

Subordinate Judicial Officers: Duties and Titles

Report of the

Subordinate Judicial Officer Working Group

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Subordinate Judicial Officer Working Group

Chair: Hon. William R. McGuiness, Administrative Presiding Justice
Court of Appeal, First Appellate District

Ms. Tamara L. Beard, Executive Officer
Superior Court of Fresno County

Hon. William A. McKinstry, Presiding Judge*
Superior Court of Alameda County

Mr. Joseph James Bell, Attorney at Law
Nevada County

Hon. Michael Nash, Judge
Superior Court of Los Angeles County

Hon. Douglas G. Carnahan, Commissioner
Superior Court of Los Angeles County

Mr. Tom Orloff, District Attorney
Alameda County

Mr. Steven Carroll, Public Defender
San Diego County

Hon. Daniel M. Ornelas, Commissioner
Superior Court of San Diego County

Hon. Robert A. Dukes, Assistant Presiding
Judge, Superior Court of Los Angeles

Ms. Christine Patton, Executive Officer,
Superior Court of Santa Cruz County¹

Mr. Michael Fischer, Staff Attorney
Administrative Office of the Courts

Hon. Rise Jones Pichon, Judge
Superior Court of Santa Clara County

Hon. David L. Haet, Commissioner
Superior Court of Solano County

Ms. A. Araceli Ramirez, Attorney at Law
Contra Costa County

Ms. Kate Howard, Assistant Director
Office of Governmental Affairs
Administrative Office of the Courts

Hon. W. Scott Snowden, Presiding Judge
Superior Court of Napa County

Hon. C. Robert Jameson, Presiding Judge*
Superior Court of Orange County

Hon. Christian F. Thierbach, Presiding Judge
Superior Court of Riverside County

Hon. Suzanne Kingsbury, Presiding Judge
Superior Court of El Dorado County

Hon. Patricia H. Wong, Commissioner
Superior Court of Sacramento County

Hon. Robert Leventer, Commissioner
Superior Court of Los Angeles County

AOC Staff
Mr. Frederick Miller, Senior Manager

Ms. Sonya Smith, Staff Attorney

*Term as presiding judge expired while serving on the working group.

¹ Ms. Patton's appointment as Regional Administrative Director of the Bay Area/Northern Coastal Region for the Administrative Office of the Courts necessitated midterm withdrawal from the working group.

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EXECUTIVE SUMMARY

I. Introduction

In December 2000 the Judicial Council directed the Administrative Director of the Courts to establish a Subordinate Judicial Officer Working Group to make recommendations on several policy issues concerning subordinate judicial officers (SJOs). In keeping with its charge, the SJO working group reviewed the duties and titles of SJOs to determine whether these should be changed in light of recent trial court restructuring. This report presents the group's recommendations on subordinate judicial duties in four subject areas: criminal, family, juvenile, and civil. These substantive recommendations are followed by the group's recommendations for structural change to existing SJO statutes. The report concludes with the group's comments concerning the implementation of its recommendations.

II. Current Subordinate Judicial Officer Titles and Duties

The courts have inherent authority to appoint SJOs to assist them in carrying out their constitutional duties.¹ This authority is discussed explicitly in the California Constitution and in the California codes. Article VI, section 22 of the Constitution states that the Legislature may provide for the courts' appointment of officers to perform subordinate judicial duties. Under that constitutional authority, the Legislature has enacted code sections establishing nine types of SJOs with distinct, but often overlapping, scopes of authority.

III. Subordinate Judicial Duties: Review and Recommendations

A. Preliminary Policy Considerations

The recommendations in this section concern the scope of the term "subordinate judicial duties." They assess which judicial duties are appropriate for delegation to SJOs as provided in article VI, section 22 of the California Constitution. These recommendations are *not* directed at the courts' ability to assign SJOs as temporary judges under article VI, section 21.

B. Criminal

The working group concluded that the power to imprison is a core judicial function that should not be delegated to subordinate judicial officers. Thus, in criminal cases, the group recommends that the definition of subordinate judicial

¹ *People v. Laff* (2001) 25 Cal.4th 703, 734–735.

duties distinguish clearly between judicial duties that can result in imprisonment and those that cannot.

Applying this principle, the group recommends that subordinate judicial duties in criminal cases be limited to the following:

- Infractions—Same authority as a judge.
- Traffic Misdemeanors—Authority over all pretrial matters and over sentencing in matters not eligible for a sentence of imprisonment. (This parallels the current authority of traffic referees and commissioners in traffic matters.)
- Arraignments—Authority to conduct arraignments and accept “not guilty” pleas.
- Penal Code Section 1269c Bail Determinations—Authority subject to review by a judge.
- Bench Warrants—Same authority as a judge.
- Discovery Motions—Authority subject to review by a judge.
- Contempt Power—Same contempt powers as a judge on all matters within the scope of the SJO’s authority. (This authority would not extend to matters an SJO hears as a temporary judge.)

C. Family

The working group concluded that the adjudication of family cases is a core judicial duty that should be performed by judges. The group urges the courts to acknowledge the serious and complex nature of these cases by providing sufficient numbers of well-qualified judges to hear them.

Despite the group’s general view that family law matters should not be designated as subordinate judicial duties, the group recommends that the office of child support commissioner be retained and that the duties of these officers remain the same. Those duties are to hear actions and proceedings for orders to establish, modify, or enforce child or spousal support, including actions to establish paternity.

The group’s recommendation concerning child support commissioners is primarily motivated by funding concerns: the federal funding for child support

commissioners specifies their duties and requires that they be subordinate judicial officers. Other than the limited duties of child support commissioners, the group recommends that all judicial duties in family cases be reserved to judges.

D. Juvenile

The working group identified very few subordinate judicial duties in juvenile cases, finding that the adjudication of most juvenile matters is a core judicial duty that should be performed by judges. The group concluded that courts should acknowledge the importance and complexity of these cases by providing sufficient numbers of well-qualified judges to hear them.

The group recommends that subordinate judicial duties in juvenile matters be limited to the following:

- Truancy Matters—Same authority as a judge.
- Minor Juvenile Delinquency Matters—Same authority as a judge in minor juvenile delinquency matters that cannot result in imprisonment. (Similar to the current authority of a juvenile hearing officer.)

E. Civil

The group concluded that the adjudication of contested civil matters and civil matters involving serious, complex, and diverse factual and legal issues should be performed by judges rather than delegated to SJOs.

The group recommends that subordinate judicial duties in civil matters be limited to the following:

- Small Claims Cases—Same authority as a judge in these cases, including small claims appeals.
- Uncontested Civil Matters—Same authority as a judge.
- Discovery Motions—Same authority as a judge.
- Pretrial Motions—Authority should be limited to motions that cannot terminate the litigation. (E.g., summary judgment motions would be reserved to judges.)
- Settlement Conferences/Mediation—Same authority as a judge.

IV. Recommendations for Structural Reform

In its review of subordinate judicial duties and titles, the group observed that there are currently nine types of SJOs, each with a slightly different scope of authority. The duties of these judicial officers are described in at least 35 statutes, which are dispersed among six different codes. The group concluded that this structure is unnecessarily complex. The group recommends the following simplifications:

- Consolidate the nine types of SJOs into fewer types and ultimately into one general SJO type.
- Consolidate the many statutes designating subordinate judicial duties into one cohesive statutory structure.

V. Implementation of Recommendations

The group recognizes that these recommendations could require significant change in some courts and therefore recommends that they be implemented in a way that minimizes disruption. In addition, the working group recommends that the Judicial Council give further consideration to the following implementation issues:

- Consider replacing the statutes that provide for SJO duties and titles with rules of court.
- Consider choosing a new general title, such as “magistrate” or “commissioner,” to replace the title of “subordinate judicial officer” or “SJO.”
- Consider implementing initiatives to attract and retain judges with family and juvenile law expertise.

