



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

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2012

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Title	Agenda Item Type
Trial Court Security: Petitions under Government Code section 69926	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rule 10.174	November 1, 2012
Recommended by	Date of Report
Trial Court Presiding Judges Advisory Committee	October 12, 2012
Hon. Laurie Earl, Chair	Contact
	Michael I. Giden, 818-558-4802 <a href="mailto:michael.giden@jud.ca.gov">michael.giden@jud.ca.gov</a>

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### **Executive Summary**

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt rule 10.174 of the California Rules of Court. The proposed rule would fulfill the Judicial Council's obligation under recently enacted legislation to adopt a rule of court that establishes a process for resolving disputes that may arise among a sheriff, county, and superior court related to a memorandum of understanding for court security services. The proposed rule would provide a process for finally and expeditiously resolving such disputes.

### **Recommendation**

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council adopt rule 10.174 of the California Rules of Court, effective November 1, 2012, to establish a process for resolving disputes that may arise among a sheriff, county, and superior court related to a memorandum of understanding for court security services.

The text of the proposed rule is attached at page 5.

## Previous Council Action

On May 17, 2012, the Policy and Coordination Liaison Committee, acting on behalf of the Judicial Council voted to support trailer bill language to amend the Superior Court Law Enforcement Act of 2002 to reflect the changed relationship between courts, counties, and sheriffs in light of the realignment of court security funding implemented in the 2011–2012 fiscal year (Assem. Bill 118; Stats. 2011, ch. 40). Substantially similar language was included in Senate Bill 1021, a bill relating to public safety and the judicial branch.<sup>1</sup> The Governor signed SB 1021 into law on June 27, 2012. Among other things, the bill amended Government Code section 69926 to establish a new process for resolving disputes related to a memorandum of understanding (MOU) for court security that might arise among a sheriff, county, and superior court.

Government Code section 69926(e) provides as follows:

(e) The Judicial Council shall, by rule of court, establish a process that, notwithstanding any other law, expeditiously and finally resolves disputes that are not settled in the meeting process described in subdivision (d).<sup>[2]</sup> The rule of court shall do all of the following:

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

The Judicial Council has not previously acted on this statutory requirement to adopt a rule of court establishing a process for resolving disputes related to court security MOUs.

## Rationale for Recommendation

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

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

<sup>2</sup> Subdivision (d) requires a meeting of representatives from the sheriff, county, superior court, California State Sheriffs’ Association, California State Association of Counties, and the Administrative Office of the Courts.

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

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

### **Comments**

The proposal to adopt rule 10.174 was circulated for public comment between September 13 and September 27, 2012, as part of an expedited comment cycle. Two comments were submitted. One commentator agreed with the proposal, the second did not indicate a position, but suggested substantive alternatives. The full text of the comments received and the committee's responses are presented in the attached comment chart at page 6.

The second commentator suggested that the writs be submitted to the Court of Appeal district to which the trial court is assigned; that the Administrative Presiding Justice of the Court of Appeal district appoint a two-member panel to review the writ; that the rule impose a deadline for the appellate court to rule; and that there be no appeal from the decision of the Court of Appeal. The committee considered these suggestions, but concluded that they were not consistent with the requirements of Government Code section 69926.

Before circulating the proposal for public comment, staff provided a draft of the rule to the Administrative Presiding Justices Advisory Committee and consulted with the staff of the Supreme Court. Staff also provided notice of the posting of the invitation to comment on the proposal to the California State Association of Counties and the California State Sheriffs' Association to be shared with their respective memberships.

### **Alternatives Considered**

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

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

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

### **Attachments**

1. Rule 10.174 of the California Rules of Court at page 5.
2. Comment Chart at page 6.

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

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

3  
4 **(a) Application**

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

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

9  
10 (1) If a sheriff, county, or superior court is unable to resolve a dispute related to the  
11 memorandum of understanding required by Government Code section 69926(b), the  
12 sheriff, county, or superior court may file a petition for a writ of mandamus or writ  
13 of prohibition.

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

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

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

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

29  
30 **(d) Appeal**

31  
32 (1) Any notice of appeal of a decision under (c) must be filed in the same superior court  
33 in which the petition was initially filed and must include on the first page the  
34 following language, below the case number, in the statement of the character of the  
35 proceeding (see rule 2.111(6)): “Notice of Appeal Relating to Petition filed under  
36 Government Code section 69926(e): Transfer Requested.”

37  
38 (2) On receipt of the notice of appeal, the Court of Appeal must request that the  
39 Supreme Court transfer the appeal to an appellate district other than the one in  
40 which the county, the superior court, and the sheriff are located.

**SP12-09****Trial Court Security: Petitions under Government Code section 69926** (adopt Cal. Rules of Court, rule 10.174)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Santa Cruz County Sheriff's Office by Susan Rozario Sr. Departmental Analyst 701 Ocean Street Santa Cruz, CA 95060	A	Santa Cruz County Sheriff-Coroner Phil Wowak has reviewed the proposed rule that establishes a process for resolving disputes that may arise among a sheriff, county, and superior court related to a memorandum of understanding for court security services and agrees with these proposed changes.	No response required.
2.	Terry McNally Court Executive Officer Superior Court of Kern County	NI	I recommend that, given all that is on the Chief Justice's plate and that appeals from the County are heard by local Appellate Districts as a normal course of business, the following recommendation:  a) Regionalize the Writ Process:  1) The Trial Court will submit the Writ to the appropriate Appellate Court District that the Trial Court is assigned; 2) The Presiding Judge of the Appellate Court shall appoint a two member panel to review the Writ; 3) The Appellate Court panel shall rule on the Writ in ____ days; 4) There shall be no appeal after the decision of the Appellate Court.	The committee considered the proposal, but concluded that it is not consistent with the process required by Government Code section 69926. Rules of court "shall not be inconsistent with statute." (Cal. Const., art. VI, § 6(d).)