

AMENDED IN SENATE MARCH 15, 2004

SENATE BILL

No. 1225

Introduced by Senator Morrow

February 11, 2004

An act to amend Section 259 of the Code of Civil Procedure, and to amend 71601 of the Government Code, relating to ~~court employment~~ courts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1225, as amended, Morrow. Court ~~employment~~ officers.

(1) *The California Constitution authorizes a court to order a cause to be tried by a temporary judge who is a member of the State Bar, on stipulation of the parties litigant. Existing statutory law sets forth the duties of court commissioners.*

This bill would revise a related provision of statutory law to conform to the constitutional provision described above. The bill would also revise the duties of a court commissioner.

(2) Existing law defines the term "subordinate judicial officer" for purposes of court administration and specifies that the term includes certain commissioners, referees, and judges pro tempore.

This bill would revise those specified examples of subordinate judicial officers, and make related nonsubstantive changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 259 of the Code of Civil Procedure is*
2 *amended to read:*

1 259. Subject to the supervision of the court, every court
2 commissioner shall have power to do all of the following:

3 (a) Hear and determine ex parte motions for orders and
4 alternative writs and writs of habeas corpus in the superior court
5 for which the court commissioner is appointed.

6 (b) Take proof and make and report findings thereon as to any
7 matter of fact upon which information is required by the court.
8 Any party to any contested proceeding may except to the report
9 and the subsequent order of the court made thereon within five
10 days after written notice of the court’s action. A copy of the
11 exceptions shall be filed and served upon opposing party or
12 counsel within the five days. The party may argue any exceptions
13 before the court on giving notice of motion for that purpose within
14 10 days from entry thereof. After a hearing before the court on the
15 exceptions, the court may sustain, or set aside, or modify its order.

16 (c) Take and approve any bonds and undertakings in actions or
17 proceedings, and determine objections to the bonds and
18 undertakings.

19 ~~(d) Administer oaths and affirmations, and take affidavits and~~
20 ~~depositions in any action or proceeding in any of the courts of this~~
21 ~~state, or in any matter or proceeding whatever, and take~~
22 ~~acknowledgments and proof of deeds, mortgages, and other~~
23 ~~instruments requiring proof or acknowledgment for any purpose~~
24 ~~under the laws of this or any other state or country.~~

25 ~~(e) Act as temporary judge when otherwise qualified so to act~~
26 ~~and when appointed for that purpose, or by written consent of an~~
27 ~~appearing party on stipulation of the parties litigant.~~ While acting
28 as temporary judge the commissioner shall receive no
29 compensation therefor other than compensation as commissioner.

30 ~~(f)~~

31 (e) Hear and report findings and conclusions to the court for
32 approval, rejection, or change, all preliminary matters including
33 motions or petitions for the custody and support of children, the
34 allowance of temporary spousal support, costs and attorneys’ fees,
35 and issues of fact in contempt proceedings in proceedings for
36 support, dissolution of marriage, nullity of marriage, or legal
37 separation.

38 ~~(g)~~



1 (f) Hear actions to establish paternity and to establish or enforce
2 child and spousal support pursuant to subdivision (a) of Section
3 4251 of the Family Code.

4 ~~(h)~~

5 (g) Hear, report on, and determine all uncontested actions and
6 proceedings subject to the requirements of subdivision ~~(e)~~ (d).

7 ~~(i) Charge and collect the same fees for the performance of~~
8 ~~official acts as are allowed by law to notaries public in this state~~
9 ~~for like services. This subdivision does not apply to any services~~
10 ~~of the commissioner, the compensation for which is expressly~~
11 ~~fixed by law. The fees so collected shall be paid to the treasurer of~~
12 ~~the county, for deposit in the general fund of the county.~~

13 ~~(j) Provide an official seal, upon which must be engraved the~~
14 ~~words “Court Commissioner” and the name of the county, or city~~
15 ~~and county, in which the commissioner resides.~~

16 ~~(k) Authenticate with the official seal the commissioner’s~~
17 ~~official acts.~~

18 *SEC. 2.* Section 71601 of the Government Code is amended
19 to read:

20 71601. For purposes of this chapter, the following definitions
21 shall apply:

22 (a) “Appointment” means the offer to and acceptance by a
23 person of a position in the trial court in accordance with this
24 chapter and the trial court’s personnel policies, procedures, and
25 plans.

