



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 17, 2015

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Title	Agenda Item Type
Subordinate Judicial Officers: Complaints and Notice Requirements	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 10.603 and 10.703	January 1, 2016
Recommended by	Date of Report
Trial Court Presiding Judges Advisory Committee	April 7, 2015
Hon. Marsha G. Slough, Chair	Contact
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### **Executive Summary**

The Trial Court Presiding Judges Advisory Committee recommends amending rules 10.603 and 10.703 of the California Rules of Court to (1) simplify the procedures a presiding judge must follow while reviewing and investigating complaints against subordinate judicial officers (SJOs); (2) clarify a presiding judge's authority in conducting an investigation and determining the appropriate action to be taken; and (3) clarify the circumstances under which discipline against an SJO must be reported to the Commission on Judicial Performance (CJP). The proposed amendments were prompted in part by a suggestion from Victoria B. Henley, Director–Chief Counsel of the CJP, that the rule be amended to address ambiguity as to what types of disciplinary action a presiding judge can impose after an investigation and what types of action must be reported to the CJP.

### **Recommendation**

The Trial Court Presiding Judges Advisory Committee recommends that the Judicial Council, effective January 1, 2016, amend rule 10.703 of the California Rules of Court to:

1. Replace the two-tier investigation process in subdivisions (i) and (j) with one investigation;

2. Delete from subdivision (j)(3) the list of possible actions available to the presiding judge and replace it with a provision (proposed subdivision (i)(4)) that a presiding judge must, in his or her discretion, close the complaint, impose discipline, or take other appropriate corrective action, which may include oral counseling, oral reprimand, or warning;
3. Add new subdivision (f)(3) to provide that a presiding judge has discretion to investigate anonymous complaints;
4. Amend subdivision (h)(3) to provide that when a presiding judge closes a complaint after initial review under subdivision (h)(1) without having contacted the SJO, it is optional to advise the SJO in writing of the disposition;
5. Add subdivision (i)(5) to clarify that when a presiding judge closes a complaint after investigation without having contacted the SJO, the presiding judge must give the SJO written notice of the final action taken on the complaint only if the presiding judge is aware that the SJO knows about the complaint;
6. Delete from subdivision (j)(2)(B) the phrase “sufficient to allow a meaningful response to the allegations” because at that stage of the process, the SJO is responding only to the proposed discipline, not to the allegations;
7. Add to subdivision (j)(4)(A) the phrase “to the intended final action” to clarify that, at that stage of the process, the SJO is responding to the intended final action, not to the allegations;
8. Amend subdivision (j)(5) to provide that if the SJO requests an opportunity to respond to the intended final action, the presiding judge “must” (rather than “should”) allow the SJO an opportunity to respond during the investigation, and amend subdivision (j)(7) to eliminate the reference to denying the SJO an opportunity to respond;
9. Amend subdivisions (g)(1) and (3) to provide that in exceptional circumstances, a presiding judge may ask the presiding judge of another court to investigate a complaint and provide the results of the investigation to the court for adjudication;
10. Add a provision as new subdivision (a)(4) stating that the procedures in the rule do not restrict the discretion of the presiding judge in taking appropriate corrective action;
11. Add a definition of “written reprimand” as new subdivision (b)(4);
12. Amend subdivisions (f)(4) and (l)(1) to clarify that a presiding judge must give written notice to the complainant of receipt of the complaint and the final court action only if the complainant is known;

13. Add “hearing officer” to the definition of “subordinate judicial officer” in subdivision (b)(1);
14. Delete from subdivision (l)(1) the words “and the subordinate judicial officer” because the requirement that the presiding judge notify the SJO of the final court action is also stated in subdivisions (i)(5) and (j)(6).

The Trial Court Presiding Judges Advisory Committee also recommends that the council, effective January 1, 2016, amend rule 10.603(c)(4)(C)(ii) to modify the cross-reference to rule 10.703(k) to reflect the renumbering of that subdivision as rule 10.703(j).

The committee recommends setting the effective date of the amendments to January 1, 2016, to give presiding judges, SJOs, and court administrators time to adjust to the new procedures in the rule. Courts may wish to schedule trainings on the revised procedures, and courts that have developed manuals on handling SJO complaints will need to revise those materials.

The text of amended rules 10.603 and 10.703 is attached at pages 13–20.

### **Previous Council Action**

At its April 23, 2010 meeting, the Judicial Council amended rule 10.703 to clarify the circumstances under which a report to the CJP must be made by the presiding judge.

### **Rationale for Recommendation**

The amendments to rules 10.603 and 10.703 simplify the procedures a presiding judge must follow while reviewing and investigating complaints against SJOs. They also clarify (1) a presiding judge’s authority and options in investigating and resolving a complaint, and (2) the circumstances under which a report must be filed with the CJP. Finally, some of the proposed amendments would make the procedures consistent with those used by the CJP in processing complaints about judges.

### **Replacing two-tier investigation process with one investigation**

The current rule requires a presiding judge to review each complaint to determine whether it should be closed or investigated further. The rule provides that if initial review by the presiding judge shows that a basis for further investigation exists, the presiding judge must conduct a preliminary investigation. (Rule 10.703(i).) If the presiding judge, after conducting the preliminary investigation, “finds a basis for proceeding with the investigation,” he or she must then conduct a formal investigation. (Rule 10.703(j).)

Under the proposed amendments, there would be just one investigation if the presiding judge determines after initial review that there is a basis for an investigation. As with subdivision (i)(3), the presiding judge would be required to give the SJO an opportunity to respond to the allegations before the presiding judge takes any disciplinary action. After reviewing the response and completing the investigation, the presiding judge would close the matter, impose discipline,

or take any other appropriate action. The actual investigation procedure would not change except that there would be one investigation instead of two.

### **Clarifying the presiding judge’s authority and options in resolving complaints**

The rule as it is currently written is unnecessarily complicated. It provides that after a preliminary investigation, the presiding judge may close the matter, proceed to a formal investigation, or take “appropriate informal action, which may include a reprimand or warning . . . .” (Rule 10.703(i)(4).) After a formal investigation, if the presiding judge decides to take action, the rule lists various types of final action a presiding judge may take, including no action, an oral or written warning, a private or public reprimand, suspension, termination, or any other action the court deems appropriate. (Rule 10.703(j)(3).)

To simplify the rule and clarify the presiding judge’s authority in determining the appropriate action, the amendments eliminate the list of possible actions available to the presiding judge. Instead, the amended rule simply provides that after an investigation, the presiding judge “must, in his or her discretion: [¶] (A) Close action on the complaint if the presiding judge finds the complaint lacks merit; [¶] (B) Impose discipline; or [¶] (C) Take other appropriate corrective action, which may include, but is not limited to, oral counseling, oral reprimand, or warning of the subordinate judicial officer.” (Rule 10.703(i)(4).) This change would diminish the perception that a presiding judge is limited by the list of possible actions or that the SJO is entitled to progressive discipline.

### **Investigating anonymous complaints**

The amendments also add a provision specifying that a presiding judge has discretion to investigate complaints that are anonymous. (Rule 10.703(f)(3).) This new provision does not alter a presiding judge’s obligation to investigate allegations of serious misconduct brought to his or her attention. Rather, it clarifies the notion that a presiding judge is not required to investigate an anonymous complaint that provides insufficient facts to launch an investigation or that does not allege conduct that violates any ethical principles. This amendment is consistent with the CJP policy regarding anonymous complaints.

### **Advising SJO of the disposition of the complaint**

When a presiding judge closes a complaint after initial review under subdivision (h)(1) without having contacted the SJO, subdivision (h)(3) provides that the presiding judge “must advise the subordinate judicial officer in writing of the disposition.” Under the current rule, a presiding judge is required to notify an SJO that a complaint has been filed only if the presiding judge intends to take some type of “informal action” or to impose discipline. (Rules 10.703(i)(3) and (j)(1)(B).) Therefore, an SJO may not even know a complaint has been filed until the presiding judge advises the SJO that the matter has been closed—for example, when the essence of a complaint is that the SJO ruled against the complainant and the presiding judge closes the matter without contacting the SJO. Similarly, a presiding judge could investigate a complaint and close the matter without asking the SJO to respond to the allegations. For example, the presiding judge could listen to a recording of a hearing and determine, without contacting the SJO, that an

allegation of poor demeanor was unmeritorious. In both examples, the committee's view is that the presiding judge should not be required to advise the SJO of the disposition of the complaint.

This proposed revision eliminates the requirement in subdivision (h)(3) that a presiding judge *must* advise the SJO in writing of the disposition and instead gives the presiding judge discretion to notify the SJO. The committee also recommends amending subdivision (j)(2) (proposed subdivision (i)(6)) and adding a new subdivision (i)(5) to require a presiding judge to give to the SJO written notice of the final action taken only if the presiding judge is aware that the SJO knows about the complaint. These amendments are consistent with the CJP policies regarding notifying judges of complaints filed against them. If a complaint to the CJP does not result in an investigation, or if the investigation reveals facts that warrant dismissal of the complaint without contacting the judge, the CJP does not inform judges about those complaints.

#### **Allowing opportunity to respond to intended final action**

The rule provides that within 10 days or as soon as reasonably possible after completion of the investigation, the presiding judge must give the SJO notice of the intended final action on the complaint and must advise the SJO that he or she may request an opportunity to respond to the intended final action. (Rule 10.703(j)(2), (4), and (5).) Subdivision (j)(5) currently states that if the SJO requests an opportunity to respond to the intended final action, the presiding judge “should” allow it. The committee recommends changing “should” to “must” to make subdivision (j)(5) consistent with subdivision (j)(7). Otherwise, a presiding judge could deny an opportunity to respond after advising the SJO that he or she may request such an opportunity. This amendment also necessitates removal of the phrase “or has not been given” in subdivision (j)(7). That subdivision directs a presiding judge to give written notice of the final action to the complainant if the SJO “does not request or has not been given an opportunity to respond.”

#### **Asking CJP to investigate and adjudicate complaints**

Current subdivision (g)(3) states: “In exceptional circumstances a presiding judge may request the commission to investigate a complaint on behalf of the court and provide the results of the investigation to the court for action.” The amendment allows a presiding judge the option of asking a presiding judge of another court to investigate a complaint on behalf of the court and providing the results of the investigation to the court for adjudication. This amendment permits a presiding judge to ask for another court's help if, for example, the court lacks the resources to conduct an investigation. Allowing a presiding judge the option of asking another court, rather than the CJP, to handle the investigation avoids unnecessary involvement by the CJP.

#### **Other amendments**

The proposed amendments add several other provisions to the rule. First, subdivision (a)(4) states specifically that the procedure for addressing complaints does not restrict the discretion of the presiding judge in taking appropriate corrective action.

Second, the proposed amendments add a definition of “written reprimand” to the rule. (Proposed rule 10.703(b)(4).) That term is used currently in subdivision (k)(1), which requires a presiding

judge to report an SJO to the commission when the presiding judge disciplines the SJO by written reprimand, suspension, or removal.

