



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-114

For business meeting on July 21, 2023

Title

Judicial Branch Administration: Procedures
for Submitting Contentions Regarding
Administration of the Courts of Appeal

Agenda Item Type

Action Required

Effective Date

September 1, 2023

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 10.1014

Date of Report

June 20, 2023

Recommended by

Administrative Presiding Justices Advisory
Committee
Hon. Patricia Guerrero, Chair

Contact

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Executive Summary

The Administrative Presiding Justices Advisory Committee recommends adopting a new rule to establish procedures for submitting to the administrative presiding justices (APJs) contentions that an APJ or presiding justice has not properly addressed or managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal. This proposal is based on a recommendation from the Appellate Caseflow Workgroup and would advance the efficient, effective, and proper administration of the Courts of Appeal.

Recommendation

The Administrative Presiding Justices Advisory Committee recommends that the Judicial Council, effective September 1, 2023, adopt new rule 10.1014 to:

- Provide a procedure by which any person may submit a contention to the administrative presiding justices regarding an APJ or presiding justice related to the administration of a Court of Appeal or a division of a Court of Appeal;
- Provide authority for the APJs to collectively review and address such contentions;

- Require the cooperation of justices who are the subject of contentions under review; and
- Address the confidentiality of submitted contentions.

The proposed new rule is attached at pages 10–13.

Relevant Previous Council Action

The Judicial Council has not previously considered a procedure by which any person may submit a contention to the APJs regarding an APJ or presiding justice (PJ) related to the administration of a Court of Appeal or a division of a Court of Appeal.

Analysis/Rationale

Background

In June 2022, former Chief Justice Tani G. Cantil-Sakauye formed the Appellate Caseflow Workgroup in response to findings issued by the Commission on Judicial Performance concerning case delays in the Third Appellate District of the Court of Appeal. The workgroup was chaired by Administrative Presiding Justice James M. Humes, Court of Appeal, First Appellate District, and its membership included APJs and associate justices from each of the six appellate districts, appellate court clerk/executive officers, appellate court managing attorneys, and attorneys who practice before the courts of appeal. The workgroup was directed to review the policies, procedures, and management and administrative practices of the Courts of Appeal and to recommend measures to promote transparency, accountability, and efficiency in issuing timely judgments. Former Chief Justice Cantil-Sakauye also directed the workgroup to recommend measures for these courts to report metrics on case delays. The workgroup delivered a final report on December 6, 2022, with 22 recommendations. One of the recommendations was that the Chief Justice urge the Administrative Presiding Justices Advisory Committee (APJAC) to recommend that the Judicial Council adopt a new rule or amend an existing rule to authorize the APJs to collectively review and address contentions that an APJ or PJ has not properly managed an important matter.¹ Former Chief Justice Cantil-Sakauye directed the APJAC to develop a rule proposal and recommend it to the Judicial Council for adoption. This proposal is intended to fulfill that direction.

Purpose of the rule

Subdivision (a) of the proposed rule states its purpose. Specifically, it states that the rule would advance the objective that APJs and PJs are accountable for the efficient, effective, and proper administration of the Courts of Appeal and each division of the Courts of Appeal.

¹ Appellate Caseflow Workgroup, *Report to the Chief Justice* (Dec. 6, 2022), p. 35, https://newsroom.courts.ca.gov/sites/default/files/newsroom/2022-12/Appellate%20Caseflow%20Workgroup%20Report_Final.pdf.

Proposed rule 10.1014

Procedures for submitting a contention

Subdivision (b) of the proposed rule would provide procedures for submitting a contention that an APJ or PJ has not properly addressed or managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal. Although contentions would be submitted to the APJs collectively, any APJ who is the subject of a contention would be recused from reviewing the contention. In addition, any APJ or PJ who is the subject of such a contention would be required to cooperate with the APJs responsible for reviewing that contention.

Under the proposed rule, anyone may submit such a contention. As noted in the advisory committee comment, the term “any person” is intended to be construed broadly and would include a judicial officer, court employee, attorney, litigant, or member of the public.

The contentions that could be submitted to the APJs under the proposed rule would be only those that relate to the *administration* of a Court of Appeal district or a division of a Court of Appeal. Contentions related to the adjudication of a specific case or the decision in a specific case would not be subject to the procedures in the proposed rule because these are matters governed by other existing legal procedures, for example, motions and writ petitions filed in a court. Similarly, personnel matters, including complaints by or against employees, are already governed by employment laws and individual court personnel policies and procedures that vest responsibility with the clerk/executive officer, not with the APJ.

Following the receipt and review of a contention, the proposed rule would authorize the APJs collectively to take appropriate remedial or other lawful action to address the contention. However, the rule would not require the APJs to take any action in response to a contention. Examples of actions that the APJs could take include recommending amendments to the California Rules of Court or operational policies of the Courts of Appeal, referring a contention to the Commission on Judicial Performance (CJP), referring it mediation, and conducting informal discussions with the person who submitted the contention and the justice who is the subject of the contention. These are examples only and would not limit the categories of actions the APJs could take. The proposed rule, however, would not authorize APJs to take actions that are within the sole purview of the Supreme Court or the CJP—for example, the removal, censure, or admonishment of a justice. Similarly, the rule would not authorize the APJ to take personnel actions, as such actions would be governed by other legal authorities and policies.

If an APJ were to receive a submission that the APJ considers outside the scope of the rule, it would be appropriate for the APJ or the APJ’s delegate to return the submission to the person who submitted it or to forward it to the official with responsibility for the contention, with a copy notifying the person who submitted it. For example, a personnel matter would be forwarded to the clerk/executive officer of the court.

Information on how to submit a contention would be posted on the judicial branch website. The committee considered it important that this information be publicly available but considered it

inappropriate to provide more detail in the rule. This lack of specificity will allow the APJs greater flexibility in determining how the information is made available. It is not intended to limit the APJs from making the information available in ways other than posting on the judicial branch website.

