



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

TANI G. CANTIL-SAKAUIYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director of the Courts

January 1, 2014

Hon. Mark Leno
Chair, Joint Legislative Budget Committee
Attn: Ms. Peggy Collins
1020 N Street, Room 553
Sacramento, California 95814

Subject: Report on implementation of an open meetings rule

Dear Senator Leno:

The Supplemental Report of the 2013–2014 Budget Package directs the Judicial Council to report to the Joint Legislative Budget Committee (JLBC) on implementation of an open meetings rule by January 1, 2014.

Beginning this summer, the Judicial Council began drafting a proposed rule of court on open meetings. The supplemental report language for Item 0250-101-0932 of the Budget Act of 2013 is as follows:

1. ***Open Working Groups.*** Not later than January 1, 2014, the Judicial Council shall submit to the Joint Legislative Budget Committee a report on the implementation of an open meetings rule in accordance with the following:
 - (a) The rule shall apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that reviews issues and reports to the Judicial Council.
 - (b) The rule shall provide for telephone access for requesting persons.
 - (c) The rule shall establish public notice requirements for any meeting of a body described above.

2. For each fiscal year beginning with 2014–2015, the report shall include the rule for that fiscal year and specific detail on amendments to the rule adopted in the prior fiscal year.

Attached is a draft of the proposed open meeting rule 10.75 for Judicial Council advisory body meetings. Also attached is a chart of key dates and activities for the development and implementation of the open meetings rule.

Although the process required by the California Rules of Court involves a single public comment period, the council is seeking feedback in a two-step process. First, on November 14, 2013, a preliminary draft of the rule was shared with all legislative offices, the Governor's Office, Department of Finance, the Legislative Analyst, stakeholders, and the media, and feedback was sought. On that date, the Judicial Council also hosted two legislative briefings and a press conference, inviting feedback on the preliminary draft rule. The preliminary draft rule was posted on the judicial branch's public website at www.courts.ca.gov, with a request for feedback from November 14 through November 20.

Second, taking into account feedback received on the preliminary draft, a revised draft was released on December 20, 2013, commencing the formal "invitation to comment" period required by the California Rules of Court. A revised draft of the proposed rule is available for comment online at <http://www.courts.ca.gov/policyadmin-invitationstocomment.htm>. The revised draft of the rule will remain open for public comment until February 7, 2014. The Judicial Council is expected to consider adopting the proposed rule during its April 2014 meeting.

The proposed rule would open many Judicial Council advisory body meetings to the public, requiring notice and a further opportunity for public comment. Please note the proposed rule is subject to change based on feedback received during the public comment period (December 20, 2013–February 7, 2014).

Comments on the revised draft may be submitted via e-mail to invitations@jud.ca.gov through February 7, 2014. Any written comments received at that address will become part of the public record.

If you have any questions related to this report please contact Cory Jasperson, Director of the AOC Office of Governmental Affairs at cory.jasperson@jud.ca.gov or 916-323-3121.

Very truly yours,



Steven Jahr
Administrative Director of the Courts

SJ/LS

Enclosures (2)

