

CALIFORNIA RULES OF COURT

Provisions pertaining to the Commission on Judicial Performance

Rule 9.60. Review of determinations by Commission on Judicial Performance

(a) Time for petition for review to Supreme Court

A petition to the Supreme Court by a judge or former judge to review a determination by the Commission on Judicial Performance to retire, remove, censure, admonish, or disqualify the judge or former judge must be served and filed within 60 days after:

(1) The Commission, under its rules, notifies the judge or former judge that its determination has been filed or entered in its records; or

(2) The determination becomes final as to the Commission under its rules, whichever event is later.

(b) Time for answer to petition for review and reply

Within 45 days after service of the petition, the Commission may serve and file an answer. Within 20 days after service of the answer, the judge or former judge may serve and file a reply. Each petition, answer, or reply submitted for filing must be accompanied by proof of service, including service on the Commission of three copies of any petition or reply filed by a judge or former judge. Extensions of time to file the petition, answer, or reply are disfavored and will be granted only upon a specific and affirmative showing of good cause. Good cause does not include ordinary press of business.

(c) Contents and form

The petition, answer, and reply must address both the appropriateness of review and the merits of the Commission's determination, and they will serve as briefs on the merits in the event review is granted. Except as provided in these rules, the form of the petition, answer, and reply must, insofar as practicable, conform to rule 8.504 except that the lengths of the petition, answer, and reply must conform to the limits specified in rule 8.204(c). Each copy of the petition must contain:

(1) A copy of the Commission's determination;

(2) A copy of the notice of filing or entry of the determination in the records of the Commission;

(3) A copy of any findings of fact and conclusions of law; and

(4) A cover that bears the conspicuous notation “PETITION FOR REVIEW OF DETERMINATION BY COMMISSION ON JUDICIAL PERFORMANCE (RULE 9.60)” or words of like effect.

(d) Transmission of the record

Promptly upon the service and filing of the petition, the Commission must transmit to the Clerk of the Supreme Court the original record, including a transcript of the testimony, briefs, and all original papers and exhibits on file in the proceeding.

(e) Applicable Rules on Review

In the event review is granted, the rules adopted by the Judicial Council governing appeals from the superior court in civil cases, other than rule 8.272 relating to costs, apply to proceedings in the Supreme Court for review of a determination of the Commission except where express provision is made to the contrary or where such application would otherwise be clearly impracticable or inappropriate.

Rule 9.61. Proceedings involving public or private admonishment, censure, removal or retirement of a judge of the Supreme Court

(a) Selection of appellate tribunal

Immediately on the filing of a petition to review a determination by the Commission on Judicial Performance to retire, remove, censure, admonish or disqualify a justice of the Supreme Court, the Clerk of the Supreme Court must select, by lot, seven Court of Appeal justices who must elect one of their number presiding justice and perform the duties of the tribunal created under Article VI, Section 18(f) of the Constitution. This selection must be made upon notice to the Commission, the justice, and the counsel of record in a proceeding open to the public. No court of appeal justice who has served as a master or a member of the Commission in the particular proceeding or is otherwise disqualified may serve on the tribunal.

(b) Clerk of Supreme Court as clerk of tribunal

The Clerk of the Supreme Court serves as the clerk of the tribunal.

Rule 10.603. Authority and duties of presiding judge

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(c) Duties

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(4) (*Oversight of judicial officers*)

The presiding judge must:

(A) *Judges*

Notify the Commission on Judicial Performance of:

(i) A judge's substantial failure to perform judicial duties, including any habitual neglect of duty, persistent refusal to carry out assignments as assigned by the presiding judge, or persistent refusal to carry out the directives of the presiding judge as authorized by the rules of court; or

(ii) Any absences caused by disability totaling more than 90 court days in a 12-month period, excluding absences authorized under (c)(2);

(B) *Notice*

Give the judge a copy of the notice to the commission under (A) if appropriate. If a copy is not given to the judge, the presiding judge must inform the commission of the reasons why so notifying the judge was deemed inappropriate;

(C) *Commissioners*

(i) Prepare and submit to the judges for consideration and adoption procedures for receiving, inquiring into, and resolving complaints lodged against subordinate judicial officers, consistent with rule 10.703; and

(ii) Notify the Commission on Judicial Performance if a subordinate judicial officer is disciplined or resigns, consistent with rule 10.703(j).

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Rule 10.703. Subordinate judicial officers: complaints and notice requirements

(a) Intent

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

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

(b) Definitions

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

- (1) "Subordinate judicial officer" means an attorney employed by a court to serve as a commissioner, referee, or hearing officer, whether the attorney is acting as a commissioner, referee, hearing officer, or temporary judge. The term does not include any other attorney acting as a temporary judge.
- (2) "Presiding judge" includes the person or group the presiding judge designates to perform any duty required by this rule to be performed by a presiding judge.
- (3) "Commission" means the Commission on Judicial Performance. The commission exercises discretionary jurisdiction over the discipline of subordinate judicial officers under article VI, section 18.1 of the California Constitution.
- (4) "Written reprimand" means written disciplinary action that is warranted either because of the seriousness of the misconduct or because previous corrective action has been ineffective.