SJO WORKING GROUP REPORT

I. INTRODUCTION

A. The Working Group and Its Charge

In December 2000 the Judicial Council directed the Administrative Director of the Courts to establish a Subordinate Judicial Officer Working Group. The council charged the working group with evaluating the titles and duties of subordinate judicial officers (SJOs) and also with reviewing and commenting on the rules and legislation drafted to implement the council's policy on SJOs. (See Appendix 1 for the full charge to the working group.) The working group, which is composed of presiding judges, judges, court commissioners, executive officers, and attorneys from courts across the state, met several times over the course of the past year.

Pursuant to its charge, the working group reviewed and commented on preliminary drafts of Assembly Bill 1698, which provides for the conversion of some SJO positions to judgeships; on rule 6.609 of the California Rules of Court, which clarifies the role of subordinate judicial officers; and on proposed rule 6.660, which establishes standards for SJO qualifications and training. Because the group has completed those aspects of its charge, this report focuses on the remaining aspect of the charge: the group's review of SJO duties and titles.

B. Context for the Group's Review of SJO Duties and Titles

Several recent structural changes in the courts led the council to request this re-examination of SJO duties and titles. These include trial court unification, statewide trial court funding, and the Trial Court Employment Protection and Governance Act (court employment act). Each of these changes contributed to making the role of SJOs a matter of statewide concern, rather than the more local issue it had been in the past. The group's task was to consider whether, in light of these changes to the court system, the duties and titles of SJOs should be restructured.

Recent Judicial Council actions concerning SJOs also informed the group's work. At the council's direction, Administrative Office of the Courts (AOC) staff drafted rule 6.609, which took effect July 1, 2002, and Assembly Bill 1698, which is currently before the Legislature. These two initiatives support the courts' efforts to provide judges, rather than SJOs, to perform the duties that are legally reserved to judges. Rule 6.609 provides that the primary role of SJOs is to perform subordinate judicial duties and that presiding judges may assign SJOs to act as temporary judges when there is a shortage of judges. Assembly Bill 1698, which permits the conversion of some SJO positions to judgeships, would help alleviate

the shortage of judges that compels some courts to assign SJOs as temporary judges.

If the goals of these initiatives were achieved, SJOs would primarily perform subordinate judicial duties, instead of routinely serving as temporary judges. Given the extent to which SJOs currently act as temporary judges—up to 80 percent of the time in some courts—this would be a significant change. In reviewing SJO duties and titles, the working group assessed whether such a change in the role *actually* performed by SJOs would urge a change in the definition of subordinate judicial duties.

C. Form of Report

Section II provides an overview of existing law concerning SJO duties and titles. Section III contains the group’s review of and recommendations for subordinate judicial duties in the areas of criminal, family, juvenile, and civil law. Within each case type, the report reviews existing law and practice, sets forth the group’s recommendations, and then discusses some alternatives the group considered. Section IV contains the group’s recommendations for structural change to the statutory framework providing for SJO duties and titles. Section V discusses the implementation of the group’s recommendations.

II. CURRENT DUTIES AND TITLES OF SUBORDINATE JUDICIAL OFFICERS

A. Constitutional Authority

The California Constitution provides that the state’s judicial power is vested in the courts, but it also permits some delegation of judicial authority. Article VI, section 22, provides that “[t]he Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties.” This authority to delegate subordinate judicial duties is distinct from the courts’ authority to appoint temporary judges, which requires a stipulation by the parties.² An SJO appointed by the court may perform subordinate judicial duties without such a stipulation.

² This authority is found in article VI, section 21, which provides, “On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause.”

B. Overview of Case Law

1. The Courts' Inherent Authority to Appoint SJOs

The Supreme Court in *People v. Laff* examined the courts' inherent authority to appoint SJOs.³ The court reaffirmed that this authority exists whether or not the Legislature has specifically provided for such judicial officers. Article VI, section 22 was intended to confirm the authority of the Legislature to provide for the appointment of SJOs; it does not circumscribe the inherent power of the courts to do so.⁴ Thus, while the Legislature may properly regulate the manner in which trial courts exercise this authority, it may not materially impair the courts' exercise of their constitutional powers.⁵

2. Definition of Subordinate Judicial Duties

Case law has developed to interpret the constitutional phrase "subordinate judicial duties." In *Rooney v. Vermont Investment Corp.* the court considered the term "subordinate judicial duties" soon after it was added to article VI in 1966.⁶ The court found that the phrase was intended to be somewhat flexible:

The words "subordinate judicial duties" were intended by the draftsmen as an appropriate constitutional phrase sufficiently broad to permit specific details to be later enacted or adopted by the legislative or rulemaking agencies. (Proposed Revision (1966), Cal. Const. Revision Com., pp. 82, 99; Judicial Council of Cal., Annual Rep. (1967) p. 90.) The reference to "judicial" duties was not intended to preclude assignment of ministerial or administrative duties to court commissioners but was intended to eliminate any possibility that assigning subordinate judicial duties to commissioners would violate the constitutional doctrine of separation of powers. (See Proposed Revision, *supra*.)⁷

The court in *People v. Lucas* employed the Webster's Third New International Dictionary definition of "subordinate" in describing subordinate judicial duties as those "placed in a lower order, class or rank; holding a lower or inferior position."⁸ To determine whether a specific case type qualified as a "subordinate judicial

³ *People v. Laff* (2001) 25 Cal.4th 703, 734–735.

⁴ *People v. Laff*, *supra*, 25 Cal.4th 703, 734.

⁵ *People v. Laff*, *supra*, 25 Cal.4th 703, 734–735.

⁶ *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351.

⁷ *Rooney v. Vermont Investment Corp.*, *supra*, 10 Cal.3d 351, 362.

⁸ *People v. Lucas* (1978) 82 Cal.App.3d 47, 54 (infractions may be designated as subordinate judicial duties).

duty,” the court examined the seriousness, complexity, and diversity of the factual and legal issues presented by that case type.⁹

C. Overview of SJO Statutes

Statutes describing subordinate judicial duties have evolved over the course of many years; Code of Civil Procedure section 259, which describes the powers of court commissioners, has been amended nine times since its enactment in 1872. The Legislature has enacted more than 35 statutes in six different codes designating certain judicial duties as “subordinate judicial duties.” These statutes establish nine types of SJOs—each with slightly different authority. They include court commissioner, child support commissioner, traffic trial commissioner, probate commissioner, referee, traffic referee, juvenile referee, juvenile hearing officer, and mental health hearing officer.

The courts have consistently upheld statutes designating subordinate judicial duties. The *Rooney* court found that a strong presumption of constitutionality favors the Legislature’s interpretation of article VI, section 22.¹⁰

Section III of this report reviews SJO duties by case type and discusses SJO statutes in more detail in the context of those case types.

III. SUBORDINATE JUDICIAL DUTIES: REVIEW AND RECOMMENDATIONS

Pursuant to its charge, the working group undertook a comprehensive review of subordinate judicial duties and identified some areas that would benefit from substantive change. The group wishes to emphasize, however, that these recommendations are not a reflection on the work SJOs perform in the courts. SJOs were well represented on the working group, and the group’s discussions and deliberations were informed by the members’ understanding that SJOs do excellent and important work in the courts.

The group also wishes to emphasize that these recommendations are not intended to interfere with courts’ ability to assign SJOs as temporary judges under the authority provided by article VI, section 21 of the California Constitution and governed by rule 6.609 of the California Rules of Court. The group is aware of the widespread use of SJOs as temporary judges and recognizes that shortages of judges often make such assignments necessary. The group’s recommendations are

⁹ *People v. Lucas*, *supra*, 82 Cal.App.3d 47, 50–56.

¹⁰ *Rooney v. Vermont Investment Corp.*, *supra*, 10 Cal.3d 351, 365–366.

directed only at restructuring the definition of subordinate judicial duties—those duties that SJOs have authority to perform without acting as temporary judges.