Third, current subdivision (l), which states what the presiding judge must tell the complainant and the SJO after the matter is resolved, is amended to state that if the complainant is unknown, either because the matter did not come to the attention of the presiding judge as a result of a complaint or because the complainant is anonymous, the presiding judge need not notify the complainant. A similar revision is added to proposed subdivision (f)(4), which requires written notice to a complainant of receipt of a complaint. The revision adds the words “if known” to clarify that notice is required only if the complainant is known.

Fourth, subdivision (b)(1) defines “subordinate judicial officer” as an attorney employed by a court to serve as a commissioner or referee. The amendments add “hearing officer” to that definition. (See Cal. Rules of Court, rule 10.701(a).)

Fifth, subdivision (j)(2)(B) provides that a presiding judge who has completed an investigation and has decided to take disciplinary action must give the SJO, in writing, “[t]he facts and other information forming the basis for the proposed action and the source of the facts and information, sufficient to allow a meaningful response to the allegations.” The committee recommends deleting the phrase “sufficient to allow a meaningful response to the allegations” because at this stage of the process, the SJO is being given an opportunity to respond to the proposed discipline; the SJO has already had an opportunity to respond to the allegations of misconduct. For the same reason, the committee proposes clarifying in subdivision (j)(4)(A) that this is an opportunity to respond “to the intended final action.”

Sixth, subdivision (i)(3) provides that a presiding judge may give the SJO a copy of a complaint or a summary of its allegations and allow the SJO to respond. The committee recommends adding the phrase “to the allegations during the investigation” to clarify that the SJO has an opportunity to respond to the allegations while the investigation is pending.

Seventh, subdivision (i)(3) also provides that the presiding judge *must* give the SJO an opportunity to respond to the allegations before taking any disciplinary action. The committee recommends adding the phrase “decides to” before “take any disciplinary action” to clarify that a presiding judge must give the SJO an opportunity to provide his or her explanation of what occurred before the presiding judge decides to take any disciplinary action.

Finally, in subdivision (l)(1), the amendments delete the phrase “and the subordinate judicial officer” so that the presiding judge would be required to notify only the complainant, not the SJO, of the final court action. This notification to the SJO in this provision is duplicative because subdivision (j)(6) (proposed subdivision (i)(9)) and new subdivision (i)(5) already require such notification to the SJO.

**Rule 10.603**

Rule 10.603 of the California Rules of Court—Authority and duties of presiding judge—contains two cross-references to rule 10.703. Subdivision (c)(4)(C)(ii) requires a presiding judge to notify the CJP if an SJO “is disciplined or resigns, consistent with rule 10.703(k).” If the Judicial Council adopts the proposed amendments to rule 10.703, subdivision (k) would be renumbered as subdivision (j). Therefore, the Trial Court Presiding Judges Advisory Committee (TCPJAC) recommends that the council amend rule 10.603(c)(4)(C)(ii) to conform to the amendments of rule 10.703. The cross-reference to rule 10.703(k) is amended to reflect the renumbering of that subdivision as rule 10.703(j).

In addition, there are several references in rule 10.603 to the “Administrative Office of the Courts” and to the “Administrative Director of the Courts.” Because the name of the organization and the title of the director have been changed, those references in rule 10.603 are amended to refer to the “Judicial Council” and the “Administrative Director.”

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

This proposal was circulated for comment as part of the spring 2013 invitation-to-comment cycle. Twenty-six individuals or organizations submitted comments.<sup>1</sup> Eighteen of those commentators are court commissioners who objected to the proposed revisions. (One commissioner, Rebecca Wightman, commented twice.) Several of those commissioners merely indicated support for the positions taken in the comment from the California Court Commissioners Association (CCCA), submitted by then-President Matthew C. St. George. Others reiterated comments in the CCCA response (discussed below). In addition to the comments from the CCCA, attorney Edith Matthai was asked by the CCCA to review and comment on the proposed revisions. She submitted a comment on September 25, 2014, after the comment period closed. Ms. Matthai’s remarks are included in the comment chart. In response to her letter, the committee agreed to rescind one proposed amendment and revert to the original language. That proposal is discussed below as an alternative considered by the committee. The committee also agreed to recommend adoption of other language proposed by Ms. Matthai.

The CCCA submitted another comment, dated November 20, 2014, after Ms. Matthai submitted her comment. This comment, written by President Jeri Hamlin, is discussed below and is included in the comment chart. The committee agreed to recommend additional revisions based on the letter from Commissioner Hamlin.

One commentator—Presiding Judge Colette M. Humphrey, Superior Court of Kern County—also disagreed with the proposed amendments. She reiterated comments in the CCCA response (discussed below).

Three superior courts (from Los Angeles, San Diego, and Tulare Counties) submitted comments indicating support for the proposed amendments.

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<sup>1</sup> A chart providing the full text of the comments and the committee responses is attached at pages 21–57.

Finally, two members of the public submitted comments that did not address proposed amendments to rule 10.703. The committee did not consider those comments.

In its first comment, the CCCA addressed several aspects of the proposed amendments. All of the concerns raised by the other commentators are addressed in the CCCA response to some extent. Therefore, this section discusses the objections of the CCCA with additional reference to specific comments from other commentators. The CCCA also drafted its own version of the rule that reflects its concerns. The CCCA version of the rule is attached to the comment chart.

### **General comments**

First, the CCCA expressed disappointment that it was not asked to participate in the discussions leading to the proposed amendments to rule 10.703. In response to this comment, the Rules and Projects Committee (RUPRO) deferred action on the proposal at its September 9, 2013 meeting pending a discussion between a subcommittee of TCPJAC and representatives of the CCCA. Representatives of the two groups met twice by conference call to discuss the CCCA's concerns. RUPRO deferred action again on November 5, 2014, referring the matter back to the Trial Court Presiding Judges Advisory Committee for further consideration. Representatives of the two groups met in person for two hours on January 29, 2015, and reached agreement on proposed language.<sup>2</sup> The committee's representatives appearing at the meeting in person were Presiding Judge Marsha G. Slough, chair, and former Presiding Judge Brian J. Back. Presiding Judge Brian L. McCabe participated by telephone. The CCCA was represented by Commissioner Glen Mondo, president-elect of the CCCA; Commissioner Matthew C. St. George, past president of the CCCA; and Commissioner Rebecca L. Wightman.

Second, the CCCA asserted, and many individual commentators agreed, that the current procedure for handling complaints about SJOs works well, so there is no need to amend the rule. (Several commentators used the maxim, "If it ain't broke, don't fix it.") They suggested that there is no evidence that the rule is confusing or complicated for presiding judges, so the proposed revisions are unnecessary. The committee's response was that just because a rule may be working does not mean it cannot be improved.

Third, the CCCA and some other commentators contended that the proposed revisions go beyond both the scope of the original request for a rule amendment by the CJP<sup>3</sup> and the intent of the proposal as stated in the invitation to comment, i.e., to "(1) simplify the procedures a presiding judge must follow while reviewing and investigating complaints against [SJOs]; (2) clarify a presiding judge's authority in conducting an investigation and determining the appropriate action

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<sup>2</sup> The CCCA submitted a letter in support of the proposed amendments to the rule (see Attachment A). Even though the two groups have reached consensus on the proposed revisions, this report addresses the comments submitted by the CCCA before the January 29, 2015 meeting.

<sup>3</sup> In March 2010, Victoria B. Henley, Director–Chief Counsel of the CJP, sent a letter to then–Administrative Director of the Courts William C. Vickrey suggesting that rule 10.703 be amended to address an ambiguity in the rule as to what types of disciplinary action a presiding judge can impose after a preliminary and a formal investigation and what types of action must be reported to the CJP.



to be taken; and (3) clarify the circumstances under which discipline against an SJO must be reported to the [CJP].” The committee’s response was that its review of rule 10.703 is not limited to the scope of the issues raised by the CJP. In addition, the committee believes the amendments advance the goals of simplifying the procedures and clarifying a presiding judge’s authority and options in handling complaints about SJOs.

### **Notifying SJO of closed complaints**

One proposed amendment that generated substantial opposition was the deletion of the requirements that when a presiding judge closes a complaint after initial review (subdivision (h)(3)) or a preliminary investigation (subdivision (i)(5)(B)) without having contacted the SJO, the presiding judge “must advise the subordinate judicial officer in writing of the disposition.” Because the current rule does not require the presiding judge to notify an SJO of a complaint unless the presiding judge intends to take some type of disciplinary action, the proposed amendments would give the presiding judge discretion to advise the SJO of the decision to close the matter rather than requiring it.

The CCCA, joined by several commissioners, objected to the elimination of this requirement because a complainant is entitled to ask the CJP to review the court’s disposition of the complaint, and if the SJO is unaware of the complaint, the SJO “would lose the opportunity to make notes or otherwise preserve relevant testimony or documents should the SJO be required to respond to a CJP inquiry.” Presiding Judge Colette Humphrey added:

[I]f there really is a basis for some action, the SJO should have the opportunity to correct the conduct as needed. For example, when an SJO receives a complaint that a judgment was pending signature for far too long, the complaint may be justified, and the SJO has an opportunity to alter procedures to avoid a recurrence.

Commissioner Vincent T. Lechowick agreed with the CCCA and specified the types of evidence that may be lost if the presiding judge does not inform the SJO about the closed complaint: exhibits returned to the parties or lost or destroyed, deleted tape or video recordings, erased hard drives, employees who no longer work for the court, and loss of memories by the SJOs, clerks, and bailiffs.

As noted in Commissioner Wightman’s comments, of the complaints reviewed by the CJP after disposition by the presiding judge, more than 95 percent are closed without further action because the presiding judge’s action is deemed adequate. That statistic plus the fact that a complainant must seek review by the CJP within 30 days of the presiding judge’s resolution of the complaint led the committee to conclude that the CJP would rarely open an investigation in which the SJO would have destroyed or returned evidence needed to refute the allegations. In addition, the committee observed that to notify an SJO in writing every time a complaint is closed would be burdensome, particularly in large courts that receive many complaints,. The committee also noted that the proposed amendment would give the presiding judge discretion to notify the SJO of the closed complaint. Finally, this change would be consistent with the CJP’s

practice of not informing judges about complaints that are closed without contacting the judge who is the subject of the complaint.

Representatives of the CCCA and the committee discussed this issue at the January 29, 2015 meeting and agreed that this amendment is acceptable.

### **Elimination of two-tiered investigation**

Another concern was the proposed elimination of the two-tiered investigation model. The CCCA contended that the proposed revisions would require a formal investigation once the decision is made to investigate. In agreement, Commissioner Diana Baker stated that “[m]any complaints may be resolved by an informal preliminary investigation saving everyone a lot of time. The option of conducting an informal preliminary investigation should be left to the sound discretion of the Presiding Judge.” She contended that the proposed change to a single investigation “results in one less option for the Presiding Judge. We should preserve the Presiding Judge’s flexibility in dealing with a complaint by preliminary investigation if that is his or her choice.” Commissioner Ronald Creighton also objected, stating that the proposed amendment “takes away discretion and flexibility from the presiding judge by requiring a formal investigation once a decision to investigate is made.” And Commissioner Wightman asserted that “by collapsing the existing, orderly process (initial review, preliminary investigation if needed, or formal investigation as needed), the proposed rule will actually limit presiding judges’ discretion and authority to treat and resolve the complaint at the level it deserves.”