cc: Members, Joint Legislative Budget Committee
Members of the Judicial Council
Hon. Douglas P. Miller, Chair, Judicial Council Executive and Planning Committee
Hon. Harry E. Hull, Jr., Chair, Judicial Council Rules and Projects Committee
Hon. Kenneth K. So, Chair, Judicial Council Policy Coordination and Liaison Committee
Hon. Mary Ann O'Malley, Chair, Judicial Council Litigation Management Committee
Hon. James E. Herman, Chair, Judicial Council Technology Committee
Ms. Diane F. Boyer-Vine, Legislative Counsel
Mr. Gregory P. Schmidt, Secretary of the Senate
Mr. E. Dotson Wilson, Chief Clerk of the Assembly (by e-copy)
Ms. Margie Estrada, Policy Consultant, Office of Senate President pro Tempore Darrell Steinberg
Ms. Fredericka McGee, General Counsel, Office of Assembly Speaker John A. Pérez
Ms. Julie Salley-Gray, Consultant, Senate Budget and Fiscal Review Committee
Ms. Jolie Onodera, Consultant, Senate Appropriations Committee
Mr. Matt Osterli, Consultant, Senate Republican Fiscal Office
Mr. Marvin Deon II, Consultant, Assembly Budget Committee
Mr. Chuck Nicol, Principal Consultant, Assembly Appropriations Committee
Mr. Allan Cooper, Consultant, Assembly Republican Fiscal Office
Ms. Madelynn McClain, Program Budget Analyst, Department of Finance
Ms. Anita Lee, Fiscal and Policy Analyst, Legislative Analyst's Office
Ms. Jody Patel, Chief of Staff, Administrative Office of the Courts (AOC)
Mr. Curtis L. Child, AOC Chief Operating Officer
Mr. Curt Soderlund, AOC Chief Administrative Officer
Mr. Cory T. Jasperson, Director, AOC Office of Governmental Affairs

Judicial Council of California * Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SP13-12

Title	Action Requested
Judicial Administration: Meetings of Judicial Council Advisory Bodies	Review and submit comments by February 7, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Adopt Cal. Rules of Court, rule 10.75	July 1, 2014
Proposed by	Contact
Executive and Planning Committee Hon. Douglas P. Miller, Chair Rules and Projects Committee Hon. Harry E. Hull, Jr., Chair Litigation Management Committee Hon. Mary Ann O'Malley, Chair Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Technology Committee Hon. James E. Herman, Chair	Hon. Douglas P. Miller douglasp.miller@jud.ca.gov

Executive Summary and Origin

The chairs of the Judicial Council's five internal committees propose the adoption of a new rule of court that would provide greater public access to meetings of the council's advisory bodies. The proposed rule recognizes the importance of open public meetings, especially on matters concerning the judicial branch budget. The proposed rule is intended to balance the importance of open meetings with significant judicial branch concerns, including ethical constraints on the judicial officers who participate on advisory bodies, staffing and other resource limitations, and the need to maintain an effective rule-making process.

Background

On June 11, 2013, the Legislature passed the Budget Act of 2013 (Assembly Bill 110). As part of Item 0250-101-0932, the Legislature added Provision 15 (Provision 15), directing that, by October 1, 2013, the Judicial Council adopt a rule "regarding open meeting requirements" for

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.

committees and similar multimember bodies reporting to the council.¹ On June 20, 2013, Governor Brown vetoed Provision 15, but, in his veto message, “urg[ed] the Judicial Council to continue efforts to provide greater public access to Judicial Branch committee activities.”²

The supplemental report language that the Legislature adopted for the budget package also addresses an open meeting rule for Judicial Council committees. Supplemental report language includes statements of legislative intent and requests studies and follow up reporting. It does not go to the Governor for review or approval and, therefore, is not subject to veto. The supplemental report for the budget package effectively restated Provision 15. It stated:

1. Open Working Groups. Not later than January 1, 2014, the Judicial Council shall submit to the Joint Legislative Budget Committee a report on the implementation of an open meetings rule in accordance with the following:
 - a. The rule shall apply to any committee, subcommittee, advisory group, working group, task force, or similar multimember body that reviews issues and reports to the Judicial Council.
 - b. The rule shall provide for telephone access for requesting persons.
 - c. The rule shall establish public notice requirements for any meeting of a body described above.
2. For each fiscal year beginning with 2014–2015, the report shall include the rule for that fiscal year and specific detail on amendments to the rule adopted in the prior fiscal year.³

Following passage of the Budget Act, at the Chief Justice’s request, the chairs of the Judicial Council’s five internal committees⁴ began a comprehensive review to develop a rule of court extending public access to appropriate council advisory body meetings.