A. Preliminary Policy Considerations

A preliminary question the group discussed was: “Should the courts have SJOs at all?” Many in the group concluded that they should not. The task of determining what duties are “subordinate” led many to conclude that *all* judicial duties merit the attention of a judge and that no case type or event can fairly be classified as subordinate. Indeed, judges are the constitutional officers designated to resolve disputes, and only they are directly accountable to the electorate. Many in the group were of the opinion that members of the public have a right to have judges hear their disputes—even if they involve small amounts of money.

Ultimately, the group determined that the council’s action on the December 2000 *Subordinate Judicial Officers* report and its charge to the working group had resolved this issue in favor of retaining SJOs. Thus, the group worked from the assumption that the courts would retain at least some SJOs and focused its attention on the question: “What judicial duties should be designated as subordinate judicial duties?” Several competing policy interests influenced the group’s analysis of that question.

The group identified several factors that favor a narrow definition of subordinate judicial duties: the principles of public accountability, separation of powers, and judicial independence and a desire to avoid creating an impression that important cases in the courts have a “secondary status.”¹¹ Theoretically, limiting the scope of subordinate judicial duties would increase the role of judges in the courts. For that reason, those group members who favored phasing out SJOs entirely also favored defining their duties as narrowly as possible.

The group also identified several factors that favor broadening the scope of SJO authority. These include the assignment flexibility that SJOs allow the courts, the expertise SJOs bring to many case types, and the ability of SJOs to assist judges with routine preliminary matters, thereby freeing the judges for more complex matters.

Keeping these competing policy interests in mind, the group began by reviewing existing law and practice in four broad case types: criminal, family, juvenile, and civil. The group then established, within each case type, a general principle to guide the determination of which specific judicial duties could fairly be designated

¹¹ These issues were raised in the council’s 1984 report to the Legislature and again in the December 2000 *Subordinate Judicial Officers* report.

as subordinate and delegated to SJOs. For example, with respect to criminal cases the group adopted the general principle that judges should hear matters with the potential to result in imprisonment, but other duties may be delegated to SJOs. This approach enabled the group to delineate specific subordinate judicial duties in a principle-driven way, without giving too much deference to the current statutory structure, which did not develop in a systematic or cohesive way, or to the prevailing assignment preferences of SJOs and judges.

B. Criminal Cases

1. Current Legal Structure

Three types of SJOs have statutory authority in criminal cases: court commissioners, traffic trial commissioners, and traffic referees. There are small differences in the authority of these SJO types, but in almost all instances one type can be cross-assigned to exercise the authority of another type.¹²

These SJOs have the authority to:

- Exercise the same powers as a judge in infraction cases;¹³
- In misdemeanor Vehicle Code violations, fix bail, grant continuances, arraign the defendant, hear and recommend orders to be made on demurrers and motions, take pleas, set cases for hearing or trial, and, in enumerated cases, impose fines and traffic school as provided for in the bail schedule;¹⁴
- Conduct arraignments in all case types;¹⁵
- Issue bench warrants upon a defendant's failure to appear or obey a court order;¹⁶
- Make an initial determination on whether a deviation from the bail schedule is appropriate;¹⁷ and
- Issue emergency protective orders against stalkers.¹⁸

¹² See Gov. Code, §§ 72401–72403, 72450. In addition, when the council adopts qualification and training standards for SJOs, Government Code section 71622(d) will permit courts to cross-assign SJOs who meet the applicable qualification and training standards. These standards have been circulated for comment and will be considered for adoption by the Judicial Council at its October 25, 2002, meeting.

¹³ Gov. Code, §§ 72190, 72401(c).

¹⁴ Gov. Code, §§ 72401, 72405, 72304.

¹⁵ Gov. Code, §§ 72401(a), 72190.1.

¹⁶ Gov. Code, §§ 72190.1, 72190.2.

¹⁷ Pen. Code, § 1269c.

2. Current Practice

SJOs comprise roughly 9 percent of all judicial officers hearing criminal cases.¹⁹ Of the total time SJOs spend hearing criminal cases, 40 percent is spent on traffic and other infractions, 44 percent on misdemeanors, and 16 percent on felonies.²⁰

SJOs spend much of their time in criminal cases performing the duties of temporary judges. When hearing misdemeanors, SJOs spend 75 percent of their time as temporary judges; when hearing felonies, 78 percent.²¹

3. Recommendations

In evaluating subordinate judicial duties in criminal cases, the group reached consensus on the following principle: *the power to imprison is a core judicial function that should be reserved to judges*. Thus, in defining subordinate judicial duties a line should be drawn between judicial duties that can result in imprisonment and those that cannot. Without a stipulation by the parties, SJOs should not hear matters that can result in imprisonment.²²

Applying this principle, the group reviewed existing statutes concerning SJO authority and considered other judicial duties in criminal cases that could be delegated to SJOs. The group's recommendations for duties appropriate for SJOs in criminal cases follow.

a. Infractions

The group recommends that SJOs retain the full powers and duties of judges in infraction matters, including the power to hear infraction appeals. Because infractions are punishable only by fines, they are appropriately handled by subordinate judicial officers.²³

b. Traffic Misdemeanors

The authority of SJOs in traffic misdemeanors is greater than in any other type of misdemeanor. In a misdemeanor violation of the Vehicle Code, a traffic referee or

¹⁸ Pen. Code, § 646.91.

¹⁹ Judicial Council of California, *Survey of Proceedings Involving Children and Families* (March 2001).

²⁰ This information is taken from a November 2000 survey of all presiding judges initiated by the Trial Court Presiding Judges Advisory Committee.

²¹ This information is taken from a November 2000 survey of all presiding judges initiated by the Trial Court Presiding Judges Advisory Committee.

²² One exception to this principle is the group's recommendation to expand SJO duties to include contempt powers in cases where the SJO has full judicial authority.

²³ Pen. Code, § 19.6.

commissioner may fix the amount of bail, grant continuances, arraign the defendant, hear and recommend orders to be made on demurrers and motions, take pleas, and set cases for hearing or trial. In certain misdemeanor violations of the Vehicle Code an SJO may impose a fine or order the defendant to attend traffic school.²⁴ However, SJOs do not have authority to impose a sentence of imprisonment in misdemeanor Vehicle Code violations.

The group recommends that SJO authority in traffic matters be retained; it allows SJOs to assist the courts with a high-volume case type, without delegating the power to imprison to SJOs.

c. Arraignments

Because an arraignment is a preliminary matter that does not have a significant impact on a defendant's imprisonment, the group concluded that conducting arraignments is an appropriate subordinate judicial duty.

Under current law, there has been some question whether the authority to conduct an arraignment includes the authority to accept a defendant's plea.²⁵ The Office of the Attorney General has concluded that a commissioner may accept a "not guilty" plea at an arraignment, but not a "guilty" plea.²⁶ Because there is confusion around this issue, the group recommends that the authority of subordinate judicial officers be clarified in a manner consistent with the Attorney General's opinion. With this clarification, the authority to conduct arraignments would include the authority to accept "not guilty" pleas, but not the authority to accept "guilty" pleas.

d. Penal Code Section 1269c Bail Determinations

Penal Code section 1269c provides that the arresting agency or the arrestee may ask a magistrate or commissioner to deviate from the bail schedule. This is a pre-arraignment proceeding subject to review by a judge at the first court hearing. Although this section grants SJOs the authority to affect a defendant's custody status, a majority of the group felt that it should be retained. This was partially because 1269c bail determinations are subject to review by a judge at a later hearing. In addition, the group was influenced by practical considerations—it would require a significant redistribution of labor in many courts to remove

²⁴ Gov. Code, §§ 72401, 72405.

²⁵ Penal Code section 988 provides that an arraignment consists "in reading the accusatory pleading to the defendant . . . and asking the defendant whether the defendant pleads guilty or not guilty to the accusatory pleading. . . ." The entering of a plea is discussed in a separate chapter of the Penal Code in section 1016 et seq.

