



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR23-01

Title

Judicial Branch Administration: Procedures
for Submitting Contentions Regarding
Administration of the Courts of Appeal

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rule 10.1014

Proposed by

Administrative Presiding Justices Advisory
Committee
Hon. Patricia Guerrero, Chair

Action Requested

Review and submit comments by
May 12, 2023

Proposed Effective Date

July 22, 2023

Contact

Laura Speed, Director
916-323-3235
laura.speed@jud.ca.gov

Executive Summary and Origin

The Administrative Presiding Justices Advisory Committee is proposing a new rule to establish procedures for submitting to administrative presiding justices contentions that an administrative presiding justice or presiding justice has not properly addressed or managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal. This proposal is based on a recommendation from the Appellate Caseflow Workgroup and would advance the efficient, effective, and just administration of the Courts of Appeal.

Background

In June 2022, Chief Justice Tani G. Cantil-Sakauye formed the Appellate Caseflow Workgroup in response to findings issued by the Commission on Judicial Performance concerning case delays in the Third Appellate District of the Court of Appeal. The workgroup was directed to review the policies, procedures, and management and administrative practices of the Courts of Appeal and to recommend measures to promote transparency, accountability, and efficiency in issuing timely judgments. Chief Justice Cantil-Sakauye also directed the workgroup to recommend measures for these courts to report metrics on case delays. The workgroup delivered a final report on December 6, 2022, that included 22 recommendations. One of the recommendations is that the Chief Justice urge the Administrative Presiding Justices Advisory

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Committee to recommend that the Judicial Council adopt a new rule or amend an existing rule to authorize the administrative presiding justices to collectively review and address contentions that an administrative presiding justice or presiding justice has not properly managed an important matter.¹ This proposal is intended to fulfill that recommendation.

The Proposal

The Administrative Presiding Justices Advisory Committee recommends that the Judicial Council adopt new rule 10.1014 to:

- Provide a procedure by which any person may submit a contention to the administrative presiding justices regarding an administrative presiding justice or presiding justice related to the administration of a Court of Appeal or a division of a Court of Appeal;
- Provide authority for the administrative presiding justices to collectively review and address such contentions;
- Require the cooperation of justices who are the subject of a contention under review; and
- Address the confidentiality of submitted contentions.

Purpose of the rule

Subdivision (a) of the proposed rule states its purpose. Specifically, it states that the rule would advance the objective that administrative presiding justices and presiding justices are accountable for the efficient, effective, and just administration of the Courts of Appeal and each division of the Courts of Appeal.

Procedures for submitting a contention

Subdivision (b) of the proposed rule would provide procedures for submitting a contention that an administrative presiding justice or presiding justice has not properly addressed or managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal. Although contentions would be submitted to the administrative presiding justices collectively, any administrative presiding justice who is the subject of a contention would be recused from reviewing the contention. In addition, any administrative presiding justice or presiding justice who is the subject of such a contention would be required to cooperate with the administrative presiding justices responsible for reviewing that contention.

Under the proposed rule, anyone may submit such a contention. As noted in the advisory committee comment, the term “any person” is intended to be construed broadly and would include a judicial officer, court employee, attorney, litigant, or member of the public.

¹ Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p. 35, https://newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf.

The contentions that could be submitted to the administrative presiding justices under the proposed rule would be only those that relate to the *administration* of a Court of Appeal district or a division of a Court of Appeal. Contentions related to the adjudication of a specific case or the decision in a specific case would not be subject to the procedures in the proposed rule, as these are matters governed by other existing legal procedures, for example, motions and writ petitions filed in a court.

Following the receipt and review of a contention, the proposed rule would authorize the administrative presiding justices collectively to take appropriate remedial or other lawful action to address the contention. However, the rule would not require the administrative presiding justices to take any action in response to a contention. Examples of actions that the administrative presiding justices could take include recommending amendments to the California Rules of Court or operational policies of the Courts of Appeal, referring a contention to the Commission on Judicial Performance (CJP), mediation, and informal discussions with those who submitted the contention and a justice who is the subject of the contention. These are examples only and would not limit the categories of actions the administrative presiding justices could take. The proposed rule, however, would not authorize administrative presiding justices to take actions that are within the sole purview of the Supreme Court or the CJP, for example, the removal, censure, or admonishment of a justice.

Information on how to submit a contention would be posted on the judicial branch website. The committee considered it important that this information be publicly available, but did not consider it appropriate to provide more detail in the rule. This will allow the administrative presiding justices greater flexibility in determining how the information is made available. It is not intended to limit the administrative presiding justices from making the information available in ways other than posting on the judicial branch website.

Presiding justices in districts with more than one division

Generally, the administrative presiding justice of an appellate district “is responsible for leading the court, establishing policies, promoting access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, and maximizing the use of judicial and other resources.”²

In the three Court of Appeal districts with only one division (i.e., the Third, Fifth, and Sixth Appellate Districts), the presiding justice acts as the administrative presiding justice.³ In the three Court of Appeal districts with more than one division (i.e., the First, Second, and Fourth Appellate Districts), the Chief Justice designates a presiding justice to act as administrative presiding justice.⁴ Each division in a multidivision district is comprised of at least two associate

² Cal. Rules of Court, rule 10.1004(b). All further references to rules are to the California Rules of Court unless otherwise indicated.