Judicial Council governance structure

The Judicial Council is the policymaking body of the California courts. Created by the state Constitution, its members include justices, judges, court administrators, legislators, and attorneys, all of whom serve as volunteers.⁵ As a body, the council “sets the direction for improving the quality of justice and advancing the consistent, independent, impartial, and accessible administration of justice.”⁶

¹ Assem. Bill 110 (2013–2014 Reg. Sess.) § 2.00, item 0250-101-0932, Provision 15.

² Governor’s veto message to Assem. on Assem. Bill 110 (2013–2014 Reg. Sess.) Assem. J. (June 27, 2013) p. 2219.

³ Legis. Analyst, Supplemental Report of the 2013-14 Budget Package, Assem. Bill 110 (2013–2014 Reg. Sess.) (Supplemental Rep.), p. 3, item Item 0250-101-0932, www.lao.ca.gov/reports/2013/supp_report/Supplemental-Report-1314.pdf.

⁴ See Cal. Rules of Court, rule 10.10(c) (describing the internal committees).

⁵ Cal. Const., art. VI, § 6(a); see also www.courts.ca.gov/4645.htm.

⁶ Cal. Rules of Court, rule 10.1(a).

The Judicial Council relies on advice and recommendations from its advisory bodies. As used in the proposed rule, the term advisory body includes internal committees, comprised entirely of council members, that provide recommendations in assigned areas (e.g., planning, rules and projects, policy coordination and legislation, litigation, and technology), and perform duties delegated by the council.⁷ Advisory bodies also include advisory committees and similar multimember bodies, whose members are drawn from a wide cross section of stakeholder groups (e.g., justices and judges, court administrators, public and private attorneys, law enforcement, probation officers, interpreters, mediators, professors, treatment providers, advocates, and members of the public).⁸ Members volunteer their time, knowledge, and experience to developing recommendations for the council that will advance the goals stated above. Because of their specialized knowledge and experience, members are actively involved in the work of their advisory bodies, often performing functions that other governmental bodies might delegate to staff (e.g., fact-finding and preparation of agendas for Judicial Council meetings).

Currently there are more than 30 such advisory bodies, many of which have multiple subcommittees. Collectively, they comprise more than 400 members, and perform many functions to advise and assist the Judicial Council, including proposing necessary changes to rules, standards, forms, and jury instructions; reviewing and commenting on pending legislation; recommending new legislation, pilot projects, and programs; identifying issues and concerns affecting court administration and recommending solutions; developing quality education and training for branch officers and personnel; providing a forum for members' education and training; and acting as liaisons to facilitate communication and information-sharing among members and between the council and the courts on an array of issues, including budget, resource requirements, technology, and facilities.⁹ As the list demonstrates, some of these charges do not involve reporting to the Judicial Council.

Advisory bodies vary in their size and scope. Some have broad areas of focus (e.g., the Trial Court Presiding Judges and Court Executives Advisory Committees), while others have more specific areas of focus (e.g., the Civil and Small Claims, and Traffic Advisory Committees). To perform their designated functions, advisory bodies meet regularly, and frequently, if circumstances demand. They also work collaboratively, signifying that many proposals ultimately presented to the Judicial Council may be submitted first to multiple advisory bodies for comment, with members of each body gathering stakeholder perspectives. This consultation process, which is work-intensive and time consuming, often must be completed within tight deadlines. The work is necessary to ensure that the council has the advice and input it requires on the significant issues confronting the courts, and that the people of California have fair and equal access to justice statewide.

⁷ *Id.*, rules 10.10–10.14.

⁸ See *id.*, rules 10.30–10.59.

⁹ *Id.*, rule 10.34; see also *id.*, rules 10.10–10.14, 10.30–10.59.

Preliminary Circulation

Because of the importance of the issue of open meetings and the significant impact that the rule would have, the chairs decided to increase opportunities for input. Accordingly, in November, they provided a preliminary draft of a proposed rule to Judicial Council advisory committee chairs, appellate court administrative presiding justices and clerks/administrators, and superior court presiding judges and executive officers, meeting with those groups personally to receive their input. They also provided a copy of the preliminary draft to branch partners, conducting two briefings for the Legislature and stakeholders, and held a separate briefing for the media. And they posted the preliminary draft rule on the California Courts website, for early public comment from November 14 to November 20.