²⁶ 67 Ops.Cal.Atty. Gen. 162 (1984).

commissioners from Penal Code section 1269c. A minority of the group felt that SJOs should not have authority to conduct 1269c bail hearings because it deviates from the group's principle that SJOs should not have authority over a defendant's custody status.

e. Bench Warrants

The group recommends that SJOs retain their current authority to issue bench warrants when a defendant fails to appear or disobeys a court order. Permitting subordinate judicial officers to issue bench warrants diverges slightly from the group's position that SJOs should not have the authority to imprison. However, the group is of the opinion that, if subordinate judicial officers are to have any role in criminal cases, it is necessary that they have the authority to issue bench warrants. This authority enables them to manage their calendars, particularly arraignment calendars, and enables them to be of greater assistance to the courts.

f. Discovery Motions

The group recommends that SJOs have authority over all discovery motions, subject to rehearing by a judge. A judge's rehearing of a discovery matter would not be a hearing de novo but would be based on the record of the initial motion. The group believes that the preliminary nature of discovery motions and the fact that they do not determine a defendant's custody status make these motions appropriate subordinate judicial duties.

g. Contempt Power

SJOs currently have authority to initiate a contempt citation but not to adjudicate it, unless the parties stipulate that the SJO may hear it as a temporary judge.²⁷ The working group recommends that SJOs be permitted to adjudicate contempt citations that arise from matters within their authority. For example, since SJOs have the full powers of a judge in infraction cases, the recommended change would permit SJOs to adjudicate contempt citations arising from infraction cases. Contempt power would not be extended to temporary judges or to SJOs acting as temporary judges.

Because this change would permit SJOs to impose a sentence of imprisonment, it would be an exception to the group's general principle that such authority should be reserved to judges. Nevertheless, the group concluded that this would not be too great a delegation of judicial authority, because the maximum sentence for

²⁷ *Marcus v. Workmen's Comp. Appeals Bd.* (1973) 35 Cal.App.3d 598, 603–604.

contempt is five days.²⁸ This change would give SJOs an additional tool with which to control their courts.

h. Special Recommendations for Traffic Infractions

Part of the working group's charge was to "[s]tudy and report to the council on the advisability of assigning certain subordinate judicial duties (e.g., traffic infractions) to non-judicial officers." The group discussed a range of options in this area and ultimately identified two quasi-administrative aspects of traffic infractions that could appropriately be delegated to court clerks.

The group recommends that courts be enabled to delegate to clerks the authority to convert fines to community service in traffic infraction cases, provided the court has established a standard rate for the value of community service hours. A majority of group members favored this idea because it would increase administrative efficiency, thereby increasing the time available to SJOs and judges for more substantive matters. Some group members expressed concern that this delegation would give clerks too much "sentencing" power. However, the general view of the group was that this duty could reasonably be delegated to clerks *if* they were required to apply a court-established standard rate for the value of community service hours as applied to fines.

The group also recommends enabling courts to delegate to clerks the authority to grant continuances in traffic infraction matters. As in the case of fines, the group favored this option only if clear guidelines were established by the court. Without sufficient guidelines, the group believed that this would be too great a delegation of judicial discretion.

4. Alternatives Considered

The group discussed, but ultimately rejected, expanding SJO duties in the following areas:

a. Magistrate Duties

The primary duties of a magistrate are conducting arraignments,²⁹ setting bail,³⁰ making probable cause determinations,³¹ issuing arrest and search warrants,³² and

²⁸ Code Civ. Proc., § 1218.

²⁹ Pen. Code, § 825.

³⁰ Pen. Code, §§ 822–823.

³¹ Pen. Code, § 849.

³² Pen. Code, § 813 et seq.

conducting preliminary hearings.³³ These duties are statutorily defined and are distinct from the duties of judges and subordinate judicial officers. Although a variety of government officials have been magistrates in the past, the current definition of magistrate names only judges.³⁴

Since the duties of a magistrate are easily distinguishable from the duties of a judge, this is an area in which SJO duties could be expanded without causing undue confusion. This would be a large expansion of SJO duties and would give courts greater flexibility in assigning subordinate judicial officers. However, most magistrate duties involve decisions that affect fundamental liberty interests. In keeping with the principle that such decisions are core judicial duties that should be reserved to judges, the group is of the opinion that the full set of magistrate duties should not be deemed subordinate judicial duties.³⁵ This does not mean that SJO should not perform *any* magistrate duties. As discussed earlier in this report, the group recommends that arraignments, which are magistrate duties, be considered subordinate judicial duties.

b. Acceptance of Guilty Pleas and Imposition of Stipulated Sentences

The group discussed permitting SJOs to accept guilty pleas and impose sentences agreed upon by the parties. Although such authority would fit naturally with SJO authority to conduct arraignments, the group viewed it as an inappropriate expansion of SJO authority. First, it would permit SJOs to take a plea that effectively terminates the criminal case and requires a waiver of the defendant's right to a trial. Second, it would permit SJOs to impose sentences of imprisonment. The group emphasized that, even when the parties have agreed on a sentence, the sentence must be approved by a judge; this is a core judicial duty that should not be delegated to subordinate judicial officers.

c. Bail Hearings

SJOs do not have explicit statutory authority to conduct bail hearings. However, the group reported a significant variation in practice among courts in this area. A few courts have interpreted the decision in *Branson v. Martin* to mean that subordinate judicial officers may exercise the authority of a magistrate, including the setting of bail.³⁶ Other courts have interpreted Penal Code section 1269(c),

³³ Pen. Code, §§ 858–883.

³⁴ Pen. Code, §§ 807, 808.

³⁵ The group is also mindful that such a broad expansion of SJO duties would be counterproductive to the policy goals of AB 1698, which is currently before the Legislature (the legislation to allow conversion of some SJO positions to judgeships).

³⁶ *Branson v. Martin*, (1997) 56 Cal.App.4th 300.

combined with statutes authorizing SJOs to conduct arraignments, to mean that SJOs have authority to conduct bail hearings without a stipulation.³⁷ Many courts assign SJOs to conduct bail hearings but request a stipulation by the parties that the SJO is acting as a temporary judge.

Regardless of current practice, the group concluded that SJO authority should *not* include bail hearings because these hearings directly affect the defendant's custody status. Reserving bail hearings to judges is consistent with the group's position that all matters concerning imprisonment should be reserved to judges.

d. Penal Code Section 1275.1 Hearings

Penal Code section 1275.1 provides that bail may not be accepted if it was feloniously obtained. The section provides for a hearing on the source of bail and states that a judge or magistrate may conduct the hearing. The group recommends that, as with bail hearings, Penal Code section 1275.1 hearings be reserved to judges.

e. Pretrial Motions (Other Than Discovery Motions)

Despite the group's recommendation that SJOs have broad authority in discovery matters, the group does not recommend that such authority be extended to other pretrial motions. Although some group members favored permitting SJOs to hear all pretrial motions subject to a rehearing, the majority did not favor extending SJO authority in that way. Some believed that substantive motions, such as motions to suppress evidence, are judicial functions that should not be delegated to SJOs. Others held the opinion that, as a practical matter, it would be too difficult to pass legislation that would delegate authority over substantive motions to SJOs.

f. Misdemeanors

Although a reasonable argument could be made for extending SJO authority to cover all misdemeanor matters, the group was not in favor of this approach. Since both misdemeanors and felonies are punishable by imprisonment, the group felt that both should be handled by judges. This is consistent with the group's general approach, which is to draw a clear distinction between matters that involve imprisonment and matters that do not.

³⁷ This section provides that when a defendant is arrested without a warrant in a felony case (or in a misdemeanor violation of a domestic violence restraining order) and a peace officer believes that bail should be set higher than the bail schedule provides, the peace officer may apply to a magistrate or a *commissioner* for an order setting a higher bail. Other Penal Code sections concerning bail refer to the court, the judge, or the magistrate, but not to commissioners or other SJOs. See Pen. Code, § 1268 et seq.

