



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 25, 2013

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Title	Agenda Item Type
Criminal Cases: Encouraging Local Mental Health Protocols and Adding Stakeholders to Currently Mandated Meetings	Action Required
	Effective Date
	January 1, 2014
Rules, Forms, Standards, or Statutes Affected	Date of Report
Amend Cal. Rules of Court, rules 10.951 and 10.952	October 1, 2013
Recommended by	Contact
Mental Health Issues Implementation Task Force	Carrie Zoller, Supervising Attorney
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### Executive Summary

The Mental Health Issues Implementation Task Force recommends amending rule 10.951 to add a subsection to encourage courts to develop mental health case protocols and rule 10.952 to include additional justice system stakeholders in courts' regular meetings concerning the criminal court system. These recommended rule amendments are designed to encourage judicial leadership in facilitating interbranch and interagency coordinated responses to people with mental illness in the criminal justice system and to improve case processing and outcomes for defendants with mental illness or co-occurring disorders.

### Recommendation

The Mental Health Issues Implementation Task Force recommends that the Judicial Council, effective July 1, 2014:

1. Amend California Rules of Court, rule 10.951 (Duties of supervising judge of the criminal division), to add new subdivision (c) encouraging the supervising or presiding judge, in

conjunction with the justice partners identified in rule 10.952, to develop local protocols for cases involving offenders with mental illness or co-occurring disorders. The development of local protocols is not mandatory.

2. Amend rule 10.952 (Meetings concerning the criminal court system) to add the following stakeholders to courts' regular meetings with justice system partners: representatives from parole, the sheriff and police departments; the Forensic Conditional Release Program (CONREP); the county mental health director (or designee); and the county director of the California Department of Alcohol and Drug Programs (or designee).

### **Previous Council Action**

The Judicial Council adopted rule 10.951 as rule 227.2, effective January 1, 1985, to outline the duties of the supervising judge of the criminal division. The council adopted rule 10.952 as rule 227.8, effective January 1, 1985, to require the supervising or presiding judge to designate judges of the court to attend regular meetings to be held with criminal justice system partners.

### **Rationale for Recommendation**

The judicial system is uniquely positioned to take a leadership role in coordinating an appropriate response to the disproportionate number of people in the criminal justice system who are mentally ill or who suffer from both substance abuse and mental disorders and thereby have co-occurring disorders. By establishing local protocols for these cases and including the justice system partners who are most directly involved with mentally ill defendants in the courts' already mandated criminal justice stakeholder meetings, the justice system can improve case processing and outcomes for defendants with mental illness or co-occurring disorders.

The cases of defendants with mental illness are often the most challenging for courts to handle appropriately, and they regularly require significant judicial branch resources. The traditional adversarial approach is frequently ineffective when applied to the cases of defendants with mental illness. Facilitating appropriate referrals to mental health treatment and services for defendants with mental health issues can be essential and requires courts to work closely with criminal justice partners and other community agencies.

The proposed rule revisions are designed to encourage judicial leadership in facilitating interbranch and interagency coordinated responses to people with mental illness in the criminal justice system. The new subsection to rule 10.951 would encourage the presiding judge, supervising judge, or other designated judge, together with justice partners, to develop local protocols for cases involving offenders with mental illness or co-occurring disorders. The protocols could help to ensure early identification of and appropriate treatment for offenders with mental illness or co-occurring disorders, with the goals of reducing recidivism, responding to public safety concerns, and providing better outcomes for these offenders while reducing costs.

Rule 10.952 requires the supervising or presiding judge to designate judges of the court to attend regular meetings with designated justice system partners (and other interested persons) to identify and eliminate problems in the criminal court system and to discuss other problems of mutual concern. The proposed amendment to rule 10.952 would add specified justice system stakeholders to those currently listed in the rule. These additional justice partners are relevant to handling cases involving offenders with mental illness or co-occurring disorders and include the Forensic Conditional Release Program (CONREP), the county mental health director, and the county director of the California Department of Alcohol and Drug Programs, as well as representatives from parole, sheriff, and police departments.