³ Rule 10.1004(a)(3).

⁴ Rule 10.1004(a)(1).

justices and a presiding justice.⁵ The office of presiding justice is distinct from the office of associate justice, subject to separate appointment and confirmation.⁶

Administrative presiding justices of Courts of Appeal with more than one division in the same city and the presiding justices of all other Courts of Appeal are generally responsible for ensuring that all appellate records and briefs are promptly filed, which is important for assuring the progress of appellate matters in each district.⁷ The justices therefore have a number of duties related to applications for extensions of time for filings and to noncompliance with the California Rules of Court.⁸ The presiding justices in each division also have the responsibility to report to the CJP a justice's "[s]ubstantial failure to perform judicial duties, including any habitual neglect of duty."⁹ Presiding justices in divisions that are geographically separate¹⁰ have additional administrative responsibilities, subject to the oversight of the administrative presiding justice.¹¹

Subdivision (c) of the proposed rule is intended to be consistent with this existing governance structure and the oversight responsibilities of administrative presiding justices in districts with more than one division. The committee therefore proposes that before a person submits a contention under (b)(1) of the rule about a presiding justice of a district with more than one division, including those in geographically separate divisions, that person must first submit the contention to the administrative presiding justice of the district in which the division is located. This will provide an opportunity for the contention to be addressed by that administrative presiding justice before it is elevated to the administrative presiding justices collectively and will

⁵ Article VI, section 3 of the California Constitution provides that "[e]ach division consists of a presiding justice and 2 or more associate justices." In practice, these divisions all consist of three associate justices and a presiding justice.

⁶ See Cal. Const., art. VI, §§ 2, 3 (distinguishing the Chief Justice and presiding justice offices from the other offices of a reviewing court); Elec. Code, § 13109(i) (same; election ballot).

⁷ Rule 10.1012(a).

⁸ Rule 10.1012(b):

Notwithstanding any other rule, the administrative presiding justices and presiding justices referred to in (a) may:

- (1) Grant or deny applications to extend the time to file records, briefs, and other documents, except that a presiding justice may extend the time to file briefs in conjunction with an order to augment the record;
- (2) Order the dismissal of an appeal or any other authorized sanction for noncompliance with these rules, if no application to extend time or for relief from default has been filed before the order is entered; and
- (3) Grant relief from default or from a sanction other than dismissal imposed for the default.

⁹ Rule 10.1016(a).

¹⁰ Division Six of the Second Appellate District (in Ventura County) and Divisions Two and Three of the Fourth Appellate District (in Riverside and Orange Counties).

¹¹ Rule 10.1004(d):

Under the general oversight of the administrative presiding justice, the presiding justice of a geographically separate division:

- (1) Generally directs and supervises all of the division's court employees not assigned to a particular justice;
- (2) Has authority to act on behalf of the division regarding day-to-day operations;
- (3) Administers the division budget for day-to-day operations, including expenses for maintenance of facilities and equipment; and
- (4) Operates, maintains, and assigns space in all facilities used and occupied by the division.

allow for a prompt, efficient resolution of a contention by the administrative presiding justice who is likely to be in the best position to address the contention. If the person submitting the contention is dissatisfied with how the administrative presiding justice addresses the contention, or if the contention concerns an administrative presiding justice, the rule allows for the person to submit the contention to the administrative presiding justices collectively to address.

To assure that this procedure for an individual administrative presiding justice to accept and address contentions works, the proposed rule would require presiding justices in districts with more than one division, including those in geographically separate divisions, to cooperate with the administrative presiding justice of the district in which the division is located when the administrative presiding justice is carrying out oversight responsibilities under the rule. This requirement would parallel the responsibilities of presiding justices to cooperate in subdivision (b)(2) and is consistent with the existing oversight authority of administrative presiding justices over presiding justices in districts with more than one division.

Confidentiality

Subdivision (d) would make confidential any communication with the administrative presiding justices regarding a contention submitted under the proposed rule, or the investigation or resolution of such a contention. As noted in the advisory committee comment, providing a process for persons to submit contentions under this rule for consideration and action by administrative presiding justices, either individually or collectively, will advance the efficient, effective, and just administration of the Courts of Appeal and each division of the Courts of Appeal. Establishing the confidentiality of this procedure would be critical to encouraging persons to submit contentions with candor. The necessity for preserving the confidentiality of these procedures and communications with administrative presiding justices would outweigh the necessity for disclosure in the interest of justice. This proposed confidentiality would be consistent with the confidentiality of complaints against judges provided in rule 10.500(f)(7) of the California Rules of Court and rule 102 of the Rules of the Commission on Judicial Performance.

Alternatives Considered

The committee considered making no recommendation. For the reasons stated in the Appellate Caseflow Workgroup's report, however, enhanced oversight by the administrative presiding justices collectively, and a procedure for submitting and considering contentions about the administration of the Courts of Appeal, will help to address issues early, improve the efficient, effective, and just management of the Courts of Appeal, and strengthen confidence in the judicial branch.