C. Family Cases

1. Current Legal Structure

a. Child Support Commissioners

Approximately 50 SJOs sitting in family courts across the state are child support commissioners.³⁸ The federal funding for these judicial officers requires that they hear only child support, spousal support, and paternity matters. If a commissioner's time is divided between support and paternity matters and other family matters, such as child custody and visitation, only the time dedicated to child support enforcement is eligible for federal funding.³⁹

b. Court Commissioners

Like child support commissioners, court commissioners have the authority to hear child support matters. Code of Civil Procedure section 259, which lists the powers of court commissioners, includes the power to “hear actions to establish paternity and to establish or enforce child and spousal support pursuant to subdivision (a) of Section 4251 of the Family Code.”⁴⁰

In addition, commissioners may hear and report to the court on preliminary family court matters as provided in Code of Civil Procedure section 259(f). This section provides that commissioners may:

Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.⁴¹

Commissioners also have the power to issue emergency protective orders and perform marriages.⁴² Other commissioner powers that may be applicable in family cases include the authority to hear and determine ex parte motions and all uncontested actions.⁴³

³⁸Family Code section 4251 establishes the office of child support commissioner.

³⁹Fam. Code, § 4521(d)(3).

⁴⁰Despite this provision granting commissioners power to hear child support matters, Family Code section 4251 provides that child support commissioners sit as temporary judges unless a party objects.

⁴¹Code Civ. Proc., § 259(f).

⁴²Fam. Code, §§ 6240–6257; Fam. Code, § 400.

⁴³Code Civ. Proc., § 259(a) and (h).

2. Current Practice

SJOs make up 43 percent of the state’s family law bench. This percentage is appreciably higher than the percentage of SJOs in other case types—SJOs make up only 7 percent of the civil bench and 9 percent of the criminal bench.⁴⁴

The work of SJOs who hear family cases is not limited to subordinate judicial duties. Presiding judges estimate that, statewide, SJOs who hear family cases spend 87 percent of their time as temporary judges.⁴⁵ When courts assign SJOs to family court, they generally do not employ the authority described in Code of Civil Procedure section 259(f), but rather assign the SJOs to act as temporary judges. The SJOs’ authority is then dependent on the parties’ stipulation that they may sit as temporary judges.

By assigning SJOs to sit as temporary judges, courts avoid the duplication of effort involved in having a judge review the preliminary findings and conclusions of SJOs. At the same time, the systematic use of SJOs as temporary judges in family cases removes them from their “subordinate” role, making them *de facto* judges. Both Judicial Council policy and working group opinion favor assigning judges, rather than long-term “temporary” judges, to family cases.

3. Recommendations

The group recommends that all judicial duties in family cases be considered core judicial duties to be performed by judges. Judicial decisions in family cases have lasting effects on the parties’ homes, familial relationships, and finances. Other types of disputes with similarly high stakes are handled almost exclusively by judges. For these reasons the group concluded that family cases cannot fairly be considered “subordinate” to other types of cases.

Even if some of the judicial work in family cases could be considered subordinate, the nature of family cases does not permit them to be split neatly into categories such as serious/unserious or complex/simple. Attempts to do so would counteract the efforts of many courts to implement a “one family, one judge” policy. These factors lend further support to the group’s conclusion that judges should hear family cases.

Recognizing the wealth of family law experience that SJOs currently contribute to the bench, the group recommends that the judicial branch take steps to ensure that

⁴⁴ Judicial Council of California, *Survey of Proceedings Involving Children and Families* (March 2001).

⁴⁵ From a November 2000 survey of all presiding judges initiated by the Trial Court Presiding Judges Advisory Committee.

the judges who hear family cases are also equipped with a high level of training and experience.⁴⁶ The group’s recommendations on methods for achieving this goal are outlined in Section V of this report.

Despite the group’s recommendation that family cases be heard by judges, the group recommends that the position and authority of child support commissioners be retained. Federal funding for child support commissioners limits the duties that can be assigned to these officers and requires that they be subordinate judicial officers. The intent of the funding is to increase the number of judicial officers available to hear this specific case type. The funding would be lost if judges, rather than SJOs, were assigned to hear child support matters.

4. Alternatives Considered

The group considered several family law matters as potential subordinate judicial duties. While all of these alternatives would enable courts to retain greater use of SJOs in family cases, they share similar drawbacks. First, dividing family law cases into separate SJO and judge aspects could undermine courts’ efforts to establish “one family, one judge” policies. Second, each of the alternatives discussed can involve adjudicating matters that are too complex and serious to be considered subordinate judicial duties. In light of these drawbacks, the group concluded that it is preferable to use judges in all family cases.

a. Protective Orders

Although SJOs often hear emergency protective orders and temporary restraining orders now, the group agreed unanimously that these matters should be handled by judges. The consequences of these orders are often high—arguably higher than incarceration. People can be removed from their homes and have their children removed from their custody. Although these decisions are “temporary,” they often have long-term consequences.

b. Default Judgments

The group also determined that default judgments in family cases should be handled by judges. Although these hearings are usually routine, they can become very complex. At the outset, it is difficult to predict how complex they will become. Moreover, family case default judgments often have serious consequences; decisions are made about paternity, child custody, child support, visitation, and division of property. Because of the seriousness and complexity of

⁴⁶ It should be noted that the group does not recommend that courts be prevented from using SJOs as temporary judges under article VI, section 21, when there is a shortage of available judges.

these matters, the group believes that family case defaults should be heard by judges.

c. Code of Civil Procedure Section 259(f) Duties

Code of Civil Procedure section 259(f) gives SJOs an advisory role in family cases, permitting them to take evidence and make recommendations to the court. In the group's experience, this section is rarely used. Some courts use it when the parties will not stipulate that an SJO may sit as a temporary judge in a family case. In such an instance, the SJO hears the case as an SJO rather than as a temporary judge and then sends his or her findings to a judge for approval. While the group found this to be an inefficient practice, it was reluctant to make a recommendation that would undercut courts that find this code section to be useful. Thus, the group recommends that this section be repealed but also recommends a transition period if it would be helpful to some courts.

D. Juvenile Cases

1. Current Legal Structure

a. Juvenile Referees

Juvenile referees have the authority to hear and make orders in most types of dependency and delinquency hearings, but all orders are subject to rehearing by a judge. Referees do not have the authority to preside over jurisdictional hearings in delinquency cases without a stipulation by the parties. Similarly, unless a referee is sitting as a temporary judge, his or her order removing a minor from the home is not final until signed by a judge.⁴⁷

b. Commissioners

A commissioner assigned to sit as a juvenile referee has the same authority as a juvenile referee. A commissioner assigned to sit as a temporary judge has authority to act as a judge in juvenile cases only if the parties stipulate.⁴⁸

c. Juvenile Hearing Officers

Juvenile hearing officers may hear most nonfelony Vehicle Code violations, other minor misdemeanors, and all infractions. They may impose fines or community

⁴⁷ Welf. & Inst. Code, §§ 247–253.

⁴⁸ *In re Edgar M.* (1975) 14 Cal.3d 727; *In re Courtney H.* (1995) 38 Cal.App.4th 1221.

service but may not place a minor in custody. All orders of a juvenile hearing officer are subject to rehearing.⁴⁹

2. Current Practice

SJOs hear a large portion of the state's juvenile cases—they make up 32 percent of the bench in dependency cases and 31 percent in delinquency cases.⁵⁰ However, the work of these SJOs is generally not limited to performing subordinate judicial duties. Statewide, presiding judges estimate that SJOs hearing juvenile cases spend 71 percent of their time acting as temporary judges.⁵¹

The practice of assigning SJOs to juvenile cases varies among courts. When assigning commissioners to juvenile cases, courts have the option of assigning them as juvenile referees or as temporary judges.⁵² Neither option allows courts the same flexibility that having judges available to hear these cases would; however, the current system permits courts to choose whether the orders of juvenile SJOs will be subject to rehearing, in the case of juvenile referees, or stipulation, in the case of commissioners.