The proposed revisions do not limit a presiding judge’s options. Rather, the presiding judge will be able to conduct any type of investigation he or she deems appropriate to resolve the complaint. The revised rule does not require the presiding judge to conduct a “formal investigation.”

### **Asking CJP to investigate and adjudicate complaints**

The committee originally proposed amending subdivision (g)(2) and (3) to expand the circumstances under which a presiding judge may ask the CJP to investigate and adjudicate a complaint about an SJO. The CCCA objected to the proposed amendments as unnecessary and “beyond the scope of the proposal (which is to clarify the type of disciplinary action a presiding judge may impose and what types of action must be reported to the CJP) . . . .” Commissioner Wightman added that the proposed amendment “actually *takes away* the PJ’s authority to adjudicate if they turn it over entirely to the CJP (and may very well lead to disparate results if some counties routinely turn over to the CJP to adjudicate while others keep their investigations and dispositions in house).” (Emphasis original.)

In response to the CCCA’s concerns, the committee proposed amending subdivisions (g)(1)(C) and (g)(2) to allow a presiding judge to ask a presiding judge of another court to investigate and adjudicate a complaint or to investigate and turn the results over to the referring court for disposition. In the November 20, 2014 letter from Commissioner Hamlin, the CCCA questioned whether a presiding judge has the authority to refer a personnel matter regarding a court

employee to another court for investigation and/or disposition. Although the committee concluded that a presiding judge does have such authority, the committee agreed to revert to the existing language in subdivision (g)(2), which provides that a presiding judge may request that the CJP investigate and adjudicate a complaint “if a local conflict of interest or disqualification prevents the court from acting on the complaint.” In subdivision (g)(3), which provides that in exceptional circumstances, a presiding judge may request the CJP to investigate a complaint on behalf of the court and provide the results of the investigation to the court for adjudication, the committee proposes adding the presiding judge of another court as an alternative to the presiding judge asking the CJP to do the investigation.

### **Elimination of progressive discipline**

The committee originally proposed adding to subdivision (a) a statement that the procedures in rule 10.703 do not “[e]ntitle a subordinate judicial officer to receive progressive levels of discipline.” The CCCA opposed this revision as “unnecessary” and commented that the association “strenuously object[s] to the abandonment of the concept of progressive discipline when considering prospective discipline of a SJO.” The comment states: “[O]ne must question why there is any need to completely eliminate the concept of progressive discipline as it currently exists in this rule.” The CCCA suggested replacing the proposed language with a statement that the procedures in the rule do not “[r]estrict the discretion of the presiding judge in taking appropriate informal or formal action.” The committee agreed to modify its proposal by adopting the suggested language with one revision. Hence, rule 10.703(a) now provides that the procedures in the rule do not “[r]estrict the presiding judge in taking appropriate corrective action.” The CCCA accepts this amendment.

### **Mission creep**

Finally, the CCCA expressed concern that the amendments would lead to “‘mission creep,’ which would unnecessarily expand the nature and number of proceedings which fall within the jurisdiction of the CJP.” The association added:

The SJOs who comprise the CCCA share all the same concerns which judges have recently expressed through recent written correspondence by the CJA and ACJ [Alliance of California Judges] regarding CJP positions on issues such as the expansion of defined misconduct (including legal error) and procedural fairness issues such as discovery.

It is unclear how the proposed amendments to rule 10.703 would fuel any concern the CCCA has about perceived overreaching by the CJP.

### **Alternatives Considered**

The committee considered eliminating entirely the provisions in subdivisions (j)(2), (4), and (5) providing that within 10 days after the completion of the investigation, the presiding judge must give the SJO notice of the intended final action on the complaint and must advise the SJO that he or she may request an opportunity to respond to the proposed discipline. The committee

originally recommended eliminating this opportunity to respond because, as at-will employees, SJOs have no right to respond to proposed discipline. (Gov. Code, § 71650(d)(1).) In addition, removing this provision would streamline the complaint review process.

The CCCA and many other commentators, including several commissioners and the presiding judge from Kern County, argued that the elimination of this important due process provision is unwarranted. One commentator, Commissioner Rebecca Wightman, stated:

With PJs rotating in counties every two years, there may very well be instances in which a discussion or an opportunity to respond to an intended final action (whether the action to be taken is informal or formal) can assist the PJ in reaching a better solution, or in making sure that similar cases in the past (when the person was not PJ) are dealt with similarly, for example.

After discussion of this issue with representatives of the CCCA, the committee agreed to recommend retention of the provision, but to limit the SJO's response to seeking correction of an error of fact or law or both. The commissioners expressed opposition to this limiting language, contending that it eviscerates the provision allowing SJOs an opportunity to respond. After receiving a letter from attorney Edith Matthai explaining the commissioners' position, the committee agreed to rescind its proposal and to retain the existing language.

The committee also considered and rejected a suggestion by CJP Director–Chief Counsel Henley that the rule be amended to specifically permit courts to commence an investigation based on oral complaints. The committee noted that if an oral complaint alleges conduct that constitutes a violation of the California Code of Judicial Ethics, a presiding judge would be obligated under canon 3D(1) of the code to investigate the complaint and take appropriate corrective action if the presiding judge has reliable information that the SJO violated any provision of the code. Therefore, an amendment “permitting” a presiding judge to consider an oral complaint is unnecessary.

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

The amendments will result in slight operational costs because courts that have developed manuals on handling complaints about SJOs will need to revise those manuals. Replacing the current two-tiered investigation with a single investigation will reduce the burden on presiding judges.

### **Attachments**

1. Cal. Rules of Court, rules 10.603 and 10.703, at pages 13–20
2. Comment chart, at pages 21–57
3. Attachment A: Letter dated February 23, 2015, from Jeri Hamlin, President, CCCA

Rules 10.603 and 10.703 of the California Rules of Court are amended, effective January 1, 2016, to read:

1 **Rule 10.603. Authority and duties of presiding judge**

2  
3 (a)–(b) \* \* \*

4  
5 (c) **Duties**

6  
7 (1)–(2) \* \* \*

8  
9 (3) *Submitted cases*

10  
11 The presiding judge must supervise and monitor the number of causes under submission  
12 before the judges of the court and ensure that no cause under submission remains undecided and  
13 pending for longer than 90 days. As an aid in accomplishing this goal, the presiding judge must:

14  
15 (A)–(E) \* \* \*

16  
17 (F) Consider requesting the services of ~~the Administrative Office of the Courts~~ Judicial  
18 Council staff to review the court’s calendar management procedures and make recommendations  
19 whenever either of the following condition exists in the court for the most recent three months:

20  
21 (i)–(ii) \* \* \*

22  
23 (4) *Oversight of judicial officers*

24  
25 The presiding judge must:

26  
27 (A)–(B) \* \* \*

28  
29 (C) *Commissioners*

30  
31 (i) Prepare and submit to the judges for consideration and adoption procedures for receiving,  
32 inquiring into, and resolving complaints lodged against ~~court commissioners and referees~~  
33 subordinate judicial officers, consistent with rule 10.703; and

34  
35 (ii) Notify the Commission on Judicial Performance if a ~~commissioner or referee~~ subordinate  
36 judicial officer is disciplined or resigns, consistent with rule 10.703(k)(j).

37  
38 (D) \* \* \*

39  
40 (E) *Assigned judges*

- 1 For each assigned retired judge:  
2
- 3 (i) Complete a confidential evaluation form;  
4
  - 5 (ii) Submit the form annually to the Administrative Director ~~of the Courts~~;  
6
  - 7 (iii) Direct complaints against the assigned judge to the Chief Justice, by forwarding them to  
8 the attention of the Administrative Director ~~of the Courts~~, and provide requested information in  
9 writing to the Administrative Director ~~of the Courts~~ in a timely manner; and  
10
  - 11 (iv) Assist the Administrative Director in the process of investigating, evaluating, and making  
12 recommendations to the Chief Justice regarding complaints against retired judges who serve on  
13 assignment.  
14
- 15 (5)–(7) \* \* \*
- 16
- 17 (8) *Liaison*
- 18
- 19 The presiding judge must:
- 20
- 21 (A) Provide for liaison between the court and the Judicial Council, ~~the Administrative Office~~  
22 ~~of the Courts~~ Judicial Council staff, and other governmental and civic agencies;  
23
  - 24 (B)–(C) \* \* \*
  - 25
  - 26 (d) \* \* \*

1 **Rule 10.703. Subordinate judicial officers: complaints and notice requirements**

2  
3 (a) **Intent**

4  
5 The procedures in this rule for processing complaints against subordinate judicial officers  
6 do not:

- 7  
8 (1) Create a contract of employment;
- 9  
10 (2) Change the existing employee-employer relationship between the subordinate  
11 judicial officer and the court; ~~or~~
- 12  
13 (3) Change the status of a subordinate judicial officer from an employee terminable at  
14 will to an employee terminable only for cause; or
- 15  
16 (4) Restrict the discretion of the presiding judge in taking appropriate corrective action.

17  
18 (b) **Definitions**

19  
20 Unless the context requires otherwise, the following definitions apply to this rule:

- 21  
22 (1) “Subordinate judicial officer” means an attorney employed by a court to serve as a  
23 commissioner, ~~or~~ referee, or hearing officer, whether the attorney is acting as a  
24 commissioner, referee, hearing officer, or temporary judge. The term does not  
25 include any other attorney acting as a temporary judge.
- 26  
27 (2)–(3) \* \* \*
- 28  
29 (4) “Written reprimand” means written disciplinary action that is warranted either  
30 because of the seriousness of the misconduct or because previous corrective action  
31 has been ineffective.

32  
33 (c) **Application**

- 34  
35 (1) \* \* \*
- 36  
37 (2) If a complaint against a subordinate judicial officer as described in (f) does not allege  
38 conduct that would be within the jurisdiction of the commission, the ~~court must~~  
39 ~~process the complaint following~~ local procedures adopted under rule 10.603(c)(4)(C)  
40 apply. The local process may include any procedures from this rule for the court’s  
41 adjudication of the complaint other than the provisions for referring the matter to the  
42 commission under (g) or giving notice of commission review under ~~(h)(k)(2)(B)~~.

1 (3) \* \* \*

2  
3 (d)–(e) \* \* \*

4  
5 (f) **Written complaints to presiding judge**

6  
7 (1) A complaint about the conduct of a subordinate judicial officer must be in writing  
8 and must be submitted to the presiding judge.

9  
10 (2) \* \* \*

11  
12 (3) The presiding judge has discretion to investigate complaints that are anonymous.

13  
14 (4) The presiding judge must give written notice of receipt of the complaint to the  
15 complainant, if known.

16  
17 (g) **Initial review of the complaint**

18  
19 (1) The presiding judge must review each complaint and determine if the complaint:

20  
21 (A) May be closed after initial review;

22  
23 (B) ~~Needs preliminary investigation~~ Requires investigation by the presiding judge;  
24 or

25  
26 (C) ~~Requires formal investigation~~ Should be referred to the commission or to the  
27 presiding judge of another court for investigation or for investigation and  
28 adjudication.

29  
30 (2) A presiding judge may request that the commission investigate and adjudicate the  
31 complaint if a local conflict of interest or disqualification prevents the court from  
32 acting on the complaint.