Presiding justices in districts with more than one division

Generally, the APJ of an appellate district “is responsible for leading the court, establishing policies, promoting access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, and maximizing the use of judicial and other resources.”²

In the three Court of Appeal districts with only one division (i.e., the Third, Fifth, and Sixth Appellate Districts), the presiding justice acts as the APJ.³ In the three Court of Appeal districts with more than one division (i.e., the First, Second, and Fourth Appellate Districts), the Chief Justice designates a presiding justice to act as APJ.⁴ Each division in a multidivision district includes at least two associate justices and a presiding justice.⁵ The office of presiding justice is distinct from the office of associate justice, subject to separate appointment and confirmation.⁶

APJs of Courts of Appeal with more than one division in the same city and the PJs of all other Courts of Appeal are generally responsible for ensuring that all appellate records and briefs are promptly filed, which is important for assuring the progress of appellate matters in each district.⁷ The justices, therefore, have a number of duties related to applications for extensions of time for filings and to noncompliance with the California Rules of Court.⁸ The presiding justices in each division also have the responsibility to report to the CJP a justice’s “[s]ubstantial failure to perform judicial duties, including any habitual neglect of duty.”⁹ Presiding justices in divisions

² Cal. Rules of Court, rule 10.1004(b). All further references to rules are to the California Rules of Court unless otherwise indicated.

³ Rule 10.1004(a)(3).

⁴ Rule 10.1004(a)(1).

⁵ Article VI, section 3 of the California Constitution provides that “[e]ach division consists of a presiding justice and 2 or more associate justices.”

⁶ See Cal. Const., art. VI, §§ 2, 3 (distinguishing the Chief Justice and presiding justice offices from the other offices of a reviewing court); Elec. Code, § 13109(i) (same; election ballot).

⁷ Rule 10.1012(a).

⁸ Rule 10.1012(b):

Notwithstanding any other rule, the administrative presiding justices and presiding justices referred to in (a) may:

- (1) Grant or deny applications to extend the time to file records, briefs, and other documents, except that a presiding justice may extend the time to file briefs in conjunction with an order to augment the record;
- (2) Order the dismissal of an appeal or any other authorized sanction for noncompliance with these rules, if no application to extend time or for relief from default has been filed before the order is entered; and
- (3) Grant relief from default or from a sanction other than dismissal imposed for the default.

⁹ Rule 10.1016(a).

that are geographically separate¹⁰ have additional administrative responsibilities, subject to the oversight of the APJ.¹¹

Subdivision (c) of the proposed rule is intended to be consistent with this existing governance structure and the oversight responsibilities of APJs in districts with more than one division. The committee, therefore, proposes that before a person submits a contention under (b)(1) of the rule about a presiding justice of a district with more than one division, including those in geographically separate divisions, that person must first submit the contention to the APJ of the district in which the division is located. Doing so will provide an opportunity for the contention to be addressed by that APJ before it is elevated to the APJs collectively and could allow for a prompt, efficient resolution of a contention by the APJ who is likely to be in the best position to address the contention. If the person submitting the contention is dissatisfied with how the APJ addresses the contention, or if the contention concerns an APJ, the rule allows for the person to submit the contention to the APJs collectively.

To assure that this procedure for an individual APJ to accept and address contentions works, the proposed rule would require PJs in districts with more than one division, including those in geographically separate divisions, to cooperate with the APJ of the district in which the division is located when the APJ is carrying out oversight responsibilities under the rule. This requirement would parallel the responsibilities of PJs to cooperate, in subdivision (b)(2), and is consistent with the existing general oversight authority of APJs over PJs in districts with more than one division.

Confidentiality

Subdivision (d) provides that all procedures 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, the need for a proper administration of the court, and resolution of the contention.

As noted in the advisory committee comment, providing a process under this rule for persons to submit contentions for consideration and action by APJs, either individually or collectively, will advance the efficient, effective, and proper administration of the Courts of Appeal and each division of the Courts of Appeal. Establishing the confidentiality of this procedure would be critical to encouraging persons to submit contentions with candor. The necessity for preserving

¹⁰ Division Six of the Second Appellate District (in Ventura County) and Divisions Two and Three of the Fourth Appellate District (in Riverside and Orange Counties).

¹¹ Rule 10.1004(d):

Under the general oversight of the administrative presiding justice, the presiding justice of a geographically separate division:

- (1) Generally directs and supervises all of the division's court employees not assigned to a particular justice;
- (2) Has authority to act on behalf of the division regarding day-to-day operations;
- (3) Administers the division budget for day-to-day operations, including expenses for maintenance of facilities and equipment; and
- (4) Operates, maintains, and assigns space in all facilities used and occupied by the division.

the confidentiality of these procedures and of communications with APJs would outweigh the necessity for disclosure in the interest of justice.

The confidentiality provided is consistent with confidentiality provisions in other rules. Specifically, the text of subdivision (d) is modeled after provisions in rule 10.703 regarding the confidentiality of proceedings related to complaints about subordinate judicial officers in trial courts and authorizing certain notices regarding those proceedings, as well as in rule 102 of the Rules of the Commission on Judicial Performance. The subdivision is also consistent with the confidentiality of complaints against judges provided in California Rules of Court, rule 10.500(f)(7).

Proposed rule 10.1014 states explicitly that subdivision (d) does not:

- Prohibit the person who submitted the contention or the justice who is the subject of the contention from making statements regarding the conduct underlying the contention;
- Preclude APJs from communicating with the person who submitted the contention or the justice who is the subject of the contention about the conduct underlying the contention or the investigation, conclusion, or resolution of the contention;
- Preclude PJs from providing a notice to the Commission on Judicial Performance or forwarding to the commission any requested information; or
- Preclude APJs from making public, when appropriate, the conclusion or resolution of the contention.

The committee determined that these four provisions needed to be made explicitly to further the efficient and effective operation of the procedure set out in the rule.

Policy implications

The proposal is based on the recommendation of the Appellate Caseflow Workgroup and will advance the objective that APJs and PJs are accountable for the efficient, effective, and proper administration of the Courts of Appeal and each division of the Courts of Appeal.