The distinction between juvenile referees and commissioners is less significant in delinquency cases than in dependency cases. In delinquency cases, neither referees nor commissioners can preside over jurisdictional hearings without a stipulation. Thus, all SJOs must sit as temporary judges to hear the jurisdictional phase of a delinquency case.

The primary benefit of assigning SJOs to hear juvenile cases is that it enables the courts to employ judicial officers with juvenile law expertise; juvenile referees often serve lengthy assignments in juvenile departments, which provides continuity and depth of experience.

There are, however, practical problems with the use of referees and commissioners in juvenile cases. The rehearing structure can result in an inefficient duplication of judicial effort. The need for stipulations can result in forum shopping and delay. Although, in some courts, the legal culture makes these problems merely theoretical, many courts regularly struggle with inefficiencies resulting from the

⁴⁹ Welf. & Inst. Code, §§ 255–263.

⁵⁰ These percentages are appreciably higher than the percentage of SJOs in other case types—SJOs make up only 7 percent of the civil bench and 9 percent of the criminal bench. Judicial Council of California, *Survey of Proceedings Involving Children and Families* (March 2001).

⁵¹ This information is taken from a survey of all presiding judges initiated by the Trial Court Presiding Judges Advisory Committee.

⁵² Under Government Code section 71622, courts may also assign juvenile referees to sit as commissioners if they meet the qualification and training requirements established by the council. These standards are being developed.

use of SJOs in juvenile cases. In most courts, the success of the practice depends on the individuals filling the SJO role and their relationship with the local bar.

3. Recommendations

The group recommends that all juvenile dependency matters and all but a limited few delinquency matters be considered “judge work.” Juvenile delinquency and dependency cases are among the most complex and serious in the courts. In these courts, parental rights are terminated and serious felonies are adjudicated. The complexity and seriousness of these matters make them core judicial duties that should be performed by judges.

The group identified two limited areas in juvenile delinquency cases that are appropriate subordinate judicial duties: truancy matters and matters currently within the authority of juvenile hearing officers.

a. Truancy Matters

Because there is no potential for incarceration in truancy matters and they are handled separately from other juvenile matters,⁵³ the group recommends that SJOs have full judicial authority in truancy matters.

b. Juvenile Hearing Officer Duties

The group believes that the duties of juvenile hearing officers are also appropriate subordinate judicial duties and recommends that they be retained as such. These duties are narrow in scope and limited to infractions, most misdemeanor Vehicle Code violations, and other minor misdemeanors. The dispositions that a juvenile hearing officer may impose are equally limited; they include the imposition of fines or community service, but not custody. All orders by juvenile hearing officers are subject to rehearing.⁵⁴

This recommendation is consistent with the group’s recommendations in the area of criminal law—both reserve the power to imprison to judges.⁵⁵

⁵³ Welf. & Inst. Code, §§ 207, 601.

⁵⁴ Welf. & Inst. Code, §§ 255–263.

⁵⁵ It is also consistent with the Judicial Council–sponsored legislation to convert some SJO positions to judgeships since the bill defines the work of juvenile referees as work for judges, but does not include the work of juvenile hearing officers in that definition.

4. Alternatives Considered

An alternative to the recommended approach would be to delegate some routine juvenile hearings, such as reviews, to SJOs. However, juvenile cases are not easily divided into routine and nonroutine components. Moreover, the group reasoned that establishing such a role for SJOs would defeat the efforts being made in many courts to provide for “one family, one judge.”

E. Civil Cases

1. Current Legal Structure

Current law establishes three primary types of subordinate judicial officers with authority in civil cases: court commissioners, probate commissioners, and mental health hearing officers. In many instances these different types of SJOs can be cross-assigned, but they each have different authority.

a. Court Commissioners

Commissioners have general authority applicable in all case types. The authority most applicable in civil cases includes the authority to:

- Hear and determine small claims cases;⁵⁶
- Hear and determine ex parte motions;⁵⁷
- Take proof and report findings on any matter of fact upon which the court requires information;⁵⁸
- Approve bonds and undertakings;⁵⁹
- Hear and determine all uncontested actions (subject to requirements pertaining to temporary judges);⁶⁰
- Hear and determine most attachment matters;⁶¹

⁵⁶ Gov. Code, § 72190.

⁵⁷ Code Civ. Proc., § 259(a).

⁵⁸ Code Civ. Proc., § 259(b).

⁵⁹ Code Civ. Proc., § 259 (c).

⁶⁰ Code Civ. Proc., § 259(h).

⁶¹ Code Civ. Proc., §§481.010–493.060.

- Perform judicial duties concerning personal property liability and liens of innkeepers and others,⁶² and
- Act as a referee by agreement of the parties or by court order.⁶³

b. Probate Commissioner

A probate commissioner has authority to review and advise the court on probate matters and may also exercise the powers of a court commissioner.⁶⁴

c. Mental Health Hearing Officer

Mental health hearing officers have authority to conduct certification review hearings and capacity hearings in mental health matters.⁶⁵ Judges, commissioners, and referees may sit as mental health hearing officers. However, mental health professionals and attorneys may also be appointed to conduct certification review or capacity hearings.

Unlike other types of SJOs, mental health hearing officers are not selected solely by the court. The Lanterman-Petris-Short Act provides for participation by mental health professionals in establishing a list of appropriate hearing officers.⁶⁶

2. Current Practice

While SJOs are not as large a presence in civil cases as they are in other case types, there are some types of civil cases in which SJOs are heavily represented. SJOs make up approximately 18 percent of the bench in probate cases and 15 percent of the bench in mental health cases. In other civil cases SJOs are approximately 7 percent of the bench.⁶⁷

When SJOs hear civil cases, they usually do so as temporary judges, rather than in their capacity as SJOs. A survey of presiding judges found that SJOs hearing civil cases spend 61 percent of their time acting as temporary judges. When small claims cases are excluded from the total, the percentage rises to 84.⁶⁸

⁶² Code Civ. Proc., §§ 1861.28, 1859–1863.

⁶³ Code Civ. Proc., §§ 638–645.1.

⁶⁴ Gov. Code, § 69897. (Note that this statute only permits probate commissioners in courts with a population between 600,000 and 900,000.)

⁶⁵ Welf. & Inst. Code, §§ 5256.1, 5334.

⁶⁶ Welf. & Inst. Code, §§ 5256.1, 5334.

⁶⁷ Judicial Council of California, *Survey of Proceedings Involving Children and Families* (March 2001).

⁶⁸ This information is taken from a November 2000 survey of all presiding judges initiated by the Trial Court Presiding Judges Advisory Committee.

3. Recommendations

In reviewing subordinate judicial duties in civil cases, the group found a useful distinction between contested and uncontested matters. While the group felt that most contested matters should be heard by judges, it viewed most uncontested matters as appropriate for subordinate judicial officers. In keeping with the court's reasoning in *People v. Lucas*, the group also took into account the seriousness, complexity, and diversity of the factual and legal issues raised in the types of hearings discussed.⁶⁹

The group agreed on the following principle: the adjudication of contested civil matters and other civil matters involving serious, complex, and diverse factual and legal issues is a core judicial function that should be performed by judges. Applying this principle, the group concluded that the following duties are appropriate subordinate judicial duties:

a. Small Claims

The group recommends retaining small claims cases within the authority of SJOs. This runs contrary to the group's general view that contested cases should be heard by judges. However, the group concluded that the limited amount in controversy and the absence of jury trials in small claims cases make them a reasonable exception to the general rule. This determination was influenced by the fact that the practice of assigning small claims cases to commissioners has become well established over time.