33  
34 (3) In exceptional circumstances, a presiding judge may request the commission or the  
35 presiding judge of another court to investigate a complaint on behalf of the court and  
36 provide the results of the investigation to the court for ~~action~~ adjudication.

37  
38 (4) \* \* \*

39  
40 (h) **Closing a complaint after initial review**

41  
42 (1) After an ~~preliminary~~ initial review, the presiding judge may close without further  
43 action any complaint that:



1 (A)–(B) \* \* \*

- 2
- 3 (2) If the presiding judge decides to close the complaint under (h)(1), the presiding judge  
4 must notify the complainant in writing of the decision to close the investigation on  
5 the complaint. The notice must include the information required under (k).
- 6
- 7 (3) The presiding judge ~~must~~ may, in his or her discretion, advise the subordinate  
8 judicial officer in writing of the ~~disposition~~ decision to close the complaint.
- 9

10 (i) **Complaints requiring preliminary investigation**

- 11
- 12 (1) If after an initial review of the complaint the presiding judge finds a basis for further  
13 inquiry, the presiding judge must conduct an preliminary investigation appropriate to  
14 the nature of the complaint.
- 15
- 16 (2) \* \* \*
- 17
- 18 (3) The presiding judge may give the subordinate judicial officer a copy of the complaint  
19 or a summary of its allegations and allow him or her an opportunity to respond to the  
20 allegations during the investigation. The presiding judge must give the subordinate  
21 judicial officer a copy of the complaint or a summary of its allegations and allow the  
22 subordinate judicial officer an opportunity to respond to the allegations before the  
23 presiding judge decides to ~~takes appropriate informal~~ any disciplinary action as  
24 ~~described in (i)(4)(B)~~ against the subordinate judicial officer.
- 25
- 26 (4) After completing the ~~preliminary~~ investigation, the presiding judge must, in his or  
27 her discretion:
- 28
- 29 (A) ~~Terminate the investigation and~~ Close action on the complaint if the presiding  
30 judge finds the complaint lacks merit; or
- 31
- 32 (B) ~~Terminate the investigation and close action on the complaint by taking~~  
33 ~~appropriate informal action, which may include a reprimand or warning to the~~  
34 ~~subordinate judicial officer, if the presiding judge finds a basis for taking~~  
35 ~~informal action~~ Impose discipline; or
- 36
- 37 (C) ~~Proceed with a formal investigation under (j) if the presiding judge finds a~~  
38 ~~basis for proceeding further.~~ Take other appropriate corrective action, which  
39 may include, but is not limited to, oral counseling, oral reprimand, or warning  
40 of the subordinate judicial officer.
- 41 (5) ~~If the presiding judge terminates the investigation and closes action on the complaint,~~  
42 ~~the presiding judge must:~~

1 (A) Notify the complainant in writing of the decision to close the investigation on  
2 the complaint. The notice must include the information required under (I); and  
3

4 (B) Advise the subordinate judicial officer in writing of the disposition.  
5

6 (j) **Complaints requiring formal investigation**  
7

8 (1) ~~If after a preliminary investigation the presiding judge finds a basis for proceeding~~  
9 ~~with the investigation, the presiding judge must conduct a formal investigation~~  
10 ~~appropriate to the nature of the complaint.~~  
11

12 (A) ~~The investigation may include interviews of witnesses and a review of court~~  
13 ~~records.~~  
14

15 (B) ~~As soon as practicable, the presiding judge must give the subordinate judicial~~  
16 ~~officer a copy of the complaint or a summary of its allegations and allow the~~  
17 ~~subordinate judicial officer an opportunity to respond.~~  
18

19 (5) If the presiding judge closes action on the complaint under (i)(4)(A) and the presiding  
20 judge is aware that the subordinate judicial officer knows of the complaint, the  
21 presiding judge must give the subordinate judicial officer written notice of the final  
22 action taken on the complaint.  
23

24 ~~(2)~~(6) If the presiding judge decides to impose discipline or take other appropriate  
25 corrective action under (i)(4)(B) or (C), within 10 days after the completion of the  
26 investigation or as soon thereafter as is reasonably possible, the presiding judge must  
27 give the subordinate judicial officer the following in writing:  
28

29 (A) Notice of the intended final action on the complaint; and  
30

31 (B) The facts and other information forming the basis for the proposed action and  
32 the source of the facts and information, ~~sufficient to allow a meaningful~~  
33 ~~response to the allegations.~~  
34

35 (3) ~~Final action on the complaint may include:~~  
36

37 (A) ~~A finding that no further action need be taken on the complaint;~~  
38

39 (B) ~~An oral or written warning to the subordinate judicial officer;~~  
40

41 (C) ~~A private written reprimand to the subordinate judicial officer;~~  
42

43 (D) ~~A public written reprimand to the subordinate judicial officer;~~

- (E) ~~Suspension of the subordinate judicial officer;~~
- (F) ~~Termination of the subordinate judicial officer; and~~
- (G) ~~Any other action the court may deem appropriate.~~

~~(4)(7)~~ The notice of the intended final action on the complaint in ~~(j)(2)(i)(6)(A)~~ must include the following advice:

- (A) The subordinate judicial officer may request an opportunity to respond to the intended final action within 10 days after service of the notice; and
- (B) If the subordinate judicial officer does not request an opportunity to respond within 10 days after service of the notice, the proposed action will become final.

~~(5)(8)~~ If the subordinate judicial officer requests an opportunity to respond, the presiding judge ~~should~~ must allow the subordinate judicial officer an opportunity to respond to the notice of the intended final action, either orally or in writing as specified by the presiding judge, in accordance with local rules.

~~(6)(9)~~ Within 10 days after the subordinate judicial officer has responded, the presiding judge must give the subordinate judicial officer ~~and the complainant~~ written notice of the final action taken on the complaint. ~~The notice to the complainant must include the information required under (l).~~

~~(7)(10)~~ If the subordinate judicial officer does not request ~~or has not been given~~ an opportunity to respond, the presiding judge must promptly give written notice of the final action to the complainant. The notice must include the information required under ~~(l)~~ (k).

~~(k)~~ **(j) Notice to the Commission on Judicial Performance**

- (1) If a court disciplines a subordinate judicial officer by written reprimand ~~under (i)(4)(B) or (j)(3)(C) or (D)~~, suspension, or ~~removal~~ termination for conduct that, if alleged against a judge, would be within the jurisdiction of the commission under article VI, section 18 of the California Constitution, the presiding judge must promptly forward to the commission a copy of the portions of the court file that reasonably reflect the basis of the action taken by the court, including the complaint or allegations of misconduct and the subordinate judicial officer's response. This provision is applicable even when the disciplinary action does not result from a written complaint.

1 (2) If a subordinate judicial officer resigns (A) while an ~~preliminary or formal~~  
2 investigation under (i) ~~or (j)~~ is pending concerning conduct that, if alleged against a  
3 judge, would be within the jurisdiction of the commission under article VI, section  
4 18 of the California Constitution, or (B) under circumstances that would lead a  
5 reasonable person to conclude that the resignation was due, at least in part, to a  
6 complaint or allegation of misconduct that, if alleged against a judge, would be  
7 within the jurisdiction of the commission under article VI, section 18 of the  
8 California Constitution, the presiding judge must, within 15 days of the resignation  
9 or as soon thereafter as is reasonably possible, forward to the commission the entire  
10 court file on any pending complaint about or allegation of misconduct committed by  
11 the subordinate judicial officer.

12  
13 (3) \* \* \*

14  
15 **(k) Notice of final court action**

16  
17 (1) When the court has completed its action on a complaint, the presiding judge must  
18 promptly notify the complainant, if known, and the subordinate judicial officer of the  
19 final court action.

20  
21 (2) \* \* \*

**SPR13-31****Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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

<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Abby Abinanti Former Commissioner San Francisco, CA	N	No further comment.	No response necessary.
2.	Trilla Bahrke Commissioner Tahoe City, CA	N	I would like to add my endorsement to the letter written by Commissioner St. George on behalf of our organization. It appears that this proposed modified rule of court is attempting to fix a system that is not broken but is actually working extremely efficiently. I would object to the proposed changes. They are unfair to subordinate judicial officers and, frankly, unnecessary.	See response to comments by the California Court Commissioners Association.
3.	Diana C. Baker Commissioner Marina, CA	N	<p>I have been a Superior Court Commissioner since 1998. I am writing to oppose the proposed change to the court’s initial review of a complaint about an SJO. Many complaints may be resolved by an informal preliminary investigation saving everyone a lot of time. The option of conducting an informal preliminary investigation should be left to the sound discretion of the Presiding Judge.</p> <p>Since 2008 (not including 2010), the CJP approved the Presiding Judge’s handling of SJO complaints 96.42% of the time. There is no reason to change the current procedure – especially since it results in one less option for the Presiding Judge. We should preserve the Presiding Judge’s flexibility in dealing with a complaint by preliminary investigation if that is</p>	The amended rule would allow a presiding judge to conduct any type of investigation he or she deems appropriate to resolve the complaint. But it would not require two different investigations “[i]f after a preliminary investigation the presiding judge finds a basis for proceeding with the investigation.”

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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			his or her choice.  I urge you not to adopt this unnecessary change.	
4.	California Court Commissioners Association by Matthew St. George President Santa Monica, CA	N	<p>On behalf of the Board of the California Court Commissioners Association (CCCA), I am providing the following comments on the proposed amendments to CRC 10.703. This public comment letter was reviewed and endorsed unanimously at our June 12, 2013 Board meeting.</p> <p>As a preliminary matter, I must relay the concern and disappointment expressed by my membership that the CCCA was not requested to participate earlier in the process as the proposed amendments would substantially alter the procedural and substantive rights of every subordinate judicial officer in the State. As requested in the invitation to comment circulated by your committee, the CCCA has focused its comments on the question of “Does the proposal reasonably achieve the stated purpose?” For the reasons set forth below, we believe that in several significant respects it does not.</p> <p><b>OVERREACH</b> As stated in your committee’s invitation to comment, the genesis of the proposed amendments was a letter from Victoria Henley of the CJP to William Vickery of the AOC</p>	<p>Consideration of the rule proposal was deferred pending a meeting between the Trial Court Presiding Judges Advisory Committee and representatives of the CCCA. The two groups then met twice by telephone conference call and once in person.</p> <p>The committee, in its review of rule 10.703, is not limited by the scope of the issues addressed by the Commission on Judicial Performance. The committee believes the proposed amendments</p>

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>suggesting that Rule 10.703 be amended “<i>to address an ambiguity in the rule as to what types of disciplinary action a presiding judge can impose after a preliminary hearing and a formal investigation and what types of action must be reported to the CJP</i>” (emphasis added). As also stated in your committee’s invitation to comment, the Trial Court Presiding Judges Advisory Committee concluded that it could address this issue “<i>by eliminating the current two-tiered preliminary/formal investigation process and replacing it with one investigation</i>” (emphasis added). Despite the limited scope of the conceptual amendments summarized above, and the limited scope of the proposed revisions as summarized in the invitation to comment, the CCCA and its membership are surprised and greatly concerned by the actual language proposed. The proposal as stated in the invitation to comment is to “simplify the procedures a presiding judge must follow while reviewing and investigating complaints against SJO’s” and to “clarify a presiding judge’s authority and options in investigating and resolving a complaint” and to “clarify under what circumstances a report must be filed with the CJP.” However, several of the proposed amendments are far outside the scope of the proposal or are simply unnecessary given the present language of the rule.</p> <p>The two key points we wish to stress are 1) SJO discipline under the current rule is working as</p>	<p>advance the goals of simplifying the procedures and clarifying a presiding judge’s authority and options in handling complaints about SJOs.</p> <p>The committee believes that although the rule may be working, there is room for improvement</p>