Comments

This proposal was circulated for public comment from March 30 to May 12, 2023. The committee received and considered a total of six comments, three from organizations and three from justices of the California Courts of Appeal. Two organizations agreed with the proposal: the California Academy of Appellate Lawyers and the California Lawyers Association, Litigation Section, Committee on Appellate Courts. The third organization, the Los Angeles County Bar Association, Appellate Courts Section, agreed if the proposal was modified. Two of the justices agreed with the proposal if modified: Associate Justice Lamar W. Baker, Court of Appeal, Second Appellate District, Division Five, and Associate Justice Frank J. Menetrez, Court of Appeal, Fourth Appellate District, Division Two. The third justice, Presiding Justice

Kathleen E. O’Leary, Court of Appeal, Fourth Appellate District, Division Three, did not agree with the proposal.

A chart with the full text of the comments received and the committee’s responses is attached at pages 14–28.

Confidentiality

Both Justice Baker and Justice Menetrez raised concerns that the confidentiality provision of the proposed rule was unclear as to who was bound to keep information or records confidential, what information or records were to be kept confidential, and from whom information and records were to be kept confidential.

The committee agreed that clarification was appropriate and revised subdivision (c), modeling it on some portions of two existing authorities on procedures that involve the review and resolution of matters related to the judicial officers. Specifically, California Rules of Court, rule 10.703, which governs the confidentiality of proceedings related to complaints about subordinate judicial officers in trial courts and authorizes certain notices regarding those proceedings, and Rules of the Commission on Judicial Performance, rule 102, which governs the confidentiality of proceedings before the commission. Although those models were instructive, the procedure under proposed rule 10.1004 is less formal and focused on justices’ administrative responsibility, which required a different approach to the confidentiality provision. Four specific provisions were included to clarify that the rule does not preclude certain individuals from disclosing certain categories of information that the committee deemed appropriate for the effective and proper operation of the process.

Scope of the contentions considered

Justice O’Leary commented that the rule was unclear as to the scope of the contentions that could be submitted to APJs under the proposed procedure. In particular, she expressed concern that the term “an important matter of administration related to a Court of Appeal” was too broad and that it would be read as being comparable the term “judicial administrative record” in rule 10.500. The committee does not intend that those terms have the same meaning or be read in the same manner. As the commenter noted, the context and purpose of the two rules is entirely different. Rule 10.500 governs public access to judicial administrative records and is intended to facilitate public transparency. Proposed rule 10.1014 relates to the administration of the Courts of Appeal and is intended to assure that PJs and APJs are accountable for how they carry out their administrative duties.

Justice O’Leary also specifically asked whether contentions related to internal personnel matters could be submitted. The committee did revise the proposal to address this question. Personnel matters, including complaints by or against employees, are already governed by employment laws and individual court personnel policies and procedures that vest primary responsibility with the clerk/executive officer, not with APJs. To make this point unequivocally clear, the committee added language to the advisory committee comment, stating that personnel and employment matters are not subject to the procedures in this rule. If an APJ were to receive a submission that

the APJ considered outside the scope of the rule, it would be appropriate for the APJ or the APJ's delegate to return the submission to the person who submitted it or to forward it to the appropriate official with responsibility for the contention, with a copy notifying the individual who submitted it. For example, a personnel matter would be forwarded to the clerk/executive officer of the court.

Other provisions considered vague

Justice Baker commented on two other provisions that he considered vague and suggested would benefit from clarification. Specifically, he noted that proposed rule 10.1014(b)(4) provides that APJs “may take appropriate remedial or other lawful action” to address a contention. The phrase, however, was intentionally drafted to provide the APJs with the greatest flexibility possible in resolving contentions and not to exclude any possible solutions they might have available to address a contention. The phrase is also constrained, however, to limit any remedies to “lawful action.” Finally, the comment on subdivision (b) explains at great length the scope of the actions APJs may take and provides examples. For these reasons, the committee determined no revision of the rule was necessary.

The second provision that Justice Baker considered vague is proposed rule 10.1014(b)(2) to the extent it does not explain what it means in requiring an APJ or PJ to “cooperate with” the APJs reviewing a contention. The committee notes that the term “cooperate” is used in a number of other contexts. Specifically, the word “cooperate” is used without further definition in article VI, section 6(f) of the California Constitution, requiring judges to cooperate with the Judicial Council when reporting concerning the condition of judicial business in their courts. Similarly, the words “cooperation” and “cooperate” are used throughout the California Rules of Court without further definition, including in rule 10.1004(c), which describes the APJs as having the duty to cooperate with the Chief Justice in “the making of reports and the assignment of judges or retired judges under article VI, section 6 of the California Constitution” and “expediting judicial business and equalizing the work of judges by recommending, when appropriate, the transfer of cases by the Supreme Court under article VI, section 12 of the California Constitution.” (Cal. Rules of Court, rule 10.1004(c)(3) and (4).) The committee, therefore, considers the use of the term “cooperate” in proposed rule 10.1014 to be sufficiently clear without further definition.

The role of administrative presiding judges

The advisory committee comment on subdivision (c) as circulated included a statement that APJs have “broad oversight authority under rule 10.1004(d).” Justice Baker took issue with the statement on the ground that the cited subdivision concerns the authority of a presiding justice and suggested that it should be deleted. The committee agrees that the comment as circulated may have been ambiguous in citing only subdivision (d). The advisory committee comment has been revised. The revised comment still confirms that proposed rule 10.1014(c) is consistent with the governing structure and the respective roles of PJs and APJs that are set out in rule 10.1004, and discusses the relevant portions of that rule.

Rule unnecessary

Justice O’Leary notes that since the issues that arose in the Third Appellate District and were identified, the Courts of Appeal have introduced many changes to their operations to reduce delays in caseload and that the proposed rule is unnecessary. The committee applauds the efforts that have been made to improve the Courts of Appeal’s transparency, accountability, and efficiency in issuing timely judgments. The Appellate Caseflow Workgroup recommended that the committee develop and recommend that the Judicial Council adopt a new rule, or amend an existing rule, of the California Rules of Court authorizing the APJs to collectively review and address contentions that an APJ or PJ has not properly managed an important matter. This proposal is intended to satisfy that recommendation, prevent issues from recurring, and build trust and confidence in the Courts of Appeal.