## **Comments, Alternatives Considered, and Policy Implications**

### **Public comments**

The invitation to comment was circulated from April 19, 2013, through June 19, 2013, to the standard mailing list for criminal, family, and juvenile law proposals. Included on the lists were appellate presiding justices, appellate court administrators, trial court presiding judges, trial court executive officers, judges, court administrators and clerks, attorneys, social workers, probation officers, and other legal professionals. Ten comments were received. Seven commentators agreed with the proposal as circulated. One addressed the issue of costs and operational impacts. One commentator agreed with the proposal subject to specified modifications. Two commentators opposed the proposal. Specifically:

- Four commentators agreed without providing additional commentary.
- One commentator, the Orange County Bar Association, indicated its support and noted that “[t]he language, as currently drafted, allows each jurisdiction to fashion responses and solutions that fit the local need and affords potential to increase just outcomes for those suffering from mental illness while also enhancing public safety.” Another noted, “Our court supports these excellent recommendations.”
- In the proposed changes to rule 10.951, three commentators addressed the use of the term *should* regarding courts’ development of local protocols for cases involving defendants with mental illness. One commentator was concerned that including the term *should* would place pressure on the courts to incur expense they cannot afford, given the current financial difficulties of the superior courts. Another commentator expressed a related concern that establishing optional duties in a rule imposes a practice that may be unrealistic for a particular court. The third commentator was concerned about unequal access to justice if the phrase *is encouraged to* was substituted for the term *should*.

A chart with all comments received and the committee’s responses is attached at pages 7–11.

### **Committee comments**

After the comment period, the Criminal Law Advisory Committee provided feedback on the proposed rule changes, indicating its support for the rule amendments as proposed.

### **Alternative actions considered and policy implications**

The Mental Health Issues Implementation Task Force considered alternatives such as education, training, guidelines, and best practices. The task force determined that a rule amendment is necessary to ensure that courts are encouraged to develop, with justice system partners, local protocols that provide guidance for handling the complex and challenging issues presented by cases involving offenders with mental health issues or co-occurring disorders, and that the alternatives would be more effective if they were supplemental to the two proposed rule changes.

The task force also determined that a rule amendment is necessary to ensure that all of the justice partners essential for identifying and eliminating problems in the criminal court system and other problems of mutual concern, particularly problems related to cases involving offenders with mental health issues or co-occurring disorders, are included in courts' regular meetings.

The task force accepted the suggestion to revise the proposed language to "encourage" courts to develop local protocols rather than using the term *should*, which more strongly expresses a preference or a nonbinding recommendation<sup>1</sup> The task force expressed confidence that by encouraging the development of protocols, the proposed rule recognizes the pressures on courts and allows courts to develop appropriate local protocols at a time and in a manner that minimizes such pressures. The task force acknowledged courts' current financial constraints and the need to minimize implementation requirements, costs, and operational impacts and determined that it was most appropriate for the rule amendment to "encourage" courts to develop such protocols.

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

One commentator noted that the operational and cost impacts of implementing the proposed amendment to rule 10.951 "cannot be determined until local protocols are identified and in place by the court and its justice system partners," and once determined, additional staffing and training guidelines would be necessary to carry through and monitor the process. Another commentator expressed concern that, "[g]iven the current financial difficulties of the Superior Courts in this state, the proposed language will force the courts to incur the expense of developing this protocol, thus reducing the already limited service that it provides to its citizens."

Because the proposed amendment to rule 10.951 has been revised to "encourage" but does not require courts to develop local protocols for cases involving offenders with mental health issues or co-occurring disorders, it provides courts with flexibility to implement protocols in ways that meet their needs. Each court may determine whether and when to develop protocols, the content of those local protocols, and ways to minimize any implementation requirements. Courts may choose to implement their protocols at a time when the court is best able to sustain the costs or operational impacts that may be incurred. Moreover, some courts have indicated that they have implemented similar protocols without spending additional funds.

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<sup>1</sup> Cal. Rules of Court, rule 1.5(b)(5).

The proposed amendment to rule 10.952 adds justice system stakeholders to courts' currently mandated meetings concerning the criminal court system. Because these meetings are already mandated, the operational impacts, costs, and implementation requirements are expected to be de minimis.

The task force is proposing these two rule amendments based on its assessment that the adoption of these changes, over time, would reduce costs incurred by courts and justice system partners for cases involving offenders with mental health issues or co-occurring disorders by encouraging courts to develop protocols that would provide for more efficient case handling and by encouraging coordination with service providers that can offer expertise and treatment, thereby reducing defendants' involvement in the courts and the criminal justice system.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

The proposed rules support the policies underlying Goal IV, Quality of Justice and Service to the Public. Specifically, these rules support objective 1, "To maintain a branchwide culture that fosters excellence in public service by building strong working relationships with communities, law and justice system partners, and other state and local leaders"; objective 3, "To provide services that meet the needs of all court users and that promote cultural sensitivity and a better understanding of court orders, procedures, and processes"; objective 4, "To promote the use of innovative and effective problem-solving programs and practices that are consistent with and support the mission of the judicial branch"; and objective 8, "To collaborate with justice system partners and community stakeholders to identify and promote programs that further the interests of all court users—including children and families."

