

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT SP12-09

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Title	Action Requested
Trial Court Security: Petitions under Government Code section 69926	Review and submit comments by September 27, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 10.174	November 1, 2012
Proposed by	Contact
Trial Court Presiding Judges Advisory Committee Hon. David Rosenberg, Chair	Michael I. Giden, Attorney Office of the General Counsel michael.giden@jud.ca.gov 818-558-4802

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### Executive Summary and Origin

This proposed rule is intended to fulfill the Judicial Council's obligation under recently enacted legislation to adopt a rule of court that establishes a process for resolving disputes that may arise among a sheriff, county, and superior court related to a memorandum of understanding for court security services.

### Background

On June 27, 2012, the Governor signed into law Senate Bill 1021, a bill relating to public safety and the judicial branch.<sup>1</sup> Among other things, this bill amended Government Code section 69926 to establish a new process for resolving disputes related to a memorandum of understanding (MOU) for court security that might arise among a sheriff, county, and superior court.<sup>2</sup>

Section 69926(e) provides as follows:

- (e) The Judicial Council shall, by rule of court, establish a process that, notwithstanding any other law, expeditiously and finally resolves disputes that are

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<sup>1</sup> Stats. 2012, ch. 41, § 35. This legislation can be accessed at [www.leginfo.ca.gov/pub/11-12/bill/sen/sb\\_1001-1050/sb\\_1021\\_bill\\_20120627\\_chaptered.html](http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_1001-1050/sb_1021_bill_20120627_chaptered.html).

<sup>2</sup> A copy of Government Code section 69926 can be accessed at [www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=48887127240+0+0+0&WAIAction=retrieve](http://www.leginfo.ca.gov/cgi-bin/waisgate?WAISdocID=48887127240+0+0+0&WAIAction=retrieve).

*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.*

not settled in the meeting process described in subdivision (d).<sup>3</sup> The rule of court shall do all of the following:

- (1) Provide a process for parties to submit disputes.
- (2) Provide for the assignment of a justice who is not from the court of appeal district in which the county, the superior court, and the sheriff are located.
- (3) Provide an expedited process for hearing these matters in a venue convenient to the parties and assigned justice.
- (4) Provide that the justice shall hear the petition and issue a decision on an expedited basis.
- (5) Provide a process for an appeal of the decision issued under paragraph (4). The appeal shall be heard in a court of appeal district other than the one in which the county, the superior court, and the sheriff are located.

### **The Proposal**

Proposed rule 10.174 is urgently needed to conform to the law. It is designed to fulfill the Judicial Council's obligation under Government Code section 69926(e) to adopt a rule of court establishing a process for the judicial resolution of disputes related to court security MOUs. The proposed rule provides:

- If a sheriff, county, or superior court is unable to resolve a dispute related to a court security MOU, the party may file a petition for a writ of mandamus or writ of prohibition.
- The caption of the petition must state that assignment of an appellate justice is requested.
- On receipt of the petition, the superior court clerk must submit a request to the Chief Justice asking that he or she assign a Court of Appeal justice from an appellate district other than the one in which the county, the superior court, and the sheriff are located to hear and decide the petition.
- The petition must be heard and decided on an expedited basis and must be given priority over other matters to the extent permitted by law and the rules of court
- Any notice of appeal of a decision on the petition must be filed in the same superior court in which the petition was initially filed.
- The caption of the notice must state that a transfer is requested.

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<sup>3</sup> Subdivision (d) requires a meeting of representatives from the sheriff, county, superior court, California State Sheriffs' Association, California State Association of Counties, and the Administrative Office of the Courts.

- On receipt of the notice of appeal, the Court of Appeal must request that the Supreme Court transfer the appeal to an appellate district other than the one in which the county, the superior court, and the sheriff are located and other than the district from which the judicial officer assigned to hear and decide the petition was selected.

### **Alternatives considered**

No alternatives to adopting a rule of court establishing a process for resolving disputes related to court security MOUs were considered because Government Code section 69926(e) requires the Judicial Council to adopt such a rule. However, alternative language to implement section 69926(e)'s provisions regarding assignment of a Court of Appeal Justice and transfer of appeals was considered. The language in the proposed rule is intended to appropriately reflect the Chief Justice's discretion under Article VI, section 6 of the California Constitution to assign judges and the Supreme Court's discretion under Article VI, section 12 to transfer causes among Court of Appeal divisions.

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

This proposed rule should not create significant implementation requirements, costs, or operational impacts for the courts. The majority of disputes related to court security MOUs were resolved by informal meetings similar to those now provided in subdivision (d). It is expected that this trend will continue and that the judicial dispute resolution process established by this proposed rule will therefore rarely need to be used.

## **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 of implementing Government Code section 69926?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.

Rule 10.174 of the California Rules of Court would be adopted, effective November 1, 2012, to read:

1 **Rule 10.174. Petition Regarding Disputes Related to Court Security Memoranda of**  
2 **Understanding**

3  
4 **(a) Application**

5  
6 This rule applies to petitions filed under Government Code section 69926(e).

7  
8 **(b) Request for assignment of Court of Appeal justice**

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10 (1) If a sheriff, county, or superior court is unable to resolve a dispute related to  
11 the memorandum of understanding required by Government Code section  
12 69926(b), the sheriff, county, or superior court may file a petition for a writ  
13 of mandamus or writ of prohibition.

14  
15 (2) On the first page, below the case number, the petition must include the  
16 following language in the statement of the character of the proceeding (see  
17 rule 2.111(6)): “Petition filed under Government Code section 69926(e):  
18 Assignment of Court of Appeal justice requested.”

19  
20 (3) On receipt of a petition, the superior court clerk must submit a request to the  
21 Chief Justice asking that he or she assign a Court of Appeal justice from an  
22 appellate district other than the one in which the county, the superior court,  
23 and the sheriff are located to hear and decide the petition.

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

26  
27 A petition filed under this rule must be heard and decided on an expedited basis and  
28 must be given priority over other matters to the extent permitted by law and the  
29 rules of court.

30  
31 **(d) Appeal**

32  
33 (1) Any notice of appeal of a decision under (c) must be filed in the same  
34 superior court in which the petition was initially filed and must include on the  
35 first page the following language, below the case number, in the statement of  
36 the character of the proceeding (see rule 2.111(6)): “Notice of Appeal  
37 Relating to Petition filed under Government Code section 69926(e): Transfer  
38 Requested.”

39  
40 (2) On receipt of the notice of appeal, the Court of Appeal must request that the  
41 Supreme Court transfer the appeal to an appellate district other than the one  
42 in which the county, the superior court, and the sheriff are located.