Alternatives considered

In addition to considering the alternatives commenters suggested, the committee considered making no recommendation. For the reasons stated in the Appellate Caseflow Workgroup’s report, however, enhanced oversight by the APJs collectively and a procedure for submitting and considering contentions about the administration of the Courts of Appeal will help to address issues early; improve the efficient, effective, and proper management of the Courts of Appeal; and strengthen confidence in the judicial branch.

Fiscal and Operational Impacts

The proposal is not expected to result in any significant additional costs. Although it may require some additional work by the APJs and administrative staff, the committee anticipates that the work can be accomplished without additional resources. One justice suggested that the proposed rule would place a significant workload burden on the Courts of Appeal. The committee, whose members and staff will bear much of that burden, has concluded that the benefit from increased accountability and confidence in the Courts of Appeal will outweigh any burden from the additional effort required. The committee will monitor the workload and may consider amendments to the rule if it thinks they are appropriate.

Attachments and Links

1. Cal. Rules of Court, rule 10.1014, at pages 10–13
2. Chart of comments, at pages 14–28

Rule 10.1014 of the California Rules of Court is adopted, effective September 1, 2023, to read:

1 **Rule 10.1014. Oversight of administrative presiding justices and presiding justices**
2

3 **(a) Purpose**
4

5 Administrative presiding justices and presiding justices are accountable for the
6 efficient, effective, and proper administration of the Courts of Appeal and each
7 division of the Courts of Appeal. This rule is intended to advance that objective.
8

9 **(b) Contention procedure**
10

11 (1) Any person who contends that an administrative presiding justice or
12 presiding justice has not properly addressed or managed an important matter
13 related to the administration of a Court of Appeal or a division of a Court of
14 Appeal may submit that contention to the administrative presiding justices
15 collectively for their review, subject to (c)(1).
16

17 (2) Any administrative presiding justice or presiding justice who is the subject of
18 a contention under this paragraph must cooperate with the administrative
19 presiding justices responsible for reviewing that contention.
20

21 (3) Any administrative presiding justice who is the subject of a contention under
22 this paragraph is recused from reviewing the contention.
23

24 (4) Following receipt and review of a contention, the administrative presiding
25 justices collectively may take appropriate remedial or other lawful action to
26 address the contention.
27

28 (5) Information on how to submit a contention will be posted on the judicial
29 branch website.
30

31 **(c) Presiding justices in districts with more than one division**
32

33 (1) Before a person submits a contention under (b)(1) about a presiding justice of
34 a district with more than one division, including the presiding justice of a
35 geographically separate division, that person must first submit the contention
36 to the administrative presiding justice of the district in which the division is
37 located to provide an opportunity for the contention to be addressed by that
38 administrative presiding justice.
39

40 (2) Presiding justices in districts with more than one division, including the
41 presiding justice of a geographically separate division, must cooperate with
42 the administrative presiding justice of the district in which the division is

1 located when the administrative presiding justice is carrying out oversight
2 responsibilities under this rule.

3
4 **(d) Confidentiality**

5
6 All procedures under this rule must be conducted in a manner that is as confidential
7 as is reasonably possible, consistent with the need to conduct a thorough and
8 complete investigation, the need for proper administration of the court, and
9 resolution of the contention.

10
11 (1) This subdivision does not prohibit the person who submitted the contention
12 or the justice who is the subject of the contention from making statements
13 regarding the conduct underlying the contention.

14
15 (2) This subdivision does not preclude administrative presiding justices from
16 communicating with the person who submitted the contention or the justice
17 who is the subject of the contention about the conduct underlying the
18 contention or the investigation, conclusion, or resolution of the contention.

19
20 (3) This subdivision does not preclude presiding justices from providing a notice
21 to the Commission on Judicial Performance or forwarding to the commission
22 any requested information.

23
24 (4) This subdivision does not preclude administrative presiding justices from
25 making public, when appropriate, the conclusion or resolution of the
26 contention.

27
28
29 **Advisory Committee Comment**

30
31 **Subdivision (b).** Subdivision (b) provides a procedure by which any person may submit a
32 contention to the administrative presiding justices regarding an administrative presiding justice or
33 presiding justice related to the administration of a Court of Appeal or a division of a Court of
34 Appeal.

35
36 **Subdivision (b)(1).** The term “any person” is intended to be construed broadly and would include
37 a judicial officer, court employee, attorney, litigant, or member of the public.

38
39 The contentions that may be submitted to the administrative presiding justices under the
40 procedures authorized by this rule are those that relate to the administration of a Court of Appeal
41 district or a division of a Court of Appeal. Contentions related to the adjudication of a specific
42 case or the decision in a specific case are not subject to the procedures in this rule. Personnel and
43 employment matters are not subject to the procedures in this rule. Personnel matters, including

1 complaints by or against employees, are already governed by employment laws and individual
2 court personnel policies and procedures that vest responsibility for handling such matters with the
3 clerk/executive officer. If an administrative presiding justice receives a submission and considers
4 it outside the scope of the rule, it would be appropriate for the administrative presiding justice or
5 their delegate to return the submission to the person who submitted it or to forward it to the
6 appropriate official with responsibility for the contention, with a copy notifying the person who
7 submitted it. For example, a personnel matter would be forwarded to the clerk/executive officer
8 of the court.

9
10 **Subdivision (b)(4).** This paragraph authorizes the administrative presiding justices collectively to
11 take appropriate remedial or other lawful action to address the contentions submitted under the
12 procedures in this rule. However, the rule does not require the administrative presiding justices to
13 take any action in response to a contention. Examples of actions that the administrative presiding
14 justices may take include recommending amendments to the California Rules of Court or
15 operational policies of the Courts of Appeal, referring a contention to the Commission on Judicial
16 Performance, referring it to mediation, and conducting informal discussions with the person who
17 submitted the contention and the justice who is the subject of the contention. This paragraph does
18 not authorize administrative presiding justices to take actions that are within the sole purview of
19 the Supreme Court or the Commission on Judicial Performance, for example, the removal,
20 censure, or admonishment of a justice. Similarly, the rule does not authorize an administrative
21 presiding justice to take personnel actions, as such actions are governed by other legal authorities
22 and policies.