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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

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<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>	
		<p>shown by the CJP’s own statistics (If it ain’t broke, don’t fix it!), and 2) the proposed amendments will deprive presiding judges of discretion and flexibility in the imposition of discipline by requiring a formal investigation once the decision is made to investigate.</p> <p>NOTICE TO SJO OF COMPLAINT Specifically, the CCCA strongly objects to the proposed deletion of the current requirement that the presiding judge must give the SJO notice of the intended final action on the complaint and an opportunity to respond (Rule 10.703(j)(2), (4) and (5)). While it is true the SJO would still have the opportunity under subdivision (i)(3) to respond to the alleged misconduct, this addresses a completely different issue: whether the punishment fits the conduct as opposed to whether there was misconduct. The proposal to move from a two-tier investigation to a single investigation simply does not require and should not include the loss or removal of this right.</p> <p>AUTHORITY OF PRESIDING JUDGE The CCCA also believes that the deletion of subdivision (g)(2) and the amendment of (g)(3) are both unnecessary and beyond the scope of the proposal. These subdivisions currently grant the authority to a presiding judge to request the CJP investigate and adjudicate a complaint against an SJO in the event of conflict of interest, disqualification, or other exceptional</p>	<p>through amending the rule.</p> <p>The proposed amendments do not require a formal investigation once a decision is made to investigate. The amended rule would allow a presiding judge to conduct any type of investigation he or she deems appropriate to resolve the complaint. But it would not require two different investigations “[i]f after a preliminary investigation the presiding judge finds a basis for proceeding with the investigation.”</p> <p>The committee agreed that the provision requiring a presiding judge to advise the SJO that he or she may request an opportunity to respond to the intended final action should be retained.</p> <p>The committee agreed to retain the language of subdivision (g)(2). In subdivision (g)(3), which requires “exceptional circumstances,” the committee added an alternative under which a presiding judge may ask a presiding judge of another court to investigate a complaint on behalf of the court and provide the results of the investigation to the court for adjudication.</p>	



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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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			<p>circumstances. The sole example of circumstances put forth in the invitation to comment which might lead a presiding judge to exercise the discretion to refer the matter to the CJP under the proposed amendment to the rule is if a court lacks the resources to conduct an investigation. Obviously, the entire judicial branch is currently under tremendous financial pressure. However, that is exactly the sort of “exceptional circumstance” under which a presiding judge could refer a matter to the CJP under the present rule. The proposed amendment is both beyond the scope of the proposal (which is to clarify the type of disciplinary action a presiding judge may impose and what types of action must be reported to the CJP) and, as clarified above, unnecessary.</p> <p><b>NOTICE OF CLOSED INVESTIGATION</b>                      The CCCA also objects to the proposed amendment to subdivision (h)(3) removing the requirement that a presiding judge advise an SJO in writing of the decision to close an investigation, instead granting discretion to the presiding judge as to whether to do so. The CCCA’s concern with this proposed amendment is that any complainant who is dissatisfied with the action by the presiding judge has the right to then demand redress from the CJP, and subdivision (l) requires the presiding judge to so advise the complainant. Absent notification by the presiding judge, the SJO would not be aware</p>	<p>The CJP opens investigations on very few complaints about SJOs and the time frame for a complainant to seek review by the CJP is very limited. Therefore, the risk of evidence being lost is minimal. This amendment is consistent with the CJP’s practice regarding complaints about judges that are closed without contacting the judge.</p>

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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			<p>of the complaint, and would lose the opportunity to make notes or otherwise preserve relevant testimony or documents should the SJO be required to respond to a CJP inquiry.</p> <p>ELIMINATION OF PROGRESSIVE DISCIPLINE</p> <p>Another unnecessary proposed change to Rule 10.703 is to place within subdivision (a), which delineates the intent of the rule, an additional line stating that nothing in this rule would “[e]ntitle a subordinate judicial officer to receive progressive levels of discipline”. Other proposed changes within the current rule would eliminate any language stating the types of discipline which could be progressively imposed should disciplinary action be taken. Nowhere was this substantive change mentioned previously. At no time was its proposed implementation discussed with those individuals whom would be impacted by the change. All SJOs are painfully aware that our employment is at will, as recent events have demonstrated. However, one must question why there is any need to completely eliminate the concept of progressive discipline as it currently exists in this rule. As our numbers diminish due to budget constraints, there is all the more reason to retain the experience and expertise of those who remain. Consider the many hours spent with judicial colleagues at New Judges Orientation, Judges College, and subsequent CLE and substantive law courses as the major</p>	<p>The committee agreed to replace its proposed language with the CCCA’s suggested provision that the procedures in the rule do not “[r]estrict the discretion of the presiding judge in taking appropriate corrective action.”.</p>

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>investment they represent in developing a SJO into a capable and competent member of the judiciary. As an institution, our rules of conduct should encourage presiding judges to cultivate and mentor SJOs in our mission to provide equal justice without prejudice to the citizens of our State. The concept of progressive discipline, long established in procedure and practice, is designed to accomplish just that. Nothing in the current rule prohibits imposition of a level of discipline equal to the misconduct committed by a SJO which requires it. The CCCA would not object to additional language in the appropriate section of the rule which would make this clear. However, we strenuously object to the abandonment of the concept of progressive discipline when considering prospective discipline of a SJO.</p> <p><b>ROLE OF THE CJP</b>                      Last but not least, much of the CCCA membership also belongs to the CJA, the ACJ or both. The CCCA (like the CJA and the ACJ) is concerned with “mission creep,” which would unnecessarily expand the nature and number of proceedings which fall within the jurisdiction of the CJP. The SJOs who comprise the CCCA share all the same concerns which judges have recently expressed through recent written correspondence by the CJA and ACJ regarding CJP positions on issues such as the expansion of defined misconduct (including legal error) and procedural fairness issues such as discovery.</p>	<p>It is not clear how the proposed amendments to rule 10.703 would fuel any concern the CCCA has about perceived overreaching by the CJP.</p>

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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			<p>In summary, the CCCA questions the scope and necessity of many of the proposed amendments. Rather than approve and forward the proposed amendments to the Judicial Council for implementation on January 1, 2014, the CCCA implores the Trial Court Presiding Judges Advisory Committee to reject the above-referenced proposed amendments or, alternatively, send them back to committee for further review and discussion. In furtherance of this goal, an alternative version of an amended rule 10.703, which incorporates some revisions, but which leaves the rule as currently stated largely intact, is attached. The CCCA would be pleased to participate in such a discussion, and would happily have done so had its input been requested earlier.</p> <p>[Proposed revisions by the CCCA are attached to this comment chart]</p>	
5.	<p>California Court Commissioners Association by Jeri Hamlin President Red Bluff, CA</p>	AM	<p>I am the President of the California Court Commissioner’s Association (CCCA), and am writing on behalf of our Association regarding proposed revisions to Rule 10.703. The CCCA represents all commissioners and other SJO’s in California. The CCCA was disappointed, to say the least, when it was not consulted initially regarding this proposed rule change, especially since it not only directly affects our members, but also because it affects <u>only</u> our members.. We were pleased and grateful when, at our September board meeting, the Chief Justice and</p>	<p>Consideration of the rule proposal was deferred pending a meeting between the Trial Court Presiding Judges Advisory Committee and representatives of the CCCA. The two groups then met twice by telephone conference call and once in person.</p>

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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			<p>Justice Miller acknowledged that we deserved to be involved in the process, beyond that of merely being given an opportunity to respond to a request for public comment. We also greatly appreciate that, after the Chief met with us, some revisions were made to the proposed rule. Unfortunately, our membership was again disappointed that we had no opportunity to discuss the most recent version of the proposed rule, or the reason why some proposed revisions were not adopted, before the matter was set for the RUPRO agenda.</p> <p>We understand from your conversation with CCCA’s former President, David Gunn, that SJO’s were intended to be included in the process prior to the proposed rule change going forward; and that, toward that end, you are willing to meet with a subcommittee of our Board. We are anxious to do so, and appreciate your willingness to make the time to hear and consider our comments and concerns. We understand that reasonable minds may differ on the final wording of the proposed changes, but cannot emphasize strongly enough our belief that when a proposed action directly affects our colleagues on the bench, we deserve to be involved in the process and heard just as much as judges would expect to be involved (through the CJA or Alliance), if a proposed action directly affected the interests of judges.</p> <p>As previously stated, we appreciate the most</p>	

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>recent revisions to the proposed rule. However, we look forward to discussing additional items, two of which were addressed in Edith Matthai’s letter, which was coordinated with the CCCA.</p> <p>FIRST, in paragraph 1(a) regarding intent, we propose subparagraph 4 state: “<i>The procedures in this rule for processing complaints . . . do not (4) Restrict the discretion of the presiding judge in taking appropriate informal or formal action.</i>” This language gives to the PJ full and unrestricted authority to take appropriate action. There is some concern that the existing proposed language may be misconstrued, and potentially cause an unintended conflict with local trial court contracts.</p> <p>SECOND, as the language in the new (i)(3) (relating to complaints requiring further investigation) we are not sure why some, but not all, of Ms. Matthai’s proposed changes were adopted. Her proposal was to include the phrase “<i>at the beginning of the investigation</i>” which we felt did not unduly restrict the PJ given the “may” language in the first sentence. As an alternative, the phrase “<i>during the investigation</i>” could be added to the first sentence, which would serve to recognize that a PJ may want further investigation that might resolve the matter, short of having to get the SJO’s input “at the beginning.”</p>	<p>The committee agreed to replace its proposed language with the CCCA’s suggested provision, with one minor revision, so that the rule provides that the procedures in the rule do not “[r]estrict the discretion of the presiding judge in taking appropriate corrective action.”</p> <p>The committee agreed to add the phrase “during the investigation” to subdivision (i)(3), as suggested by the CCCA.</p>