The group acknowledges that there are compelling reasons to assign judges, rather than SJOs, to small claims cases. These cases are often complex and can require a great deal of judicial officers' time because litigants represent themselves. These are also cases in which the public has a great amount of contact with the court system. All of these factors weigh in favor of reserving the adjudication of small claims cases to judges, and many group members are of the opinion that the ideal practice would be to have judges hear small claims cases. However, assuming that the courts will continue to use SJOs in civil cases, the group determined that the delegation of small claims cases to SJOs is reasonable and appropriate. The group feels this issue should be revisited if the Legislature significantly raises the jurisdictional limits in small claims cases.

⁶⁹*People v. Lucas* (1978) 82 Cal.App.3d 47, 50–56.

b. Small Claims Appeals

The group recommends that SJOs retain the authority to hear small claims appeals. Because small claims “appeals” are actually trials de novo, most group members believed that there was no need to distinguish between the authority to hear a small claims trial and a small claims appeal.⁷⁰ A minority of the group felt that small claims appeals should be heard by judges because these cases often raise complex issues of fact and law and are not otherwise subject to judicial review.⁷¹

c. Uncontested Matters

The group recommends that the current authority of SJOs to hear, report on, and determine most uncontested matters be retained. This includes the authority to hear and determine civil defaults,⁷² to enter judgments in accordance with the terms of written stipulations,⁷³ and to conduct uncontested civil trials.⁷⁴ The group concluded that these duties are appropriate SJO duties because they are consistent with the “chamber duties” for which SJOs were initially established.⁷⁵

d. Discovery Matters

The group recommends that SJOs have the same authority as a judge in civil discovery matters. Handling discovery matters as a referee falls within the current authority of SJOs. The group favors making this authority explicit and expanding it to give SJOs full judicial authority in discovery matters.

Permitting SJOs to hear these matters would increase access for civil litigants who are not able to pay the fees for private discovery referees. It would also free judges to hear more substantive matters. In courts that use a direct calendaring system, the benefits of this change will be more limited.

e. Other Pretrial Motions

The group recommends extending SJO authority to include all pretrial civil motions that do not have the potential to terminate the litigation. The preliminary nature of such motions makes them appropriate SJO duties. Motions that can

⁷⁰ Code Civ. Proc., § 116.770.

⁷¹ Code Civ. Proc., § 116.780.

⁷² *Reisman v. Shahverdian* (1984) 153 Cal.App. 3d 1074, 1093.

⁷³ *People v. Superior Court* (1965) 239 Cal.App.2d 99, 103; *Rooney v. Vermont Investment Corp.* (1973) 10 Cal.3d 351, 367.

⁷⁴ *Bill Benson Motors, Inc. v. Macmorris Sales Corp.* (1965) 238 Cal.App.2d Supp. 937, 944.

⁷⁵ Because default set-asides are contested matters and because of their finality, the group does not consider these to be subordinate judicial duties.

terminate the litigation, such as summary judgment motions, should be reserved to judges.

f. Settlement Conferences/Mediation

The group recommends that SJO authority explicitly include settlement conferences and mediation. These are appropriate subordinate judicial duties because they cannot terminate the litigation without the parties' consent. If the parties do reach an agreement, the matter becomes uncontested, making the entry of the resulting settlement an appropriate SJO duty.

g. Uncontested Postjudgment Remedies

The group recommends that uncontested postjudgment remedies be designated as subordinate judicial duties. However, the group favored reserving contested postjudgment remedies to judges.

4. Alternatives Considered

a. Unlawful Detainer Cases

The group discussed expanding subordinate judicial authority in unlawful detainer cases but does not favor such an expansion. Because unlawful detainer cases can have large amounts in controversy—in cases involving long-term commercial leases, for example—and because they often involve important issues concerning individuals' homes, the group concluded that the adjudication of unlawful detainer cases is a core judicial function that should be reserved to judges.

b. Emergency Protective Orders and Temporary Restraining Orders

Emergency protective orders and temporary restraining orders affect fundamental liberty interests.⁷⁶ The group concluded that the seriousness of these matters makes them classic “judge work” that should not be delegated to SJOs. It appears that the use of SJOs in these matters has evolved from the widespread use of SJOs in family cases, rather than from a determination that they are appropriate for delegation to subordinate judicial officers. The group is aware that this recommendation would call for a significant change in many courts but feels that the nature of these decisions are such that they cannot be fairly characterized as subordinate.

⁷⁶ See Fam. Code, § 6240; Pen. Code, § 646.91.

c. Probate Guardianships and Conservatorships

Although the group believed it would be appropriate for SJOs to handle uncontested probate matters, it also noted that probate cases are not easily separated into contested and uncontested matters. What appears to be an uncontested matter may become complex and contested at any time. On balance, the group concluded that probate matters should be reserved to judges.

Consequently, the group also recommends that the office of probate commissioner be eliminated. As a practical matter, it appears that probate commissioners have been replaced by probate examiners who review probate files and make recommendations to the probate judge. The group recommends that judges, aided by probate examiners where appropriate, hear probate matters.

d. Mental Health Hearings

The duties performed by mental health hearing officers affect fundamental liberty interests such as whether an individual can be detained for involuntary treatment of a mental disorder.⁷⁷ These determinations are sufficiently serious and complex that they should be performed by judges, rather than delegated to SJOs. Mental health specialists should guide judges, but they should not exercise judicial functions in these cases.

For these reasons, the group recommends that the office of mental health hearing officer be eliminated. This is a significant change, and it will possibly require judges to perform duties that have been delegated to subordinate judicial officers in many courts. Nevertheless, the group concluded that the decisions made in mental health hearings cannot fairly be categorized as subordinate judicial duties.

e. Trials

In the group's opinion, trials should be heard by judges. While they were willing to make an exception for small claims trials, the group agreed that presiding over other court trials and jury trials is a core judicial function that should not be delegated to SJOs.

f. Provisional Remedies

The group recommends that provisional remedies be reserved to judges because of their complexity and the important public issues they involve.

⁷⁷ See Welf. & Inst. Code, §§ 5256.1, 5334(c).

g. Appeals

Although some routine appellate matters could be considered subordinate in nature, the group favored reserving all appellate matters, except for small claims appeals, to judges. The complexity of appellate matters and their public policy impact make them core judicial duties that should be performed by judges.

IV. RECOMMENDATIONS FOR STRUCTURAL REFORM

A. Consolidation of SJO Duty Statutes

In its review of statutes relating to SJOs, the working group encountered frequent overlapping and sometimes unclear sources of SJO authority. The large number of these statutes and their location in so many different codes does not appear to be by design. Instead, it seems that SJO statutes have been enacted independently of each other over the course of many years and in response to changing social and political pressures. The resulting statutory structure is unnecessarily complex; conflicts about the meaning of different provisions relating to SJOs can absorb a disproportionate amount of court time. Thus, the group recommends that the many statutes designating subordinate judicial duties be reorganized and consolidated into one cohesive statutory structure.

B. Consolidation of SJO Titles

As part of the reorganization and consolidation of SJO statutes, the group recommends that the number of SJO types also be consolidated. The Trial Court Employment Protection and Governance Act provides that SJOs who meet the Judicial Council's minimum qualification and training standards may be cross-assigned to perform the duties of other types of SJOs.⁷⁸ Rules establishing those qualification and training standards have been drafted and circulated for comment. If adopted, the rules will establish a single set of SJO qualification and training standards, which will enable courts to cross-assign SJOs freely.⁷⁹ In light of this change, the group saw little reason to retain the many types of SJOs and their overlapping scopes of authority.

Like the unification of the municipal and superior courts, this unification of SJO types will increase flexibility in the courts and enable them to use their judicial resources where they are most needed.

⁷⁸Gov. Code, § 71622(d).

⁷⁹The council is scheduled to consider these rules for adoption at its November 1, 2002, meeting.

The group acknowledges that the implementation of this recommendation may need to be undertaken gradually. Some courts, particularly the larger courts, compensate different types of SJOs at significantly different levels. These compensation issues should be taken into consideration when consolidating SJO types.