23
24 **Subdivision (c).** This subdivision is consistent with the governance structure provided in rule
25 10.1004, which gives administrative presiding justices responsibility for “leading the court,
26 establishing policies, promoting access to justice for all members of the public, providing a forum
27 for the fair and expeditious resolution of disputes, and maximizing the use of judicial and other
28 resources” (Cal. Rules of Court, rule 10.1004(b)), along with more specific duties (Cal. Rules of
29 Court, rule 10.1004(c)), and which also prescribes areas in which a presiding justice in a
30 geographically separate division is given authority under the general oversight of the
31 administrative presiding justice (Cal. Rules of Court rule 10.1004(d)).

32
33 **Subdivision (d).** Providing a process for persons to submit contentions under this rule for
34 consideration and action by administrative presiding justices, either individually or collectively,
35 will advance efficient, effective, and proper administration of the Courts of Appeal and each
36 division of the Courts of Appeal. Establishing the confidentiality of this procedure is critical to
37 encouraging persons to submit contentions with candor. The necessity for preserving the
38 confidentiality of these procedures and of communications with administrative presiding justices
39 outweighs the necessity for disclosure in the interest of justice.

40
41 Subdivision (d) is consistent with confidentiality provisions in other rules. Specifically, the text of
42 subdivision (d) is modeled after provisions in California Rules of Court, rule 10.703(e), regarding
43 the confidentiality of proceedings related to complaints about subordinate judicial officers in trial

1 courts and authorizing certain notices regarding those proceedings, and in Rules of the
2 Commission on Judicial Performance, rule 102. This subdivision is also consistent with
3 maintaining the confidentiality of complaints against judges provided in California Rules of
4 Court, rule 10.500(f)(7).

DRAFT

Judicial Branch Administration: Procedures for Submitting Contentions Regarding Administration of the Courts of Appeal
 (adopt Cal. Rules of Court, rule 10.1014)

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

| | Commenter | Position | Comment | Committee Response |
|----|---|-----------------|---|--|
| 1. | Hon. Lamar W. Baker, Associate Justice of the Court of Appeal, Second Appellate District, Division Five Los Angeles, California | AM | <p>Thank you for the opportunity to comment on the new proposed rule. My brief comments are reflected below.</p> <p>1. The advisory committee comment statement in the proposed rule that an administrative presiding justice (APJ) wields “broad oversight authority under rule 10.1004(d)” should be deleted. The cited subdivision concerns the authority of a presiding justice. Regardless, APJs do not have broad oversight authority. They have well-defined and limited administrative responsibilities and authority (and some only if delegated by a majority of justices) under rule 10.1004(c).</p> | <p>The committee appreciates the commenter’s thoughtful review of the proposal.</p> <p>The advisory committee comment has been revised in response to this comment. The committee agrees that the comment, as circulated, may have been ambiguous in citing only subdivision (d).</p> <p>Under rule 10.1004(b), administrative presiding justices (APJs) have authority “for leading the court, establishing policies, promoting access to justice for all members of the public, providing a forum for the fair and expeditious resolution of disputes, and maximizing the use of judicial and other resources.” In addition, under rule 10.1004(c), an APJ “must perform any duties delegated by a majority of the justices in the district with the Chief Justice’s concurrence,” and has a range of specific responsibilities identified in the subdivision. As the commenter notes, subdivision (d) identifies the responsibilities of a presiding justice (PJ) in a geographically separate division (division 6 of the Second Appellate District, and divisions 2 and 3 of the Fourth Appellate district). The PJ duties identified in subdivision (d) are performed “[u]nder the general oversight of the administrative presiding justice.”</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Judicial Branch Administration: Procedures for Submitting Contentions Regarding Administration of the Courts of Appeal

(adopt Cal. Rules of Court, rule 10.1014)

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

| | Commenter | Position | Comment | Committee Response |
|--|-----------|----------|---|--|
| | | | | <p>The committee agrees that the comment, as circulated, may have been ambiguous in citing only subdivision (d) of rule 10.1004. Nonetheless, proposed rule 10.1014(c) would be consistent with several rules of court that give PJs, including those in geographically separate divisions, a role in the administration of the Courts of Appeal, some under the oversight of administrative presiding justices. (Cal. Rules of Court, rules 10.1000(b) [APJ authority to transfer cases between divisions within the district], 10.1004 [discussed above], 10.1012 [APJ and PJ responsibility to supervise progress of appeals].)</p> |
| | | | <p>2. The advisory committee comment should explain how the rule is consistent with existing constitutional and statutory provisions—perhaps most prominently Article VI, Section 6(e) of the California Constitution, which assigns to the Chief Justice responsibility for expediting judicial business and equalizing the work of justices, and Article VI, Section 12(a), which assigns to the Supreme Court authority to transfer a cause from one court of appeal to another.</p> | <p>The proposed rule is consistent with the two constitutional provisions cited by the commenter. Specifically, nothing in the rule authorizes the transfer of causes from one district to another. The committee notes that under rule 10.1004(c)(3) and (4), APJs are required to cooperate with the Chief Justice in both responsibilities. As a result, the advisory committee has concluded that it is not necessary to add to the advisory committee comment.</p> |
| | | | <p>3. Several provisions in the rule as proposed would benefit from clarification and further revision.</p> | |
| | | | <p>In particular, proposed rule 10.1014(b)(4) provides APJs “may take appropriate remedial or other</p> | <p>The phrase in proposed rule 10.1014(b)(4) cited by the commenter was intentionally drafted to provide the APJs the greatest flexibility possible in</p> |