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**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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			<p>THIRD, as to the language in the new (i)(4), for unknown reasons, Ms. Matthai’s language describing potential corrective action was not adopted. We believe the resulting singular example could be considered misleading or unclear. To make clear the full range of a PJ’s discretion, we suggest utilizing some existing language from the current rule, modified to state: <i>“which may include, but is not limited to, oral counseling, oral reprimand, or warning to the subordinate judicial officer.”</i></p> <p>FOURTH, we believe further discussion and consideration is appropriate on the proposal in (g)(1)(C) and (g)(2) regarding a PJ being able to transfer the matter to the PJ of another county. While we see potential pluses and minuses to this proposal, we are not sure the significant underlying issue of jurisdiction has been addressed. I.e., regardless of this rule, does a PJ have the authority to refer a personnel matter of an individual employed in one county, to the jurisdiction of a different county? We would be interested to know if the Judicial Council staff has researched this issue.</p> <p>As a point of privilege, many of our board members have asked me to pass along how offended they were by the statement in the Judicial Council Staff’s report that it is unknown if CCCA still opposes the proposed rule change. If staff did not know, it is because no one contacted the CCCA to ask.</p>	<p>The committee agreed to add the suggested language.</p> <p>The committee agreed to retain the language of subdivision (g)(2). In subdivision (g)(3), which requires “exceptional circumstances,” the committee added an alternative under which a presiding judge may ask a presiding judge of another court to investigate a complaint on behalf of the court and provide the results of the investigation to the court for adjudication.</p>

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			Unfortunately, the Staff has historically failed to include consulting with CCCA, even in matters directly affecting our segment of the judiciary.  [Details concerning meeting logistics are not included.]	
6.	Benjamin R. Campos Commissioner Los Angeles, CA	N	I join in the position outlined by Commissioner St. George, president of CCCA. Thank you for your consideration.	See response to comments by the California Court Commissioners Association.
7.	Ronald Creighton Commissioner Walnut Creek, CA	N	The proposed rule change takes away discretion and flexibility from the presiding judge by requiring a formal investigation once a decision to investigate is made. More importantly, the Rule as currently written is working fine. The CJP's own statistics show an overwhelming approval of how the presiding judges have conducted their investigations and impose discipline by simply closing each SJO disciplinary action reported to them with rare exception.	The proposed amendments do not require a formal investigation once a decision is made to investigate. The amended rule would allow a presiding judge to conduct any type of investigation he or she deems appropriate to resolve the complaint. But it would not require two different investigations "[i]f after a preliminary investigation the presiding judge finds a basis for proceeding with the investigation."  See response to comments by the California Court Commissioners Association.
8.	J. F. DeMelo Commissioner Visalia, CA	N	The current SJO discipline method works well. The proposed changes are unnecessary.	See response to comments by the California Court Commissioners Association.
9.	William D. Dodson Commissioner Los Angeles, CA	N	As I understand it, the current rule gives an SJO the right to notice and an opportunity to respond to a court's intended final action. As far as I can	The committee agreed that the provision requiring a presiding judge to advise the SJO that he or she may request an opportunity to respond



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			<p>tell, the new rule would eliminate this guarantee, which would eliminate the officer's right to be heard on a very critical issue. Such a change does not seem prudent.</p> <p>In reference to the proposed changes, it seems to me that there has not been a sufficient showing that any changes in the existing procedures are really desirable. When described as a change to simplify or clarify the procedures, the proposal sounds good in the abstract, but I do not see any real confusion or unnecessary complexity that would make the change desirable in practice.</p> <p>Thank you for the opportunity to comment.</p>	<p>to the intended final action should be retained.</p> <p>See response to comments by the California Court Commissioners Association.</p>
10.	Carol J. Hallowitz Commissioner Los Angeles, CA	N	I tend to believe in the old adage "If it ain't broke, don't fix it." The system we now have in place appears to be working just fine. If there are to be changes, I endorse the proposals submitted by the California Court Commissioners Association.	See response to comments by the California Court Commissioners Association.
11.	Jeffrey M. Harkavy Commissioner Chatsworth, CA	N	After having reviewed the proposed changes, I concur in the concerns and recommendations made by Commissioner Matthew St. George on behalf of the CCCA.	See response to comments by the California Court Commissioners Association.
12.	Colette M. Humphrey Presiding Judge Superior Court of Kern County	N	I would like to express my opposition to the proposed revision to Rule 10.703. While it seems intended to "streamline" the complaint	

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	Bakersfield, CA		process, it also creates a situation that may deprive SJOs of the opportunity to respond to complaints. Under the current rule, the SJO has a right to notice and an opportunity to respond to a court’s intended final action. The revision requires only that the SJO be notified AFTER the action is taken. The proposed revision also removes the requirement that the SJO be advised of the disposition when a complaint is closed. This is not helpful for at least two reasons. First, if there really is a basis for some action, the SJO should have the opportunity to correct the conduct as needed. For example, when an SJO receives a complaint that a judgment was pending signature for far too long, the complaint may be justified, and the SJO has an opportunity to alter procedures to avoid a recurrence. Secondly, since a large portion of the complaints are not justified and since SJOs tend to have a lot of “repeat customers,” if the SJO is unaware of a disposition, they won’t know to keep records that might serve to refute future claims by the same litigant. The procedure that has been in place to address complaints regarding SJOs has remained virtually unchanged for 10 years, and it seems to have worked adequately for the benefit of the court, the public and the SJOs. The proposed revision does not seem designed to help SJOs do the right thing, but rather makes it harder for them to modify their conduct if needed. Thank you for your consideration of my thoughts.	The committee agreed that the provision requiring a presiding judge to advise the SJO that he or she may request an opportunity to respond to the intended final action should be retained.  See response to comments by the California Court Commissioners Association.

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13.	Patricia M. Ito Commissioner Lancaster, CA	N	I concur with the position taken by the California Court Commissioners Association.	See response to comments by the California Court Commissioners Association.
14.	Vince Lechowick Commissioner Lakeport, CA	N	Further points on the loss of due process from lack of timely notice of a pending complaint (beyond even the simple preservation of judicial notes) include: Exhibits returned to the parties (or otherwise made unavailable, lost or destroyed); Erasures or deletions of tape recordings, videos or hard drives (routine, accidental or otherwise); Retiring and exiting employees from court staffs (who may have favorable observations to add); Loss of memories of the specifics of the case by the Commissioners, clerks, bailiffs and others involved as they move on to many other days of high volume pro per calendars, etc.  “Streamlined” sounds more like “taking the easy way out” rather than doing justice or providing defense of SJOs’ work. Remember, discipline can now extend to simple “errors” (“should have known or so decided”), and adequate defense of decisions can require basically a “retrial.”	See response to comments by the California Court Commissioners Association.
15.	Chris Martin Commissioner Salinas, CA	N	The appropriate changes, if any, that should be made are listed in Matt St. George’s posted comment, which reflects the well-thought out and well-reasoned position of the CCCA. An	See response to comments by the California Court Commissioners Association.

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			alternate Amended Rule 10.703 is also attached to Mr. St. George's comment. I speak on my behalf only and not on behalf of the Superior Court.	
16.	Edith R. Matthai Robie & Matthai Los Angeles, CA	N	<p>I have been asked by the California Court Commissioner's Association to review and comment on the proposed changes to Rule 10.703.</p> <p>It is my opinion that further limited revisions need to be made to the currently proposed version of the rule. The changes will clarify the process both for the protection of the presiding judges charged with the obligation to administer the rule, and the subordinate judicial officers who may face investigations under the rule. I greatly appreciate the tremendous amount of work that has been done, to date, by the Presiding Judges and others who have crafted the proposed new rule and certainly do not intend my comments to be critical of those efforts. It simply appears that in the laudatory effort to streamline and simplify the process, there were a few areas in which the resulting proposal is either unclear or resulted in an unintended consequence.</p> <p>The California Commissioner's Association now agrees that streamlining the process by eliminating the two levels of a preliminary and a formal investigation is appropriate if adopted in</p>	

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			<p>combination with the recommended changes in this letter. [T]he following changes would resolve areas in which the new rule as written is unclear. I have underlined the proposed additional language below.</p> <p>• (i) <b>Complaints requiring further investigation</b></p> <p>(3) The presiding judge may give the subordinate judicial officer a copy of the complaint or a summary of its allegations and allow him or her an opportunity to respond to the allegations <u>at the beginning of the investigation</u>. The presiding judge must give the subordinate judicial officer a copy of the complaint or a summary of its allegations and allow the subordinate judicial officer an opportunity to respond to the allegations before the presiding judge <u>decides to</u> takes any disciplinary action against the subordinate judicial officer.</p> <p>This change in language would clarify that no judge should decide to take disciplinary action until the subordinate judicial officer has had an opportunity to provide his or her explanation of what occurred. The section would still allow the presiding judge to begin an investigation, decide that discipline was not warranted and close the matter without notifying the subordinate judicial officer of the investigation.</p>	<p>The committee disagreed with the proposed addition of the phrase “at the beginning of the investigation” but agreed with the proposed addition of the phrase “decides to.” The committee also agreed to add the phrase “during the investigation” instead of “at the beginning of the investigation.”</p>

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		<p>• (i) <b>Complaints requiring further investigation</b></p> <p>(4) After completing the investigation, the presiding judge must, in his or her discretion:</p> <p>(C) Take other appropriate <u>corrective action, which may include, but is not limited to, an oral reprimand or counseling of the subordinate judicial officer.</u></p> <p>This language makes it clear that a presiding judge may in appropriate circumstances, decline to impose written discipline and instead counsel or verbally reprimand the subordinate judicial officer.</p> <p>Of additional concern is that the limitation in Section (i)(8) of the SJO's response to a Notice of Intended Final Action to matters "based on correction of an error of fact or law or both" eliminates the ability of an SJO to address the appropriate level of discipline that should be imposed.</p> <p>It is presumed that the language "based on correction of an error of fact or law or both" was intended to mirror the language of Rule 111.5 of the Rules of the Commission on Judicial Performance. However that Rule applies only to advisory letters, the lowest level of discipline issued by the commission. When an advisory letter has been issued, the level of</p>	<p>The committee agreed with the proposed revision as proposed in the CCCA's November 20, 2014 letter. The committee proposes amending the provision as follows: "Take other appropriate corrective action, which may include, but is not limited to, oral counseling, oral reprimand, or warning of the subordinate judicial officer."</p> <p>The committee agreed to recommend retaining this provision, but rejected the proposed language. Instead the committee recommends reverting to the existing language in subdivision (i)(5), which will be renumbered (j)(8).</p>	

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		<p>discipline has been set at the lowest level available if discipline is to be imposed.</p> <p>The limitation of the SJO's response in proposed Rule 10.703(i)(8) applies no matter what level of discipline the presiding judge has imposed, which eliminates the ability of the SJO to address the appropriate level of discipline.</p> <p>Although the SJO is able to give an initial response under (i)(3), that response would address the facts and circumstances surrounding the allegations. It is anticipated that in most circumstances the SJO will ask that discipline not be imposed for the reasons set forth in that response and would not address the level of discipline to be imposed.</p> <p>The change requested below should not be viewed as a desire to reargue or reiterate the response previously provided under (i)(3). I would suggest that the language be changed to read:</p> <p>“but the response to the intended final action must be based on new matter, which the SJO could have not known at the time a response was submitted pursuant to (i)(3) or to a statement objecting to the level of discipline or to a correction of an error of fact or law or both.”</p> <p>Finally, in what I understood to be the currently</p>	

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			<p>proposed version of the rule, Section (i)(10) states: “The notice must include the information required under (1).” “(1)” should be changed to “(k)” since there is no longer a section (1) in the rule.</p> <p>Both the California Commissioner's Association and I appreciate your attention to these requested changes. If you have any changes or would like to discuss this matter further, please do not hesitate to contact me.</p>	
17.	Elizabeth Munisoglu Commissioner Los Angeles, CA	N	<p>I agree wholeheartedly with the comment and suggestions proposed and posted by the CCCA in behalf of all subordinate judicial officers.</p> <p>The proposed changes, both facially and substantively, seem to presume that SJOs are inherently less deserving of the same procedural due process as are judges. There is NO evidence that the current system is flawed, nor is there any evidence that any County’s Presiding Judge has been, or in the future would be, unable to effectively implement the existing disciplinary processes.</p> <p>I strongly urge that, if any changes are made, they be limited to the sensible suggestions offered by the CCCA.</p>	See response to comments by the California Court Commissioners Association.
18.	Ronald Pierce Squaw Valley, CA	N/A		Comment does not address proposed amendments to rule 10.703.



