41 lawyer assistance program, or a report of the violation to the presiding judge, appropriate authority, or

1 other agency or body. Judges should note that in addition to the action required by Canon 3D(2),  
2 California law imposes mandatory additional reporting requirements on judges regarding lawyer  
3 misconduct. See Business and Professions Code section 6068.7.”  
4

5 **Rule 10.1017. Notification to State Bar of attorney misconduct**  
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7 **(a) Notification by justice**  
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9 When notification to the State Bar is required under Business and Professions Code section  
10 6086.7, the justice issuing the order or authoring the opinion that triggers the notification  
11 requirement under section 6086.7 is responsible for notifying the State Bar. The justice  
12 may direct the Clerk to notify the State Bar.  
13

14 **(b) Contents of notice**  
15

16 The notice must include the State Bar member’s full name and State Bar number, if  
17 known.  
18

19 **(c) Notification to attorney**  
20

21 If notification to the State Bar is made under this rule, the person who notified the State  
22 Bar must also inform the attorney who is the subject of the notification that the matter has  
23 been referred to the State Bar.  
24

25 **Advisory Committee Comment**  
26

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30 representation, or willful misrepresentation of an attorney; (3) the imposition of any judicial sanctions on  
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34 Bar a copy of the relevant minutes, final order, and transcript, if one exists. This rule is intended to clarify  
35 which justice has the responsibility of notifying the State Bar under section 6086.7 and the required  
36 contents of the notice.  
37

38 In addition to the requirements stated in Business and Professions Code section 6086.7, judges are subject  
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