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

Judicial Branch Administration: Procedures for Submitting Contentions Regarding Administration of the Courts of Appeal
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|--|-----------|----------|--|---|
| | | | lawful action” to address a contention. That is too vague (and perhaps too broad). | resolving contentions and to not exclude any possible solutions they might have available to address a contention. The phrase is also constrained, however, to limit any remedies to “lawful action.” Although this term is also not specific, it is intended to clarify that the proposed paragraph does not authorize any actions that would be inconsistent with existing law. In addition, the comment on this subdivision clarifies the scope of the possible actions by providing examples: This paragraph authorizes the administrative presiding justices collectively to take appropriate remedial or other lawful action to address the contentions submitted under the procedures in this rule. However, the rule does not require the administrative presiding justices to take any action in response to a contention. Examples of actions that the administrative presiding justices may take include recommending amendments to the California Rules of Court or operational policies of the Courts of Appeal, referring a contention to the Commission on Judicial Performance, referring it to mediation, and conducting informal discussions with the person who submitted the contention and the justice who is the subject of the contention. This paragraph does not authorize |

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| | | | <p>In addition, proposed rule 10.1014(d) provides a communication regarding a contention is “confidential”; confidential as to whom? The public? Or an APJ or presiding justice who may be the subject of the contention? If the latter, how will Due Process considerations be respected?</p> | <p>administrative presiding justices to take actions that are within the sole purview of the Supreme Court or the Commission on Judicial Performance, for example, the removal, censure, or admonishment of a justice. Similarly, the rule does not authorize an administrative presiding justice to take personnel actions, as such actions are governed by other legal authorities and policies.</p> <p>The committee concluded, therefore, that revision of the proposed rule was unnecessary.</p> <p>On the proposed confidentiality provision in proposed rule 10.1014(d), please see the committee response to Justice Menetrez below at page 22.</p> <p>In addition, it is not anticipated that a remedy under this rule would result in the deprivation of the life, liberty, or property of a justice who is the subject of a contention. The proposed advisory committee comment on subdivision (b)(4), addresses the scope of actions the APJs may take:</p> <p>Examples of actions that the administrative presiding justices may take include recommending amendments to the California Rules of Court or operational policies of the Courts of Appeal, referring a contention to the</p> |

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| | | | | <p>Commission on Judicial Performance, referring it to mediation, and conducting informal discussions with the person who submitted the contention and the justice who is the subject of the contention. This paragraph does not authorize administrative presiding justices to take actions that are within the sole purview of the Supreme Court or the Commission on Judicial Performance, for example, the removal, censure, or admonishment of a justice.</p> <p>In addition, implicit in the duty of such individuals to cooperate with the consideration of contention concerning the individual is that the individual will have an opportunity to respond to the contention.</p> <p>Accordingly, the proposed rule would not implicate any justice’s due process rights.</p> <p>The committee considers this provision sufficiently clear without further definition. The committee notes that the word “cooperate” is used without further definition in Article VI, section 6(f) of the California Constitution, requiring judges to cooperate with the Judicial Council when reporting concerning the condition of judicial business in their courts. Similarly, the words “cooperation” and “cooperate” are used throughout the California Rules of Court without</p> |
| | | | <p>Finally, proposed rule 10.1014(b)(2) states an APJ or presiding justice must “cooperate with” the APJs reviewing a contention. The proposed rule would benefit from further definition of what it means to “cooperate.”</p> | |

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| | | | | further definition, including in rule 10.1004(c), which describes the APJs as having the duty to cooperate with the Chief Justice in: <ul style="list-style-type: none"> • “[T]he making of reports and the assignment of judges or retired judges under article VI, section 6 of the California Constitution”; and • “[E]xpediting judicial business and equalizing the work of judges by recommending, when appropriate, the transfer of cases by the Supreme Court under article VI, section 12 of the California Constitution.” (Cal. Rules of Court, rule 10.1004(c)(3) & (4).) |
| 2. | California Academy of Appellate Lawyers by Wendy Cole Lascher, Rules Commentary Chair Ventura, California | A | The California Academy of Appellate Lawyers (“CAAL”) is devoted to promoting and encouraging reforms in appellate practice that ensure effective representation of litigants and more efficient administration of justice. | The committee appreciates the commenter’s support for the proposal. |
| 3. | California Lawyers Association, Litigation Section, Committee on Appellate Courts by Kelly Woodruff, Chair San Francisco, California | A | The CAC supports the proposal set forth in SPR23-01, which would adopt California Rules of Court, rule 10.1014. This new rule would set forth a procedure, stated on the court website, by which any person may submit a contention, relating to the administration of a Court of Appeal district or a division of a Court of Appeal, to the administrative presiding justices regarding an administrative presiding justice or presiding justice. The rule would authorize administrative presiding justices to collectively review and address such contentions and require the | The committee appreciates the commenter’s support for the proposal. |

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|--|-----------|----------|---|--------------------|
| | | | <p>cooperation of justices who are the subject of a contention under review. The submitted contentions would be confidential.</p> <p>This rule was first proposed by the Appellate Caseflow Workgroup (ACW), formed by former Chief Justice Tani G. Cantil-Sakauye to investigate and address delays in the Third District Court of Appeals. As set forth in ACW’s report to the Chief Justice, “the issues in the Third District might have been identified and remediated earlier if there had been, in addition to better management in the Third District, a mechanism for supplementary state-level management oversight.” (ACW’s Report to the Chief Justice, at p. 35.) The proposal flows from the need for further oversight of decisions from administrative presiding justices, who had operated with nearly complete independence and whose management actions or inactions were “effectively immune from review.” (Id.)</p> <p>The procedure for administrative complaints set forth in SPR23-01 appears to be thoughtful and comprehensive. The CAC writes to emphasize that the confidentiality provision is instrumental to the effectiveness of this new procedure. Without confidentiality provisions, attorneys would be dissuaded from submitting a candid criticism of the administrative presiding justice or presiding justice’s management of the court district or division, for fear of offending that justice. The</p> | |