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19.	Scott Retired Investigator San Luis Obispo, CA	N/A		Comment does not address proposed amendments to rule 10.703.
20.	Phyllis Shibata Commissioner Pomona, CA	N	There is no need for these changes.	See response to comments by the California Court Commissioners Association.
21.	Superior Court of Los Angeles County Los Angeles, CA [Comment on behalf of the court]	A	Rule 10.703 requires revision. In broad terms, it seeks to create a process by which courts respond to external complaints about its subordinate judicial officers (SJOs). However, the existing process is duplicative and imposes unnecessary work on presiding judges. To the extent the proposed changes streamline the process of investigating external complaints against SJOs, they are useful.	No response necessary.
22.	Superior Court of San Diego County by Mike Roddy Executive Officer San Diego, CA [Comment on behalf of the court]	A	No further comment.	No response necessary.
23.	Superior Court of Tulare County by Sherry Pacillas Court Operations Manager Visalia, CA [Comment on behalf of the court]	A	In agreement with the proposed updated policies and Judicial Council forms.	No response necessary.
24.	Rebecca Wightman	N	I am submitting this comment as an individual	See response to comments by the California

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	Commissioner San Francisco, CA		<p>who, by virtue of my position, is subject to discipline under existing CRC Rule 10.703. I also agree with the comments previously submitted by the CCCA, as well as the CCCA’s alternative suggested rule revision to address any and all concerns previously identified by the CJP letter referenced in the write up to the original proposed rule change.</p> <p><b>Does the proposal reasonably achieve the stated purpose?</b> Answer: <b>NO</b>, for all of the reasons and comments stated below, including, but not limited to the fact that there appears to be <b>no credible data that PJs are confused or feel constrained, or that there is a need to “simplify”</b> the existing process that has been in place for years, and <b>there appears to be no credible reason for eliminating a perfectly good model (which is successfully used by CJP), including elimination of due process provisions regarding notification to SJOs.</b></p> <p><u>Comments</u> The background to the proposed rule change – the letter from the CJP (Victoria Henley) – identified two very specific, limited, concerns: one regarding consideration of oral complaints, the other regarding clarifying that the informal actions that can be taken after a preliminary investigation regarding “a reprimand or warning” are <i>oral</i> warnings and <i>oral</i> reprimands. The proposed rule revision goes WAY BEYOND addressing such concerns,</p>	Court Commissioners Association.

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			<p>claiming – without actual evidence or clear justification – that the existing rule is “unnecessarily complicated” and/or somehow limits the discretion of presiding judges.</p> <p>A review of public data regarding complaints against SJOs from CJP’s own annual reports reveals that presiding judges do not seem to be having any problems in utilizing the existing procedures in Rule 10.703, and further, that they are adequately addressing complaints against the SJOs in their respective counties. The CJP’s annual reports that I examined revealed the following astonishing information:</p> <ul style="list-style-type: none"> <li>o <b>2009</b> – 153 new complaints; CJP reviewed <b>154</b> (incl. from prior year): a whopping <b>149</b> were closed after initial review [that’s 96.7%] – to use the <u>CJP’s own words</u> in its annual report: “...because it determined that <b>the superior court’s handling and disposition of the complaints were adequate and that no further proceedings were warranted.</b>” And, of the remaining five, three were closed without discipline following CJP’s investigation, one concluded with an advisory letter, and one concluded with a public censure (this latter one was for an SJO who failed to complete submitted matters in a timely fashion).</li> </ul>	

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		<ul style="list-style-type: none"> <li>○ <b>2010 (I didn't have the report handy)</b></li> <li>○ <b>2011</b> – 163 new complaints; CJP reviewed <b>162</b>: a whopping <b>157</b> were closed after initial review [that's 96.9%] – to use the <u>CJP's own words</u> in its annual report: <b>"...because it determined that the superior court's handling and disposition of the complaints were adequate and that no further proceedings were warranted."</b> And, of the remaining five, four of them were closed without discipline following CJP's investigation; one closed when the SJO resigned with an agreement not to serve in a judicial capacity.</li> <li>○ <b>2012</b> – 160 new complaints; CJP reviewed <b>161</b> (incl. one from prior year): and a whopping <b>152</b> were closed after initial review [that's 95% or 94.4% if you incl. case from prior year] – to use the <u>CJP's own words</u> in its annual report: <b>"...because it determined that the superior court's handling and disposition of the complaints were adequate and that no further proceedings were warranted."</b> And, of the remaining nine, three were closed without discipline following CJP's investigation; one was closed where SJO resigned and agreed not to serve in a judicial capacity; one led to a public</li> </ul>		

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			<p>admonishment, and four led to issuance of advisory letters.</p> <ul style="list-style-type: none"> <li>○ I even found a CJP annual report from <b>2005</b>: 155 new complaints; CJP reviewed <b>154</b>: a whopping <b>153</b> were closed after initial review!!</li> </ul> <p><b>This data appears to contradict any unsubstantiated statement that the current CRC Rule 10.703 is unnecessarily complicated and/or needs to be simplified. Indeed, PJs appear to be quite successfully following the procedures in the current rule.</b> This raises the age-old question: “If it ain’t broke, why “fix” it?”</p> <p>SUGGESTION: If, indeed, there is any concern regarding either the need to clarify that the phrase in subdivision (i) pertaining to “a reprimand or warning”, then by all means, let’s clarify it by inserting the word “oral” in front of both “reprimand” and “warning.”</p> <p>The proposed rule also simply makes the unsubstantiated statement that the existing rule somehow restricts presiding judges’ discretion. This is simply an incorrect <i>opinion</i>. Indeed, it is my opinion that by collapsing the existing, orderly process (initial review, preliminary investigation if needed, or formal investigation as needed), the proposed rule will actually limit presiding judges’ discretion and authority to</p>	

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			<p>treat and resolve the complaint at the level it deserves.</p> <p>SUGGESTION: To the extent there is any conception or belief that the existing rule somehow limits a presiding judges' discretion, then a simple added provision to explicitly state that the rule does no such thing would be sufficient to address any such concern. This would include removing any barriers to the discretion of a PJ to refer the matter to the CJP for investigation and report back to the PJ.</p> <p>Finally, there are indeed impacts from the proposed rule – proposed eliminations of certain provisions – that are not justified or adequately explained. The most glaring one has to do with the elimination of due process provisions in the existing rule regarding notifications to SJOs. The elimination – without any good reason – appears to be “overkill” under the guise of trying to “simplify” the rule. Why is elimination of such an important provision necessary????? It isn't, and should be restored. In sum, the alternative suggested revisions that were submitted by the CCCA are ones that I believe would adequately address any real concerns with the existing rule.</p> <p>Please take the time to reconsider the need for such a drastic revision to a rule that PJs have been quite successfully navigating for years. Minor changes, if any, will more than</p>	

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			adequately address any true concerns.	
75	Rebecca Wightman Commissioner San Francisco, CA	N	<p>I previously submitted some comments, along with indicating my support for the alternative proposed revision of CRC 10.703; however, I realized that perhaps some of my comments were not specific enough – i.e., I alluded to the problematic due process issues, but did not mention specific provisions. Please consider the following additional comments as an augmentation to my prior comments.</p> <p><b>There is at least one very critical due process provision that was completely removed in the “streamlining” attempt for absolutely no stated good reason:</b></p> <ul style="list-style-type: none"> <li>• In the current rule, an SJO has the right to notice and an opportunity to respond to a court’s intended final action – see (j)(2), with specific advice required in the notice – see (j)(4). <ul style="list-style-type: none"> <li>○ The “streamlined” proposed rule <u>COMPLETELY ELIMINATES this due process procedure</u>, and merely states that if the PJ is aware that the SJO knows of the complaint (and who knows how someone will keep track of that), then the PJ must give the SJO written notice of the final action taken—i.e., after it is a done deal.</li> </ul> </li> </ul>	The committee agreed to retain this provision.

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			<ul style="list-style-type: none"> <li>○ If adopted, SJOs will no longer have an opportunity to address concerns regarding any proposed intended final action. With PJs rotating in counties every two years, there may very well be instances in which a discussion or an opportunity to respond to an intended final action (whether the action to be taken is informal or formal) can assist the PJ in reaching a better solution, or in making sure that similar cases in the past (when the person was not PJ) are dealt with similarly, for example.</li> <li>○ Why was this provision taken out?? If there is no good reason, then it should at the very least be added back in to any revised rule.</li> </ul> <p>There are other changes that put an SJO at a disadvantage (particularly with regard to difficult pro pers who file multiple complaints), and may wind up causing problems and inconsistencies in treatment for SJOs down the road, including causing problems for CJP if the case is refiled with the CJP down the road:</p> <ul style="list-style-type: none"> <li>• The “streamlined” rule removes the mandate currently in (h)(3) [and also currently in (i)(5)(B)] that the PJ advise the SJO of the disposition when closing</li> </ul>	<p>The CJP opens investigations on very few complaints about SJOs and the time frame for a complainant to seek review by the CJP is very limited. Therefore, the risk of evidence being lost is minimal. This amendment is consistent with</p>



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			<p>a complaint. This provision currently puts an SJO on notice that there may be a need to keep notes (or jot some down) should the litigant refile with the CJP and/or raise the same or similar complaints (as we all know that can happen) with the court down the road.</p> <ul style="list-style-type: none"> <li>○ By <u>removing</u> the mandate, and making it “discretionary,” the SJO may never know about a complaint, and may not therefore save any notes, etc., related to a litigant where the PJ decided not to advise. This change is not a “matter of semantics.”</li> <li>○ If SJOs are not consistently (mandatorily) given notice of the closure of a complaint, irrespective of at what stage of investigation it closes, not only may notes not get preserved, but recordings may get erased, and other evidence may not be preserved (including other witnesses, court staff that may move on) – which evidence and information may be very helpful to both SJOs and the CJP should a litigant decide to pursue the matter further by filing a complaint with the CJP.</li> <li>○ By making it “discretionary” there will be a disparate effect throughout the state, with some SJOs and the</li> </ul>	<p>the CJP’s practice regarding complaints about judges that are closed without contacting the judge.</p>