26 (b) “Employee organization” means any organization that
27 includes trial court employees and has as one of its primary
28 purposes representing those employees in their relations with the
29 trial court.

30 (c) “Hiring” means appointment as defined in subdivision (a).

31 (d) “Mediation” means effort by an impartial third party to
32 assist in reconciling a dispute regarding wages, hours, and other
33 terms and conditions of employment between representatives of
34 the trial court and the recognized employee organization or
35 recognized employee organizations through interpretation,
36 suggestion, and advice.

37 (e) “Meet and confer in good faith” means that a trial court or
38 representatives as it may designate, and representatives of
39 recognized employee organizations, shall have the mutual
40 obligation personally to meet and confer promptly upon request by



1 either party and continue for a reasonable period of time in order
2 to exchange freely information, opinions, and proposals, and to
3 endeavor to reach agreement on matters within the scope of
4 representation. The process should include adequate time for the
5 resolution of impasses where specific procedures for resolution
6 are contained in this chapter or in a local rule, or when the
7 procedures are utilized by mutual consent.

8 (f) “Personnel rules,” “personnel policies, procedures, and
9 plans,” and “rules and regulations” mean policies, procedures,
10 plans, rules, or regulations adopted by a trial court or its designee
11 pertaining to conditions of employment of trial court employees,
12 subject to meet and confer in good faith.

13 (g) “Promotion” means promotion within the trial court as
14 defined in the trial court’s personnel policies, procedures, and
15 plans, subject to meet and confer in good faith.

16 (h) “Recognized employee organization” means an employee
17 organization that has been formally acknowledged to represent
18 trial court employees by the county under Sections 3500 to 3510,
19 inclusive, prior to the implementation date of this chapter, or by the
20 trial court under Rules 2201 to 2210, inclusive, of the California
21 Rules of Court, as those rules read on April 23, 1997, Sections
22 70210 to 70219, inclusive, or Article 3 (commencing with Section
23 71630) of this chapter.

24 (i) “Subordinate judicial officer” means an officer appointed
25 to perform subordinate judicial duties as authorized by Section 22
26 of Article VI of the California Constitution, including, but not
27 limited to, a court commissioner, probate commissioner, child
28 support commissioner, referee, traffic trial commissioner, traffic
29 referee, juvenile court referee, juvenile hearing officer, and
30 temporary judge.

31 (j) “Transfer” means transfer within the trial court as defined
32 in the trial court’s personnel policies, procedures, and plans,
33 subject to meet and confer in good faith.

34 (k) “Trial court” means a superior court.

35 (l) “Trial court employee” means a person who is both of the
36 following:

37 (1) Paid from the trial court’s budget, regardless of the funding
38 source. For the purpose of this paragraph, “trial court’s budget”
39 means funds from which the presiding judge of a trial court, or his
40 or her designee, has authority to control, authorize, and direct



1 expenditures, including, but not limited to, local revenues, all
2 grant funds, and trial court operations funds.

3 (2) Subject to the trial court’s right to control the manner and
4 means of his or her work because of the trial court’s authority to
5 hire, supervise, discipline, and terminate employment. For
6 purposes of this paragraph only, the “trial court” includes the
7 judges of a trial court or their appointees who are vested with or
8 delegated the authority to hire, supervise, discipline, and
9 terminate.

10 (m) A person is a “trial court employee” if and only if both
11 paragraphs (1) and (2) of subdivision (l) are true irrespective of job
12 classification or whether the functions performed by that person
13 are identified in Rule 810 of the California Rules of Court. The
14 phrase “trial court employee” includes those subordinate judicial
15 officers who satisfy paragraphs (1) and (2) of subdivision (l). The
16 phrase “trial court employee” does not include temporary
17 employees hired through agencies, jurors, individuals hired by the
18 trial court pursuant to an independent contractor agreement,
19 individuals for whom the county or trial court reports income to
20 the Internal Revenue Service on a Form 1099 and does not
21 withhold employment taxes, sheriffs, and judges whether elected
22 or appointed. Any temporary employee, whether hired through an
23 agency or not, shall not be employed in the trial court for a period
24 exceeding 180 calendar days, except that for court reporters in a
25 county of the first class, a trial court and a recognized employee
26 organization may provide otherwise by mutual agreement in a
27 memorandum of understanding or other agreement.