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|----|---|-----------------|---|--|
| | | | disincentive would apply with special force to attorneys who practice regularly in the appellate courts, the very attorneys who would likely offer the greatest insight into potential court administrative problems. | |
| 4. | Los Angeles County Bar Association, Appellate Courts Section by John A. Taylor, Jr., Executive Committee Member | AM | The Appellate Courts Section of the Los Angeles County Bar Association (LACBA-ACS) supports SPR23-01, with a proposed modification. Proposed Rule 10.1014 provides a needed safety valve for addressing contentions that an administrative presiding justice or presiding justice has not properly managed an important matter related to the administration of a Court of Appeal or one of its divisions, and will promote transparency, accountability, and efficiency in issuing timely judgments. | The committee appreciates the commenter’s support for the proposal. |
| | | | The LACBA-ACS agrees with the “Invitation to Comment” observation (at page 3) that the proposed rule should limit submissions to those relating to the administration of a Court of Appeal district or division, and not include contentions regarding a specific case or decision. The LACBA-ACS suggests that this limitation be stated either expressly in the new rule or in the Advisory Committee Comment to the rule. | The committee agrees with the commenter and the proposal will include similar language in the advisory committee comment on subdivision (b)(1) of the proposed rule. |
| 5. | Hon. Frank Menetrez, Associate Justice of the Court of Appeal, Fourth Appellate District, Division Two | AM | Subdivision (d) of the proposed rule provides that “Any communication with the administrative presiding justices regarding a contention submitted under this rule, or the investigation or resolution of | The committee appreciates the commenter’s thoughtful review of the proposal. |

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|--|-----------------------|----------|--|--|
| | Riverside, California | | <p>such a contention, is confidential.” I am concerned about this provision because it does not make clear *who* is supposed to keep *what* confidential from *whom*.</p> <p>For example, I would think that a complainant should not be required to keep their contention confidential; rather, they may discuss it with others or disclose it publicly. Likewise, I would expect that the administrative presiding justices should not be required to keep the resolution of a contention confidential from the complainant; rather, the resolution should be disclosed to the complainant. Neither of those points is clear in the proposed rule, and the proposed rule could be read as providing to the contrary. The second point might be particularly important because the proposed rule requires the complainant to submit the contention to the local APJ before submitting it to the APJ committee. If the local APJ keeps the resolution of the contention confidential from the complainant, how is the complainant to know whether to take the contention to the committee?</p> <p>I expect that the committee’s intention was to make the contention procedure confidential in roughly the same way that proceedings of the commission on judicial performance are confidential. (The CJP is prohibited from public disclosure of various things, but a CJP complainant can make their own complaint public,</p> | <p>As noted in the proposed advisory committee comment on subdivision (d), the proposed rule would authorize a procedure that would “advance efficient, effective, and just administration of the Courts of Appeal and each division of the Courts of Appeal. Establishing the confidentiality of this procedure is critical to encouraging persons to submit contentions with candor. The necessity for preserving the confidentiality of these procedures and communications with administrative presiding justices outweighs the necessity for disclosure in the interest of justice.”</p> <p>The committee intended this subdivision on confidentiality to be simple and unspecific, consistent with the proposed procedure. Based on this comment and the comment from Justice Baker, however, the committee reconsidered the proposed language in subdivision (d), looked to other models, and is proposing language that provides more detail to address the concerns raised by these commenters.</p> <p>The new language is modeled in part on a portion of Rules of the Commission on Judicial Performance, rule 102, which addresses confidentiality of proceedings before the Commission on Judicial Performance, and in part on California Rules of Court, rule 10.703(e), which provides for the confidentiality of proceedings concerning complaints about</p> |

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| | | | <p>etc.) But without some kind of additional clarifying language, I am concerned that the proposed provision may be misinterpreted misapplied.</p> | <p>subordinate judicial officers in the trial courts. The new language is intended to be simpler than either of those models, consistent with the less formal nature of the procedures in the proposed rule.</p> <p>Proposed subdivision (d) would:</p> <ul style="list-style-type: none"> • Provide that “[a]ll procedures under this rule must be conducted in a manner that is as confidential as is reasonably possible,” consistent with the purpose of the rule; • “[N]ot prohibit the person who submitted the contention or the justice who is the subject of the contention from making statements regarding the conduct underlying the contention”; • “[N]ot preclude administrative presiding justices from communicating with the person who submitted the contention or the justice who is the subject of the contention about the conduct underlying the contention or the investigation, conclusion, or resolution of the contention”; • “[N]ot preclude presiding justices from providing a notice to the Commission on Judicial Performance or forwarding to the commission any requested information”; and |

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| | | | | <ul style="list-style-type: none"> • “[N]ot preclude administrative presiding justices from making public, when appropriate, the conclusion or resolution of the contention.” |
| 6. | <p>Hon. Kathleen E. O’Leary Presiding Justice of the Court of Appeal, Fourth Appellate District, Division Three Orange, California</p> | N | <p>I oppose proposed CRC Rule 10.1014. It does not appropriately address the stated purpose.</p> <p>Many new procedures have been successfully implemented by the APJs to prevent a reoccurrence of the case delay issues that arose in the Third District and were identified in the Appellate Caseflow Workgroup Report to the Chief Justice. Additionally, the mechanism in the proposed rule is ambiguous and lacking in clear definitions and has the potential of imposing an unintended scope of work which will place a significant burden on the COAs with little benefit.</p> <p>In June 2022 Chief Justice Tani G. Cantil-Sakauye formed the Appellate Caseflow Workgroup (workgroup) in response to findings issued by the Commission on Judicial Performance (CJP) concerning case delays in the Third District Court of Appeal (Third District). The Chief Justice directed the workgroup to review policies, procedures, and management and administrative practices of the Courts of Appeal, and to recommend measures to promote transparency, accountability, and efficiency in issuing timely</p> | <p>The committee appreciates the commenter’s thoughtful review of the proposal.</p> <p>The committee agrees with the commenter that the Courts of Appeal have successfully implemented changes that will help prevent case delay issues that arose in the Third Appellate District of the Court of Appeal. It is important, however, that this work continues as recommended by the Appellate Caseflow Workgroup. The proposed rule implements a procedure, recommended by the workgroup, that will assure that APJs and PJs continue to be accountable for the efficient, effective, and just administration of the Courts of Appeal and each division of the Courts of Appeal. Although the procedure may involve some additional work for the Courts of Appeal, the committee concluded that the benefit from increased accountability and confidence in the courts will outweigh any burden from the additional effort.</p> |