V. IMPLEMENTATION OF RECOMMENDATIONS

The working group's recommendations are intended to serve as long-term objectives for the judicial branch to work toward as it restructures SJO duties and titles. Because the implementation of these recommendations may need to occur gradually and be coordinated with other Judicial Council initiatives, the working group has not undertaken the drafting of rules of court or legislation. However, the group has several suggestions for the implementation phase of this project.

A. Consider Replacing SJO Statutes With Rules of Court

The group recommends that the Judicial Council give further study to the option of replacing existing SJO statutes with rules of court. Group members identified several factors that favor defining subordinate judicial duties in rules of court rather than in statutes. Defining subordinate judicial duties involves a determination of which judicial duties are appropriate for delegation—a determination that falls squarely within the province of the judicial branch.

In addition, a move away from statutes to rules of court would be consistent with the policy underlying the Trial Court Employment Protection and Governance Act (court employment act). That act delegated to the courts many employment issues that had formerly been determined by statute, such as the number and type of court employees and their salaries.⁸⁰ It also delegated to the judicial branch authority over the numbers and types of SJOs—formerly a function of the Legislature and the boards of supervisors.⁸¹ Because SJOs are court employees, it would be consistent with the policy of the court employment act to delegate the definition of subordinate judicial duties to the judicial branch.

On the other hand, the practice of designating subordinate judicial duties by statute has a long history, dating from at least 1872 when the Legislature enacted Code of Civil Procedure section 259 concerning the power of court commissioners. Throughout this long history, the courts have given deference to the Legislature's interpretation of the constitutional phrase "subordinate judicial duties." This

⁸⁰ Gov. Code, §§ 71620, 71623.

⁸¹ Gov. Code, § 71622.

history may weigh in favor of retaining a statutory designation of subordinate judicial duties.

Because there are reasonable arguments on both sides of this issue, and because political factors may weigh in its resolution, the group recommends that the Judicial Council give it further study as the council moves toward the implementation of the recommendations in this report.

B. Potential SJO Titles

The group discussed a wide range of potential titles for a single consolidated SJO position, but feels that it is premature to choose a single title. Some possibilities include associate judge, court commissioner, magistrate, hearing officer, and referee. Although the title “subordinate judicial officer” occurs in the constitution, the group does not favor it as a working title for these judicial officers.

Because the title “magistrate” raises more complex issues than other potential titles, it is discussed briefly here. “Magistrate” is the title of SJOs in the federal courts, which could make the title easier for court users to understand than the titles “commissioner” or “referee.” However, the term “magistrate” has a distinct historical meaning in California, which would need to be changed if SJOs were to use it as a title. Currently only judges are magistrates in California.⁸² It is through their status as magistrates that judges have authority to conduct arraignments and preliminary hearings.⁸³ Prior to trial court unification, the office of magistrate gave municipal court judges the authority to act in the early stages of felony cases. Now that the municipal and superior courts are unified, the office of magistrate has less practical value. If the existing office of magistrate were eliminated, the title magistrate could be used for SJOs. Because the term magistrate appears in the California Constitution, this change would require a constitutional amendment.⁸⁴

C. Special Recommendations for Family and Juvenile Cases

1. Juvenile Referees

Practically speaking, the group’s recommendation that judges hear nearly all juvenile matters means a phasing out of the office of juvenile referee. However, the group urges that the implementation of this recommendation take into account the current role of SJOs in juvenile courts. Several group members emphasized that SJOs are the backbone of their juvenile courts and possess an expertise in

⁸² Pen. Code, § 808.

⁸³ Pen. Code, §§ 825, 858–883; See *Koski v. James* (1975) 47 Cal.App.3d 349.

⁸⁴ See, e.g., Cal. Const., art. I, § 14.

juvenile law that serves the courts and the parties well. Thus, the steps the judicial branch takes toward the long-term goal of assigning judges to juvenile courts should ensure that these courts are not destabilized or underserved in the short term.

2. Attracting Judges to Family and Juvenile Courts

Fully implementing the group's recommendations in family and juvenile cases will require courts to assign more judges to those cases. The group acknowledges that the courts face obstacles in attracting and retaining judges in their family and juvenile courts. Although the resolution of this issue does not fall within the charge to the working group, the group has submitted to the Family and Juvenile Advisory Committee and the Trial Court Presiding Judges Advisory Committee a list of potential policy initiatives directed at addressing it. The group requests that the advisory committees and AOC staff investigate these policy initiatives further as they carry out the council's directive to "consider and advise the council on methods for acquiring, retaining, and training judges with interest in family and juvenile law and for establishing assignment and length of service criteria in these areas."⁸⁵

⁸⁵ Judicial Council of Cal., Admin. Off. of Cts., *Subordinate Judicial Officers* (December 15, 2000), p. 2.

APPENDIX 1: Judicial Council Charge to the SJO Working Group

At its December 15, 2000, meeting, the Judicial Council took several actions concerning subordinate judicial officers, which are listed below. Action number 5 (**in bold**) contains the charge to the Subordinate Judicial Officer Working Group.

On December 15, 2000, the Judicial Council:

1. Directed staff to present to the Rules and Projects Committee draft rules of court recognizing that subordinate judicial officers are a valued part of the California court system because of the expertise they bring to the bench and the flexibility they allow local courts and establishing the following policy:
 - a. The primary role of subordinate judicial officers should be to perform subordinate judicial duties; but
 - b. A subordinate judicial officer may appropriately sit as a temporary judge where lawful, if his or her presiding judge determines that, because of a shortage of judges, it is necessary for the effective administration of justice.
2. Directed staff to propose to the Policy Coordination and Liaison Committee legislation providing that:
 - a. Upon a recommendation by the Judicial Council developed after review of legislatively established criteria and in consultation with the affected court a vacant subordinate judicial officer position shall be converted to a judgeship. The Governor shall appoint a judge to fill the new judgeship;
 - b. A vacancy occurs when an SJO resigns, retires, or is removed from his or her position.
3. Directed staff to develop rules of court establishing minimum qualification and training standards for subordinate judicial officers, and present those rules to the Rules and Projects Committee for review and circulation.
4. Directed the Family and Juvenile Law Advisory Committee, the Trial Court Presiding Judges Advisory Committee, and AOC staff to consider and advise the council on methods for acquiring, retaining, and training judges with interest in family and juvenile law and for establishing assignment and length of service criteria in these areas.
- 5. Directed the Administrative Director to establish a working group, composed of members of the appropriate advisory committees, and other interested judges, subordinate judicial officers, bar members, and AOC staff, charged with evaluating issues subsequent to and related to the implementation of Recommendations 1-4 as follows:**

- a. Evaluate the current titles and statutory duties of subordinate judicial officers and, if appropriate, make recommendations for changes not inconsistent with the other recommendations in this report;**
 - b. Study and report to the council on the advisability of assigning certain subordinate judicial duties (e.g., traffic infractions) to non-judicial officers;**
 - c. Study and report to the council on the advisability of extending the conversion process established as a result of Recommendation 2 to allow conversion of subordinate judicial positions that are not vacant into superior court judge positions;**
 - d. Review, comment, and make recommendations on the work products resulting from Recommendations 1–4, 6 and 7.**
6. Adopted the following policy: No current subordinate judicial officer shall lose his or her employment solely as a result of the policies, rules, and legislation proposed by Recommendations 1 through 5 above.
7. Approved the following interim (January 1, 2001 through June 30, 2001) process for creating new subordinate judicial officer positions:
 - a. For any subordinate judicial officer position requested after January 1, 2001, courts must apply to the Judicial Council through the AOC, documenting the court's subordinate judicial officer workload and relating the amount and type of workload to the need for a new subordinate judicial officer position. Courts must also document the availability of permanent funding for the requested position;
 - b. Staff will analyze applications in light of the policy set forth in Recommendation 1, and make a recommendation to the Judicial Council on whether the application should be granted.