(c) Application

- (1) A court that employs a subordinate judicial officer must use the procedures in this rule for processing complaints against the subordinate judicial officer if the complaint alleges conduct that if alleged against a judge would be within the jurisdiction of the commission under article VI, section 18 of the California Constitution.

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

(3) A court may adopt additional policies and procedures for the adjudication of complaints against subordinate judicial officers not inconsistent with this rule.

(d) Promptness required

The presiding judge must ensure that the court processes each complaint promptly. To the extent reasonably possible, the court must complete action on each complaint within 90 days after the complaint is submitted.

(e) Confidentiality

(1) All proceedings by a presiding judge under this rule must be conducted in a manner that is as confidential as is reasonably possible consistent with the need to conduct a thorough and complete investigation and the need for proper administration of the court.

(2) This rule does not prohibit access by the commission to any information relevant to the investigation of a complaint against a subordinate judicial officer.

(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) Persons who are unable to file a written complaint because of a disability may present an oral complaint, which the presiding judge must commit to writing.

(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) Requires investigation by the presiding judge; or

(C) Should be referred to the commission or to the presiding judge of another court for investigation or for investigation and adjudication.

(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, a presiding judge may request the commission or the 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.

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

(A) The complaint;

(B) The response of the subordinate judicial officer, if any;

(C) All evidence and reports produced by the investigation of the complaint, if any; and

(D) The final action taken on the complaint.

(h) Closing a complaint after initial review

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

(A) Relates to the permissible exercise of judicial or administrative discretion by the subordinate judicial officer; or

(B) Does not allege conduct that if alleged against a judge would be within the jurisdiction of the commission under article VI, section 18 of the California Constitution.

(2) If the presiding judge decides to close the complaint under (h)(1), the presiding judge must notify the complainant in writing of the decision to close the complaint. The notice must include the information required under (k).

(3) The presiding judge may, in his or her discretion, advise the subordinate judicial officer in writing of the decision to close the complaint.

(i) Complaints requiring investigation

(1) If after an initial review of the complaint the presiding judge finds a basis for further inquiry, the presiding judge must conduct an investigation appropriate to the nature of the complaint.

(2) The investigation may include interviews of witnesses and a review of court records.

(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 during the investigation. 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 decides to take any disciplinary action against the subordinate judicial officer.

(4) After completing the 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; or

(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.

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

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

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

(B) The facts and other information forming the basis for the proposed action and the source of the facts and information.

(7) The notice of the intended final action on the complaint in (i)(6)(A) shall 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 shall become final.

(8) If the subordinate judicial officer requests an opportunity to respond, the presiding judge 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.

(9) Within 10 days after the subordinate judicial officer has responded, the presiding judge must give the subordinate judicial officer written notice of the final action taken on the complaint.

(10) If the subordinate judicial officer does not request 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 (k).

(j) Notice to the Commission on Judicial Performance

(1) If a court disciplines a subordinate judicial officer by written reprimand, suspension, or 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.

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

(3) Upon request by the commission, the presiding judge must forward to the commission any requested information regarding a complaint about or allegation of misconduct committed by a subordinate judicial officer.

(k) Notice of final court action

(1) When the court has completed its action on a complaint, the presiding judge must promptly notify the complainant, if known, of the final court action.

(2) The notice to the complainant of the final court action must:

(A) Provide a general description of the action taken by the court consistent with any law limiting the disclosure of confidential employee information; and

(B) Include the following statement:

If you are dissatisfied with the court's action on your complaint, you have the right to request the Commission on Judicial Performance to review this matter under its discretionary jurisdiction to oversee the discipline of subordinate judicial officers. No further action will be taken on your complaint unless the commission receives your written request within 30 days after the date this notice was mailed. The commission's address is:

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102

Rule 10.1016. Notice of failure to perform judicial duties

(a) Notice

(1) The Chief Justice or presiding justice must notify the Commission on Judicial Performance of a reviewing court justice's:

(A) Substantial failure to perform judicial duties, including any habitual neglect of duty, or

(B) Disability-caused absences totaling more than 90 court days in a 12-month period, excluding absences for authorized vacations and for attending schools, conferences, and judicial workshops.

(2) If the affected justice is a presiding justice, the administrative presiding justice must give the notice.

(b) Copy to Justice

The Chief Justice, administrative presiding justice, or presiding justice must give the affected justice a copy of any notice under (a).

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