Fiscal and Operational Impacts

The proposal is not expected to result in any additional costs. Although it may require some additional work by the administrative presiding justices and their staff, the committee anticipates that the work can be accomplished without additional resources.

Request for Specific Comments

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

- Does the proposal appropriately address the stated purpose?

Attachments and Links

1. Cal. Rules of Court, rule 10.1014, at pages 7–8

Rule 10.1014 of the California Rules of Court would be adopted, effective July 22, 2023, to read:

1 **Rule 10.1014. Oversight of administrative presiding justices and presiding justices**

2
3 **(a) Purpose**

4
5 Administrative presiding justices and presiding justices are accountable for the efficient,
6 effective, and just administration of the Courts of Appeal and each division of the Courts
7 of Appeal. This rule is intended to advance that objective.
8

9 **(b) Contention procedure**

- 10
11 (1) Any person who contends that an administrative presiding justice or presiding
12 justice has not properly addressed or managed an important matter related to
13 the administration of a Court of Appeal or a division of a Court of Appeal
14 may submit that contention to the administrative presiding justices
15 collectively for them to review, subject to (c)(1).
16
17 (2) Any administrative presiding justice or presiding justice who is the subject of
18 a contention under this paragraph must cooperate with the administrative
19 presiding justices responsible for reviewing that contention.
20
21 (3) Any administrative presiding justice who is the subject of a contention under
22 this paragraph is recused from reviewing the contention.
23
24 (4) Following receipt and review of a contention, the administrative presiding
25 justices collectively may take appropriate remedial or other lawful action to
26 address the contention.
27
28 (5) Information on how to submit a contention will be posted on the judicial
29 branch website.
30

31 **(c) Presiding justices in districts with more than one division**

- 32
33 (1) Before a person submits a contention under (b)(1) about a presiding justice of
34 a district with more than one division, including those in geographically
35 separate divisions, that person must first submit the contention to the
36 administrative presiding justice of the district in which the division is located
37 to provide an opportunity for the contention to be addressed by that
38 administrative presiding justice.
39
40 (2) Presiding justices in districts with more than one division, including those in
41 geographically separate divisions, must cooperate with the administrative
42 presiding justice of the district in which the division is located when the

Rule 10.1014 of the California Rules of Court would be adopted, effective July 22, 2023, to read:

1 administrative presiding justice is carrying out oversight responsibilities
2 under this rule.

3
4 **(d) Confidentiality**

5
6 Any communication with the administrative presiding justices regarding a
7 contention submitted under this rule, or the investigation or resolution of such a
8 contention, is confidential.

9
10 **Advisory Committee Comment**

11
12 Subdivision (b). Subdivision (b) provides a procedure by which any person may submit a contention to the
13 administrative presiding justices regarding an administrative presiding justice or presiding justice related to
14 the administration of a Court of Appeal or a division of a Court of Appeal.

15
16 Subdivision (b)(1). The term “any person” is intended to be construed broadly and would include a judicial
17 officer, court employee, attorney, litigant, or member of the public.

18
19 The contentions that may be submitted to the administrative presiding justices under the procedures
20 authorized by this rule are those that relate to the administration of a Court of Appeal district or a division
21 of a Court of Appeal. Contentions related to the adjudication of a specific case or the decision in a specific
22 case are not subject to the procedures in this rule.

23
24 Subdivision (b)(4). This paragraph authorizes the administrative presiding justices collectively to take
25 appropriate remedial or other lawful action to address the contentions submitted under the procedures in
26 this rule. However, the rule does not require the administrative presiding justices to take any action in
27 response to a contention. Examples of actions that the administrative presiding justices may take include
28 recommending amendments to the California Rules of Court or operational policies of the Courts of
29 Appeal, referring a contention to the Commission on Judicial Performance, mediation, and informal
30 discussions with those who submitted the contention and a justice who is the subject of the contention. This
31 paragraph does not authorize administrative presiding justices to take actions that are within the sole
32 purview of the Supreme Court or the Commission on Judicial Performance, for example, the removal,
33 censure, or admonishment of a justice.

34
35 Subdivision (c). This subdivision is intended to be consistent with an administrative presiding justice’s
36 broad oversight authority under rule 10.1004(d).

37
38 Subdivision (d). Providing a process for persons to submit contentions under this rule for consideration
39 and action by administrative presiding justices, either individually or collectively, will advance efficient,
40 effective, and just administration of the Courts of Appeal and each division of the Courts of Appeal.
41 Establishing the confidentiality of this procedure is critical to encouraging persons to submit contentions
42 with candor. The necessity for preserving the confidentiality of these procedures and communications with
43 administrative presiding justices outweighs the necessity for disclosure in the interest of justice. This
44 confidentiality is consistent with the confidentiality of complaints against judges provided in the California
45 Rules of Court, rule 10.500(f)(7) and the Rules of the Commission on Judicial Performance, rule 102.