**SPR13-31**

**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>CJP having a better record to work with, depending upon which county/PJs decide to give notice upon closing a complaint.</p> <ul style="list-style-type: none"> <li>• <b>The “streamlined” rule radically changes the nature of who initially not only investigates, but also who adjudicates local complaints against SJOs:</b> <ul style="list-style-type: none"> <li>○ In the current rule, subdivision (g)(2), trial courts/PJs can seek the assistance of the CJP if there is a conflict, or if, in exceptional circumstances, the PJ wants CJP to investigate and provide the results back to the trial court.</li> <li>○ HOWEVER, by “collapsing” (g)(2) and (g)(3) into a new (g)(3), and adding the words “<u>and adjudicate</u>” – this changes the nature of the existing process tremendously – and actually <i>takes away</i> the PJs authority to adjudicate if they turn it over entirely to the CJP (and may very well lead to disparate results if some counties routinely turn over to the CJP to adjudicate while others keep their investigations and dispositions in house).                             <ul style="list-style-type: none"> <li>▪ The suggested alternative put forth by the CCCA was to</li> </ul> </li> </ul> </li> </ul>	<p>The committee agreed to retain the language of subdivision (g)(2). In subdivision (g)(3), which requires “exceptional circumstances,” the committee added an alternative under which a presiding judge may ask a presiding judge of another court to investigate a complaint on behalf of the court and provide the results of the investigation to the court for adjudication.</p>

**SPR13-31**

**Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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

List of All Commentators, Overall Positions on the Proposal, and General Comments				
	Commentator	Position	Comment	Committee Response
			<p>simply remove the “exception circumstance” phrase, so that PJs can freely refer to CJP for investigation, <b>but there is absolutely no reason to allow CJP to adjudicate local complaints that would never arise to the level of CJP reporting.</b> In some respects, the proposed provision – without clarification or if not eliminated – may very well interfere with existing employer/employee processes in existence in the various counties.</p> <p>Bottom line: <u>Courts – and their respective HR divisions – have for years operated under the existing process and procedures without any problems.</u> (I previously sent in some statistics on this aspect of complaint resolution). The proposed “overhaul” is simply unnecessary and not just a matter of semantics. Please consider the alternative proposed revisions submitted by CCCA, <u>or at a minimum</u> put back the various due process notice provisions (both regarding final intended action, and closures), and take out the “adjudicate” provision of the new proposed rule.</p> <p>I do not support the rule as proposed for the reasons above.</p>	

**SPR13-31****Subordinate Judicial Officers: Complaints and Notice Requirements** (Amend Cal. Rules of Court, rules 10.603 and 10.703)

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

<b>List of All Commentators, Overall Positions on the Proposal, and General Comments</b>				
	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			Thank you for considering these comments, which are my own, and not on behalf of any organization.	
26.	Cynthia A. Zuzga Commissioner Los Angeles, CA	N	Please maintain the current investigative model to afford all parties involved a complete and fair process. I urge the advisory committee to adopt the recommendations of the California Commissioners Court Association.	See response to comments by the California Court Commissioners Association.

1 **PROPOSED RULE CHANGES BY CCCA**

2  
3 **Rule 10.703. Subordinate judicial officers: complaints and notice requirements**

4  
5 **(a) Intent**

6  
7 The procedures in this rule for processing complaints against subordinate judicial  
8 officers do not:

- 9  
10 (1) Create a contract of employment;
- 11  
12 (2) Change the existing employee-employer relationship between the subordinate  
13 judicial officer and the court; or
- 14  
15 (3) Change the status of a subordinate judicial officer from an employee terminable at  
16 will to an employee terminable only for cause; or
- 17  
18 (4) Restrict the discretion of the presiding judge in taking appropriate informal or  
19 formal action.

20  
21 **(b) Definitions**

22  
23 Unless the context requires otherwise, the following definitions apply to this rule:

- 24  
25 (1) "Subordinate judicial officer" means an attorney employed by a court to serve as a  
26 commissioner, ~~or~~ referee, or hearing officer, whether the attorney is acting as a  
27 commissioner, referee, hearing officer, or temporary judge. The term does not  
28 include any other attorney acting as a temporary judge.

29  
30 (2)-(3) \*\*\*

31  
32 **(c) Application**

33  
34 (1) \*\*\*

- 35  
36 (2) If a complaint against a subordinate judicial officer as described in (f) does not  
37 allege conduct that would be within the jurisdiction of the commission, the ~~court~~  
38 ~~must process the complaint following~~ local procedures adopted under rule  
39 10.603(c)(4)(C) apply. The local process may include any procedures from this  
40 rule for the court's adjudication of the complaint other than the provisions for  
41 referring the matter to the commission under (g) or giving notice of commission  
42 review under (l)(2)(B).

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(3) \*\*\*

~~(d)–(e)~~ \*\*\*

**(f) Written complaints to presiding judge**

(1) A complaint about the conduct of a subordinate judicial officer must be in writing and must be submitted to the presiding judge.

(2) \*\*\*

(3) The presiding judge has discretion to investigate complaints that are anonymous.

(4) The presiding judge must give written notice of receipt of the complaint to the complainant, if known.

**(g) Initial review of the complaint**

(1) The presiding judge must review each complaint and determine if the complaint:

(A) May be closed after initial review;

(B) Needs preliminary investigation; or

(C) Requires formal investigation.

(2) A presiding judge may request that the commission investigate and adjudicate the complaint if a local conflict of interest or disqualification prevents the court from acting on the complaint.

(3) In ~~exceptional circumstances~~ his or her discretion, a presiding judge may request the commission to investigate a complaint on behalf of the court and provide the results of the investigation to the court for action.

(4) The court must maintain a file on every complaint received, containing the following:

(A)–(D) \*\*\*

**(h) Closing a complaint after initial review**

1 (1) After a preliminary review the presiding judge may close without further action  
2 any complaint that:

3  
4 (A)-(B) \*\*\*  
5

6 (2) If the presiding judge decides to close the complaint after initial review, ~~the~~  
7 presiding judge must notify the complainant, if known, in writing of the decision  
8 to close the complaint. The notice must include the information required under  
9 (l).

10  
11 (3) The presiding judge must advise the subordinate judicial officer in writing of the  
12 ~~disposition~~ decision to close the complaint.

13  
14 **(i) Complaints requiring preliminary investigation**

15  
16 (1)-(2) \*\*\*  
17

18 (3) The presiding judge may give the subordinate judicial officer a copy of the  
19 complaint or a summary of its allegations and allow him or her an opportunity to  
20 respond to the allegations. The presiding judge must give the subordinate judicial  
21 officer a copy of the complaint or a summary of its allegations and allow the  
22 subordinate judicial officer an opportunity to respond to the allegations before the  
23 presiding judge takes appropriate informal action as described in (i)(4)(B).  
24

25 (4) After completing the preliminary investigation, the presiding judge must, in his or  
26 her discretion:

27 (A) Terminate the investigation and close action on the complaint if the  
28 presiding judge finds the complaint lacks merit; or

29 (B) Terminate the investigation and close action on the complaint by taking  
30 appropriate informal action, which may include an oral reprimand or oral  
31 warning to the subordinate judicial officer, if the presiding judge finds a  
32 basis for taking informal action; or  
33  
34  
35

- 1 (A) The subordinate judicial officer may request an opportunity to respond  
2 within 10 days after service of the notice; and  
3
- 4 (B) If the subordinate judicial officer does not request an opportunity to  
5 respond within 10 days after service of the notice, the proposed action  
6 will become final.  
7
- 8 (5) If the subordinate judicial officer requests an opportunity to respond, the presiding  
9 judge should allow the subordinate judicial officer an opportunity to respond to  
10 the notice of the intended final action, either orally or in writing as specified by  
11 the presiding judge, in accordance with local rules.  
12
- 13 (6) Within 10 days after the subordinate judicial officer has responded, the presiding  
14 judge must give the subordinate judicial officer and the complainant if known,  
15 written notice of the final action taken on the complaint. The notice to the  
16 complainant must include the information required under (l).  
17
- 18 (7) If the subordinate judicial officer does not request or has not been given an  
19 opportunity to respond, the presiding judge must promptly give written notice of  
20 the final action to the complainant if known. The notice must include the  
21 information required under (l).  
22

23 **(k) Notice to the Commission on Judicial Performance**  
24

- 25 (1) If a court disciplines a subordinate judicial officer by written reprimand under  
26 (i)(4)(B) or (j)(3)(C) or (D) , suspension, or ~~removal~~ termination for conduct that,  
27 if alleged against a judge, would be within the jurisdiction of the commission  
28 under article VI, section 18 of the California Constitution, the presiding judge  
29 must promptly forward to the commission a copy of the portions of the court file  
30 that reasonably reflect the basis of the action taken by the court, including the  
31 complaint or allegations of misconduct and the subordinate judicial officer’s  
32 response. This provision is applicable even when the disciplinary action does not  
33 result from a written complaint.  
34
- 35 (2) If a subordinate judicial officer resigns either (A) while a preliminary or formal  
36 investigation under (i) or (j) is pending concerning conduct that, if alleged against a  
37 judge, would be within the jurisdiction of the commission under article VI, section 18  
38 of the California Constitution, or (B) under circumstances that would lead a  
39 reasonable person to conclude that the resignation was due, at least in part, to a  
40 complaint or allegation of misconduct that, if alleged against a judge, would be  
41 within the jurisdiction of the commission under article VI, section 18 of the  
42 California Constitution, then the presiding judge must, within 15 days of the  
43 resignation or as soon thereafter as is reasonably possible, forward to the commission



1 the entire court file on any pending complaint about or allegation of misconduct  
2 committed by the subordinate judicial officer.

3  
4 (3) \*\*\*

5  
6 **(I) Notice of final court action**

7  
8 (1) When the court has completed its action on a complaint, the presiding judge must  
9 promptly notify the complainant, if known, and the subordinate judicial officer of  
10 the final court action.

11  
12 (2) \*\*\*

13  
14  
15



California Court Commissioners Association

**JERI M. HAMLIN**

President

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SENT BY EMAIL TO AVOID DELAY

February 23, 2015

Judge Marsha Slough  
Chair, TCPJAC

Re: Letter of support for proposed revision to Rule 10.703 (version revised 1-29-15)

Dear Judge Slough:

Our organization would like to take this opportunity to sincerely thank you for providing a meaningful opportunity to participate in discussions to further modify the pending proposed revisions to California Rules of Court, Rule 10.703. We consider the January 28, 2015 meeting between our CCCA subcommittee members and yourself, along with your TCPJAC subcommittee members, to have been pivotal in making a positive difference as to CCCA's position on the Rule change.

We continue to believe that, had we been included at the very outset, in discussions about a rule that only affects subordinate judicial officers, the result would have been a different, and even better rule. However, under the circumstances of how long it took to get this far, and particularly as a result of the meeting you facilitated on January 28<sup>th</sup>, CCCA now wishes to provide this letter of support.

The further revised proposed Rule (revised 1-29-15, after our joint TCPJAC/CCCA meeting on 1-28-15) that we understand will go to the Judicial Council at its April 17, 2015 meeting (after passing review through RUPRO), contains changes that essentially address many of the concerns we had raised when submitting comments to the original proposal. As a result, we believe that this matter, once approved by RUPRO, can be placed on the Judicial Council's consent Agenda with our support.

Thank you again for your assistance in this matter. Please let us know if our organization can be of assistance in any other matters affecting our membership or the work that we do in the courts.

Sincerely,

Jeri Hamlin  
President, CCCA