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| | | | <p>judgments. She also directed the workgroup to recommend measures for these courts to report metrics on case delays.</p> <p>Unnecessary Prior to the report and proposed new rule, there has been a comprehensive audit of all cases pending in the COAs. Explanations have been required from the various courts as to why any case has been pending for an extended period of time. Managing attorneys from all the COAs are required to regularly report to APJs on aging cases older than one year. Two data analysts have been approved to be hired to monitor statewide COA caseload statistics. These measures address the Chief Justice’s concern for report metrics on case delays. Additionally, where appropriate, the APJs have transferred cases between Districts and Divisions to facilitate timely adjudication. The most recent Court Statistic Report shows courts have made significant progress in eliminating their backlogs. Without this new rule while the report was being prepared, the APJs effectively addressed the concerns regarding accountability and efficiency in issuing timely judgments expressed by the Chief Justice.</p> <p>Overly broad and burdensome due to lack of clarity The lack of definition of the terms used in the proposed rule make its implementation</p> | <p></p> <p>The committee applauds the efforts that have been made to improve the Courts of Appeal’s transparency, accountability, and efficiency in issuing timely judgments. The Appellate Caseload Workgroup also recommended that to improve and strengthen confidence in management decisions, the Administrative Presiding Justices Advisory Committee recommend that the Judicial Council adopt a new rule, or amend an existing rule, of the California Rules of Court authorizing the APJs to collectively review and address contentions that an APJ or PJ has not properly managed an important matter. This proposal is intended to satisfy that recommendation, prevent issues from recurring, and build trust and confidence in the Courts of Appeal.</p> <p>The advisory committee comment has been revised in response to this comment. The advisory</p> |

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| | | | <p>challenging. What does the phrase “an important matter related to the administration” of a COA mean in the context of delay reductions efforts?</p> <p>CRC Rule 10.500 refers to public access to judicial administrative records. That rule provides for public access to nondeliberative and nonadjudicative court records, budget, and management information. The rule defines “Judicial administrative record” as “any writing containing information relating to the conduct of the people’s business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing’s physical form or characteristics, except an adjudicative record. The term ‘judicial administrative record’ does not include records of a personal nature that are not used in or do not relate to the people’s business, such as personal notes, memoranda, electronic mail, calendar entries, and records of Internet use.” Rule 10.500 further provides that the public’s right of access to judicial administrative records and must be broadly construed to further the public’s right of access. This broad access to information is totally appropriate given the branch’s goal of transparency, but is it intended that COAs will need to respond to contentions on such a wide-ranging list of administrative issues including internal management decisions and budget management?</p> | <p>committee comment explains the scope of the rule beginning at page 11, line 39.</p> <p>The commenter expresses concern that the term “an important matter related to administration” of a court of appeal could be read as comparable to the term “judicial administrative record” in rule 10.500. The committee does not intend that those terms have the same meaning or be read in the same manner. As the commenter notes, the context and purpose of the two rules is entirely different. Rule 10.500 governs public access to judicial administrative records and is intended to facilitate transparency. Proposed rule 10.1014 relates to the administration of the Courts of Appeal and is intended to assure that presiding justices and administrative presiding justices are accountable for how they carry out their administrative duties. It is not the intent of the committee that the scope of proposed rule 10.1014 be interpreted in light of rule 10.500.</p> <p>The commenter also questions whether the rule would apply to personnel matters, among other subjects. Personnel matters, including complaints by or against employees, are already governed by employment laws and individual court personnel policies and procedures that vest responsibility for handling such matters with the clerk/executive officer, not with APJs. To make this point unequivocally clear, the committee is adding</p> |

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| | | | <p>What is the definition of an “important” matter “related to the administration of a Court of Appeal or a division of a Court of Appeal?” APJs and PJs routinely make decisions that could be described as administrative decisions. Many of those decisions likely will be deemed “important” to some people. Is an ADA accommodation - granted or denied –related to the administration of an appellate court? Are facility issues related to the administration of an appellate court? Are internal personnel matters such as promotions and hiring issues related to the administration of an appellate court? There is no connection between issues such as these and the objective of identifying and remediating the problems that were identified in the Appellate Court Caseflow Workgroup Report.</p> <p>Reading the proposed rule in context with the definition of administrative records in CRC Rule 10.500, and with the new rule being silent on the definition, one would reasonably assume that the broad definition in CRC Rule 10.500 applies to the newly proposed CRC Rule 10.1014. This would create a tremendous amount of work for the COAs. It is one thing to provide access to information on a broad scope of administrative matters, but to require APJs and PJs to review every contention made in reference to such a broad scope of administrative matters could result in hundreds of hours of research and response time.</p> | <p>language to the advisory committee comment that states that personnel and employment matters are not subject to the procedures in this rule. If an administrative presiding justice were to receive a submission that the APJ considered outside the scope of the rule, it would be appropriate for the APJ or the APJ’s delegate to return the submission to the person who submitted it or to forward it to the appropriate official with responsibility for the contention, with a copy notifying the individual who submitted it. For example, a personnel matter would be forwarded to the clerk/executive officer of the court.</p> |

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| | | | <p>Alternative approach Rather than adopt a statewide court rule, why not have each district include on its website a statement that demonstrates the court is committed to the timely adjudication of cases and invite anyone with a comment or concern about the timely adjudication of cases to submit the comment or concern to the court electronically.</p> <p>Each district could then adopt a policy that the PJs and APJs are required to address the comment or concern in a set amount of time. All responses would be reviewed first by the APJ in the District and then collectively by the APJs.</p> <p>Should there be a need to modify the comment process, a change can be made quickly to a [policy] as opposed to going through the cumbersome process required to amend a Rule of Court.</p> | <p>The committee appreciates the commenter’s suggestion and is not opposed to courts including such a statement on their websites. To assure continued efficient, effective, and proper administration of the courts, the Courts of Appeal need a procedure codified in the California Rules of Court that gives persons who contend that an administrative presiding justice or presiding justice has not properly addressed or managed an important matter related to the administration of the court a method of submitting these contentions for consideration. This proposal effects that purpose and is necessary to implement the recommendation of the Appellate Caseflow Workgroup.</p> |

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