JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG16-01

Title
Subordinate Judicial Officers: Court Commissioners as Magistrates

Action Requested
Review and submit comments by June 14, 2016

Proposed Rules, Forms, Standards, or Statutes
Amend Penal Code section 808

Proposed Effective Date
January 1, 2018

Proposed by
Trial Court Presiding Judges Advisory Committee
Hon. Brian L. McCabe, Chair
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

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Executive Summary and Origin

The Criminal Law and Trial Court Presiding Judges Advisory Committees propose amending Penal Code section 808 to include "court commissioners" within the definition of those who may serve as a "magistrate." Magistrate duties are constitutionally and statutorily defined functions in the criminal justice system; the authority of magistrates is limited in comparison to judicial powers. This proposal was developed at the request of presiding judges to expand the pool of judicial officers who are authorized to perform magistrate duties, provide courts with greater flexibility to equitably address judicial workloads, and increase access to justice in response to the need for a more systemwide approach to balancing judicial workload.

Background

Magistrates

The role of a magistrate is unique in the criminal justice system and differs from the role of a judge. Magistrates derive their jurisdiction and limited powers from the state constitution (Cal. Const., art. I, § 14), together with the acts of the Legislature; the powers and duties of a magistrate are solely those given by statute. Penal Code section 808 defines "magistrates" as the judges of the Supreme Court, Courts of Appeal, and superior courts. Court commissioners, a type of subordinate judicial officer (SJO), are not currently included in the statutory definition. When acting as a magistrate, judges of the Supreme Court, Courts of Appeal, and superior courts have only the jurisdiction and powers conferred by law on magistrates—not those powers that pertain to their judicial offices.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

Magistrates perform certain constitutionally and statutorily defined functions in the criminal justice system. The principal functions of magistrates include issuing search warrants, bench warrants, arrest warrants, and warrants of commitment (Pen. Code, §§ 1523, 881(a), 807, and 1488); fixing and granting bail (Pen. Code, § 815a); conducting preliminary examinations of persons charged with a felony and binding defendants over for trial or release (Pen. Code, § 858); and acting as the designated on-call magistrate when court is not in session (Pen. Code, § 810). The authority of a magistrate is limited to those statutory functions. A magistrate presiding at a preliminary hearing does not sit as a judge of a court and cannot exercise any of the powers of a judge in court proceedings. Unlike a judge, a magistrate lacks authority to determine the guilt or innocence of a defendant.

Court commissioners

Article VI, section 22 of the California Constitution empowers the Legislature to provide for the appointment of commissioners and other SJOs to perform subordinate judicial duties. Government Code section 72190 authorizes commissioners, under the direction of judges, to exercise the powers and perform the duties prescribed by law. The purpose of SJOs is "to assist an overburdened judiciary with the performance of 'subordinate judicial duties.'" (*Branson v. Martin* (1997) 56 Cal.App.4th 300, 305.)

In criminal cases, court commissioners generally have authority to conduct arraignments and issue bench warrants, if directed to perform those duties by the presiding judge (Gov. Code, §§ 72190.1 and 72190.2); hear ex parte motions for orders and alternative writs and writs of habeas corpus (Code Civ. Proc., § 259); make an initial determination on whether a deviation from the bail schedule is appropriate (Pen. Code, § 1269c); and fix bail in misdemeanor Vehicle Code violation cases (Gov. Code, § 72304). In infraction cases, court commissioners are expressly authorized to exercise the same powers and duties as judges, including making probable cause determinations. (Gov. Code, § 72190; *Branson, supra*, 56 Cal.App.4th at p. 305.)

Commissioners, however, currently lack authority to issue a search warrant (see 61 Ops.Cal.Atty.Gen. 487 (1978)) or to take and enter a guilty plea at arraignment (see 67 Ops.Cal.Atty.Gen. 162 (1984)). Court commissioners may act as temporary judges when qualified to do so and appointed for that purpose, but only on stipulation of the parties. (Code Civ. Proc., § 259; see, also, Cal. Rules of Court, rule 2.831.)

The Proposal

The Criminal Law and Trial Court Presiding Judges Advisory Committees propose amending Penal Code section 808 to include "court commissioners" within the definition of "magistrate." The proposal would expand the pool of judicial officers who are authorized to exercise magistrate powers and perform magistrate duties. By expanding the authorized duties of commissioners, the proposal is designed to promote court efficiencies, enhance access to justice, and provide court leadership with more flexibility to address judicial workloads.

