

### Invitation to Comment

Title	Reporting Subordinate Judicial Officers to the Commission on Judicial Performance (amend Cal. Rules of Court, rules 10.603 and 10.703)
Summary	The proposed amendment to rule 10.703(k) would clarify the circumstances under which a presiding judge must report to the Commission on Judicial Performance: (1) certain disciplinary actions against a subordinate judicial officer; and (2) the resignation of a subordinate judicial officer while an investigation is pending. The proposed amendment to rule 10.603, which addresses duties of a presiding judge, would add a reference to the reporting requirements specified in rule 10.703(k).
Source	Trial Court Presiding Judges Advisory Committee Hon. Mary Ann O'Malley, Chair
Staff	Mark Jacobson Senior Attorney Office of the General Counsel Administrative Office of the Courts 415-865-7898 mark.jacobson@jud.ca.gov

Article VI, section 18.1 of the California Constitution states that the Commission on Judicial Performance “shall exercise discretionary jurisdiction with regard to the oversight and discipline of subordinate judicial officers . . . .” Rule 10.703, entitled “Complaints Against Subordinate Judicial Officers,” implements this constitutional provision by setting forth procedures for courts and presiding judges to follow with respect to complaints about subordinate judicial officers (SJOs). Rule 10.703(k) provides that a presiding judge must notify the commission if (1) after a formal investigation, a complaint about an SJO results in written reprimand, suspension, or removal of the SJO; or (2) an SJO resigns while an investigation by the court is pending. There is no definition of “complaint” or “formal investigation” in the rule, but rule 10.703(f)(1) requires that a complaint be written unless the complainant is disabled, and (i)(2) and (j)(1)(A) state that an investigation “may include interviews of witnesses and a review of court records.”

Concerns have arisen about the lack of clarity in the rule regarding whether a presiding judge must notify the commission of an SJO’s discipline or resignation when the matter under investigation did not come to the court’s attention as a result of a written complaint about the SJO. For example, a court might investigate and discipline an SJO based on conduct reported to the presiding judge by another judge or court staff or based on a news report.

Concerns have also arisen about the lack of clarity regarding the circumstances under which a court must report to the commission the resignation of an SJO under rule 10.703(k)(2).

This ambiguity in the rule may result in complaints against a presiding judge for failure to comply with the rules. To promote the reporting that is necessary for the commission to fulfill its constitutional obligation to oversee conduct by SJOs, the advisory committee recommends clarifying the circumstances under which a report to the commission must be made.

First, the committee proposes amending rule 10.703(k) to clarify that a presiding judge must (1) notify the commission whenever an SJO is disciplined by written reprimand, suspension, or removal for conduct that, if alleged against a judge, would be within the commission's jurisdiction, whether or not there is a written complaint; (2) notify the commission whenever an SJO resigns while a preliminary or formal investigation under rule 10.703(i) or (j) is pending, or whenever an SJO resigns under circumstances that would lead a reasonable person to conclude that the resignation was due to a complaint or allegation of misconduct; and (3) comply with any request by the commission for information about a complaint or allegation of misconduct committed by an SJO. Second, the committee proposes that the title of rule 10.703 be changed from "Complaints About Subordinate Judicial Officers" to "Subordinate Judicial Officers: Complaints and Notice Requirements" to accurately reflect the proposed revisions to the rule. Finally, the committee concluded that rule 10.603, which describes the duties of presiding judges, should be amended to reference the reporting requirements in rule 10.703(k).

Rules 10.603 and 10.703 of the California Rules of Court would be amended, effective July 1, 2010, to read as follows:

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

2  
3 **(a)–(b) \* \* \***

4  
5 **(c) Duties**

6  
7 (1)–(3) \* \* \*

8  
9 (4) *Oversight of judicial officers*

10  
11 The presiding judge must:

12  
13 (A)–(B) \* \* \*

14  
15 (C) *Commissioners*

16  
17 (i) Prepare and submit to the judges for consideration and  
18 adoption procedures for receiving, inquiring into, and  
19 resolving complaints lodged against court commissioners  
20 and referees, consistent with rule 10.703; and

21  
22 (ii) Notify the Commission on Judicial Performance if a  
23 commissioner or referee is disciplined or resigns, consistent  
24 with rule 10.703(k).

25  
26 (D)–(E)

27  
28 (5)–(11) \* \* \*

29  
30 **(d) \* \* \***

31  
32  
33 **Rule 10.703. ~~Complaints against subordinate judicial officers~~ Subordinate**  
34 **judicial officers: complaints and notice requirements**

35  
36 **(a)–(j) \* \* \***

37  
38 **(k) Report Notice to the Commission on Judicial Performance**  
39

40 (1) ~~If after a formal investigation under (j) the complaint results in the a~~  
41 court disciplines a subordinate judicial officer by written reprimand  
42 under (i)(4)(B) or (j)(3)(C) or (D), suspension, or removal of the  
43 ~~subordinate judicial officer~~ for conduct that if alleged against a judge  
44 would be within the jurisdiction of the commission under article VI,  
45 section 18 of the California Constitution, the presiding judge must  
46 promptly forward to the commission a copy of the portions of the court  
47 file on the complaint that reasonably reflect the basis of the action taken  
48 by the court, including the complaint or allegations of misconduct and  
49 the subordinate judicial officer's response. This provision is applicable  
50 even when the disciplinary action does not result from a written  
51 complaint.

52  
53 (2) ~~If the a subordinate judicial officer resigns (A) while an preliminary or~~  
54 formal investigation under (i) or (j) is pending, concerning conduct that,  
55 if alleged against a judge, would be within the jurisdiction of the  
56 commission under article VI, section 18 of the California Constitution,  
57 or (B) under circumstances that would lead a reasonable person to  
58 conclude that the resignation was due, at least in part, to a complaint or  
59 allegation of misconduct that if alleged against a judge would be within  
60 the jurisdiction of the commission under article VI, section 18 of the  
61 California Constitution, the presiding judge must, within 15 days of the  
62 resignation, or as soon thereafter as is reasonably possible, forward to  
63 the commission the entire court file on any pending complaint about or  
64 allegation of misconduct committed by the subordinate judicial officer.

65  
66 (3) On request by the commission, the presiding judge must forward to the  
67 commission any requested information about a complaint ~~against~~ about  
68 or allegation of misconduct committed by a subordinate judicial officer.

69  
70 (j) \* \* \*

71  
72

## Item W10-03 Response Form

**Title:** Reporting Subordinate Judicial Officers to the Commission on Judicial Performance (amend Cal. Rules of Court, rules 10.603 and 10.703)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_

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\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

### **To Submit Comments**

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/>

**Email:** [invitations@jud.ca.gov](mailto:invitations@jud.ca.gov)

**Mail:** Ms. Camilla Kieliger  
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San Francisco, CA 94102

**Fax:** (415) 865-7664, Attn: Camilla Kieliger

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, January 22, 2010</b>
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*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.*