### **Attachments**

1. Cal. Rules of Court, rules 10.951 and 10.952, at page 6
2. Comments chart, at pages 7–11.

Rules 10.951 and 10.952 of the California Rules of Court are amended, effective January 1, 2014, to read:

1 **Rule 10.951. Duties of supervising judge of the criminal division**

2  
3 ~~(a)–(b)~~ \* \* \*

4  
5 **(c) Mental health case protocols**

6  
7 The presiding judge, supervising judge, or other designated judge, in conjunction with the  
8 justice partners designated in rule 10.952, is encouraged to develop local protocols for  
9 cases involving offenders with mental illness or co-occurring disorders to ensure early  
10 identification of and appropriate treatment for offenders with mental illness or co-  
11 occurring disorders with the goals of reducing recidivism, responding to public safety  
12 concerns, and providing better outcomes for those offenders while using resources  
13 responsibly and reducing costs.

14  
15 ~~(e)(d)~~ **Additional judges**

16  
17 To the extent that the business of the court requires, the presiding judge may designate  
18 additional judges under the direction of the supervising judge to perform the duties  
19 specified in this rule.  
20

21 ~~(d)(e)~~ **Courts without supervising judge**

22  
23 In a court having no supervising judge, the presiding judge performs the duties of a  
24 supervising judge.  
25  
26

27 **Rule 10.952. Meetings concerning the criminal court system**

28  
29 The supervising judge or, if none, the presiding judge must designate judges of the court to  
30 attend regular meetings to be held with the district attorney; public defender; representatives of  
31 the local bar; probation department; parole office, sheriff department, police  
32 departments, and Forensic Conditional Release Program (CONREP); county mental health  
33 director or his or her designee; county director of the California Department of Alcohol and  
34 Drug Programs or his or her designee; court personnel; and other interested persons to  
35 identify and eliminate problems in the criminal court system and to discuss other problems of  
36 mutual concern.  
37

**SPR13-16**

Criminal Cases: Encouraging Local Mental Health Protocols and Adding Stakeholders to Currently Mandated Meetings (Revise forms CR-180 and CR-181)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	California Judges Association By: Lexi Howard Legislative Director Sacramento, California	A	<p>The Mental Health Issues Implementation Task Force (MHIITF) is proposing two rule amendments to address recommendations from the final report of the Task Force for Criminal Justice Collaboration on Mental Health Issues. The MHIITF proposes amending rule 10.951 to add a subsection to encourage courts to develop mental health case protocols. The task force also proposes amending rule 10.952 to include additional justice system stakeholders in the already mandated meetings concerning the criminal court system. These proposals are designed to encourage judicial leadership in facilitating an interbranch and interagency coordinated response to people with mental illness who have entered the criminal justice system, and to improve case processing and outcomes for defendants with mental illness or co-occurring disorders.</p> <p>The California Judges Association supports the proposed rule, as specified in Invitation to Comment SPR13-16, because it would encourage the courts to develop, in coordination with other agencies, mental health case protocols and improve outcomes for mentally ill defendants.</p>	No response required.

**SPR13-16****Criminal Cases: Encouraging Local Mental Health Protocols and Adding Stakeholders to Currently Mandated Meetings (Revise forms CR-180 and CR-181)**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
2.	Hon. Wendy Lindley Judge Superior Court of Orange County Santa Ana, California	AM	This legislation is a positive step in the right direction. The language should be changed to "should" rather than "encouraged" otherwise there will not be equal access to justice.	The proposal circulated as using the language "should", but based upon other comments, the Task Force feels that use of the term "is encouraged to" would be more appropriate than the term "should".
3.	Mental Health America of California By: Rusty Selix Executive Director Sacramento, California	A	No specific comment.	No response required.
4.	Orange County Bar Association By Wayne R. Gross President Newport Beach, California	A	The proposed change to the Local Rule encourages broad dialogue within each local criminal justice community on ways to improve service and responses to those with a diagnosis of mental illness who have cases in the criminal courts, supports collaborative exchanges among the involved agencies, while also affording an opportunity to enhance understanding and education of diagnostic issues, treatment options and appropriate sentences and responses.. The language, as currently drafted, allows each jurisdiction to fashion responses and solutions that fit the local need and affords potential to increase just outcomes for those suffering from mental illness while also enhancing public safety.	No response required.
5.	Superior Court of Contra Costa County By: Hon. Thomas M. Maddock	N	Proposed Rule 10.951 states that a presiding .....judge "should" develop local protocols.... The explanation for the change states that the	The Task Force considered this comment and agrees that in light of the fiscal challenges currently facing the courts, use of the term "is