Over the years, judicial workload demands have exceeded the number of available judicial officers.[1] As of June 30, 2014, there were 291 authorized commissioner FTE positions in the judicial branch.[2] The number of SJOs assigned to each court varies widely across the state. Several reasons favor broadening the scope of commissioner authority, including:

The assignment flexibility that commissioners allow the courts;
The expertise commissioners bring to many case types; and
The ability of commissioners "to assist judges with routine preliminary matters, thereby freeing the judges for more complex matters."[3]

In addition, recent rulings and legislation have enhanced the need for greater flexibility in fulfilling the duties of magistrates. The Supreme Court in *Missouri v. McNeely* (2013) 569 U.S. __ [133 S.Ct. 1552, 185 L.Ed.2d 696], for example, ruled that search warrants are required for nonconsensual blood testing during driving under the influence investigations, and that exceptions to the warrant requirement must be determined case by case based on the totality of the circumstances (see also Penal Code § 1524(a)(13) and (15) (A)(i) authorizing courts to issue search warrants under these circumstances). The ruling has amplified the number of search warrant requests, particularly off-hours requests, resulting in increased workload demands for judges who serve as on-call magistrates on nights and weekends.

Similarly, recently enacted legislation has expanded the courts' workload by providing courts with authority to issue temporary emergency gun violence restraining orders (Pen. Code, §§ 18125–18145). Penal Code section 18145(a)(2) authorizes the issuance of temporary emergency gun violence restraining orders in accordance with the procedures for obtaining an oral search warrant, if time and circumstances do not permit the submission of a written petition. Those procedures specifically authorize magistrates to issue oral search warrants when the court is in session. Under Penal Code section 18145(b), the presiding judge designates at least one judge, commissioner, or referee to be reasonably available to issue temporary emergency gun violence restraining orders, but only when the court is not in session. Because the statutory authority for this type of restraining order is new, the workload impact is not yet known but is anticipated to be significant for some courts.

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[1] Judicial Council of Cal., *Need for New Judgeships in the Superior Courts: 2014 Update of the Judicial Needs Assessment* (November 2014), www.courts.ca.gov/12922.htm. This mandatory report to the Legislature describes the filings-based need for judicial officers in the trial courts and shows that an additional 270 full-time equivalent judicial officers are needed in 35 courts. Judicial need is calculated based on a complex workload formula. The statewide need for new judgeships is calculated by adding the judicial need among only the courts that have fewer judgeships than their workload demands.

[2] Judicial Council of Cal., *2015 Court Statistics Report: Statewide Caseload Trends, 2004–2005 Through 2013–2014* (2015), www.courts.ca.gov/12941.htm#id7495.

[3] See Judicial Council of Cal., *Subordinate Judicial Officers: Duties and Titles* (July 2002), p. 13, www.courts.ca.gov/documents/sjowgfinal.pdf. The report found that SJOs spent at least 75 percent of their time on criminal cases performing the duties of temporary judges.

Since the duties of magistrates are easily distinguishable from the duties of judges, commissioner responsibilities could be expanded to include magistrate duties without causing undue confusion. In this manner, the proposal provides greater flexibly in the use of existing judicial and commissioner resources to increase access to justice while equitably addressing judicial workload concerns.

Alternatives Considered

The committees alternatively considered amending Penal Code section 808 to provide court commissioners with limited authority to exercise specifically defined magistrate powers and perform magistrate duties. (See Pen. Code, § 646.91(a), (*l*) [commissioners are included among the judicial officers authorized to issue ex parte emergency protective orders for persons in immediate danger of being stalked], and Pen. Code, § 809 [the Santa Clara County Superior Court night-time commissioner is "considered a magistrate for the purpose of conducting prompt probable cause hearings for persons arrested without an arrest warrant"].) The committees, however, determined that a proposal to include court commissioners as magistrates for all purposes would provide greater flexibility, enhance court efficiencies, and enable courts to more effectively and equitably address workload issues while increasing access to justice.

Implementation Requirements, Costs, and Operational Impacts

Under the proposal, local court leadership would retain discretion to decide the extent of magistrate duties that could be performed by court commissioners. For those courts that choose to incorporate the magistrate role into commissioner duties, potential implementation costs may include commissioner training. Because implementation would be voluntary, however, each court could determine whether potential efficiencies would outweigh implementation costs.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed Penal Code section 808, at page 5

Section 808 of the Penal Code would be amended, effective January 1, 2018, to read:

§ 808

The following persons are magistrates:

(a) The judges of the Supreme Court.

(b) The judges of the courts of appeal.

(c) The judges of the superior courts.

(d) Court commissioners.