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	Judge Martinez, California		<p>purpose of the change is to encourage but not require development of a local protocol, in this way the proponents can ignore the cost impact on the local Superior Court. The use of the word “should” is more directive than the use of the phrase, “is encouraged to”. Any presiding judge who doesn’t develop these protocols will be subjected to pressure both political and, through complaints of failing to competently perform his/her duties, personal.</p> <p>Given the current financial difficulties of the Superior Courts in this state, the proposed language will force the courts to incur the expense of developing this protocol, thus reducing the already limited service that it provides to its citizens. The proponents have failed to demonstrate a positive cost benefit for the courts due to this proposed rule change, thus ignoring the real impact on the courts.</p> <p>For these reasons it “should” not be adopted.</p>	encouraged to” would be more appropriate than the term “should”. The requested modification has been made.
6.	Superior Court of Los Angeles County Los Angeles, California	A	No specific comment.	No response required.
7.	Superior Court of San Diego County By: Mike Roddy Executive Officer San Diego, California	A	<p>The operational and cost impact of implementing the proposed amendment to Rule 10.951 cannot be determined until local protocols are identified and in place by the court and its justice system partners. Once determined then “yes” a need for additional staff and training guidelines would be necessary to carry through and</p>	The Task Force considered this comment and feels that because the proposal does not make statewide mandates, local courts are able to respond in a way that meets their individual needs while providing the flexibility to minimize expenses. The Task Force has also been informed that some courts have succeeded in implementing similar protocols without spending additional funds.

**SPR13-16**

**Criminal Cases: Encouraging Local Mental Health Protocols and Adding Stakeholders to Currently Mandated Meetings (Revise forms CR-180 and CR-181)**

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			monitor this process. As for the proposed amendment to Rule 10.952, we see no real impact.	
8.	Superior Court of Santa Clara County By: Hon. Brian C. Walsh Presiding Judge San Jose, California	A	Our court supports these excellent recommendations.	No response required.
9.	Superior Court of Sonoma County By: Jose Octavio Guillen Court Executive Officer Santa Rosa, California	N	While I totally understand the desire and need to address the needs of our mentally ill criminal justice system population, I don't agree with this proposal to include aspirational or optional duties or tasks in a Rule. These well-intentioned "effective practices" when incorporated into rules of court to encourage courts to do something, end up setting unreasonable expectations; eroding the integrity and force behind the rules; and over-reaching by imposing a practice that may be unrealistic for a particular court. Rule 10.603. Authority and duties of presiding judge already covers this leadership role. "(a) General responsibilities The presiding judge is responsible, with the assistance of the court executive officer, for leading the court, establishing policies, and allocating resources in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public. The presiding judge is responsible for:	The Task Force considered this comment and feels that Rules of Court that suggest, without mandating, system improvements are helpful to local courts. It was noted that such rules empower courts with information that may assist them in achieving better case outcomes, fiscal savings, and improved service to the public. It was also noted that if a local court chooses to implement an effective practice suggested by a Rule of Court, the court is able to do so in the way it feels is most appropriate in its county.

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	Commentator	Position	Comment	Committee Response
			<p>(1) Ensuring the effective management and administration of the court, consistent with any rules, policies, strategic plan, or budget adopted by the Judicial Council or the court;                      (2) Ensuring that the duties of all judges specified under rule 10.608 are timely and orderly performed; and                      (3) Ensuring that the court has adopted written policies and procedures allowing the presiding judge to perform efficiently the administrative duties of that office."</p> <p>Fundamentally, the Court is a powerful convener of criminal justice stakeholders and uses its status to bring about collaboration and desired outcomes, but the Court MUST also refrain from owning the systemic problem. As a judicial branch we must exercise restraint while striving for comity. We also must be disciplined to conduct empirical research to determine what is effective or best practice. Labeling or promoting something as effective or best practice is meaningless without any empirical data.</p>	
10.	Superior Court of Ventura County By: Michael Planet Court Executive Officer Ventura, California	A	No specific comment.	No response required.