Many thoughtful and helpful comments were received through this preliminary circulation. With the benefit of this input, the internal chairs revised the draft rule. The result is the proposed rule that is attached now for consideration during the formal public comment period that extends through February 7.

The Proposed Rule on Meetings of Advisory Bodies

The internal committee chairs propose that the Judicial Council adopt, effective July 1, 2014, rule 10.75 on the meetings of the council's advisory bodies.

Existing public access to Judicial Council advisory bodies

The Judicial Council's rules and procedures already provide for substantial openness and transparency. Advisory body proposals regarding rules, forms, standards of judicial administration, and jury instructions typically are circulated for public comment for several weeks before they are submitted to the Judicial Council.¹⁰ After that public comment period concludes, advisory bodies consider all comments received in finalizing their proposals. The reports that they submit to the Judicial Council presenting final proposals discuss and respond to each of the public comments received. Those reports, with attachments listing and responding to each public comment, are posted on the California Courts website (www.courts.ca.gov) about one week before the meeting at which the Judicial Council will consider and decide on the proposals.¹¹

The public may attend Judicial Council meetings in person or listen to real time audio casts of the meetings with simultaneous live captioning, may submit written comments on agenda items to the council before the meeting, and may submit comments orally during council meetings. Internal committee chairs also report during open council meetings regarding the activities of the internal committees in the period since the last council meeting, and minutes of those internal committee meetings are posted on the California Courts website. Recorded audio and text from the captured live captioning during council meetings are posted on the specific meeting page after each council meeting, and the minutes of council meetings are posted after the council has

¹⁰ *Id.*, rule 10.22(d).

¹¹ See *id.*, rule 10.5(c).

approved them. Public access to judicial administrative records prepared, owned, used, or retained by a judicial branch entity also is affirmed in a rule of court.¹²

Intent of the rule (Rule 10.75(a))

The intent of proposed rule 10.75 would be to supplement and expand on the existing rules and procedures so that the public will have even greater access to the Judicial Council and its advisory bodies. (Proposed rule 10.75(a).)

Definition of “advisory bodies” (Rule 10.75(b)(1))

“Advisory bodies,” as used in rule 10.75, would mean any multimember body created by formal council action to review issues and report to the council. (Proposed rule 10.75(b).) This broad definition is consistent with the supplemental report language, discussed above. It includes Judicial Council internal committees, advisory committees, subcommittees, and comparable multimember bodies that report to the council.

Open meetings policy

***Meetings* (Rule 10.75(c)(1))**

Under rule 10.75, advisory body meetings to review issues that the advisory body will report to the Judicial Council would be open to the public, unless they are closed on one of the grounds explicitly listed in subdivision (d), described below. The scope is consistent with the supplemental report language.¹³ Advisory body meetings that do not involve review of issues to be reported to the council, such as meetings providing education or training for members, exchanges concerning best practices, or sharing of information of general interest unrelated to issues that the advisory body will report to the council, are not subject to rule 10.75. Meetings open to the public under the proposed rule would include budget meetings, which are meetings or portions of meetings to discuss a proposed recommendation that the Judicial Council approve an allocation or direct the expenditure of public funds. The proposed rule also would preclude a majority of advisory body members from deciding a matter included on a posted agenda for an upcoming open meeting, or open portion of a meeting, in advance of the meeting. (Proposed rule 10.75(c)(1).)

***Subcommittees* (Rule 10.75(c)(2))**

The rule would provide that, if an advisory body subcommittee is charged with addressing a subject as a continuing matter or includes a majority of the members of the advisory body, the subcommittee must meet in open session when considering an issue that the advisory body will report to the Judicial Council, unless the meeting is closed on one of the grounds listed in subdivision (d). (Proposed rule 10.75(c)(2).)

¹² *Id.*, rule 10.500(c)(2).

¹³ Supplemental Rep., *supra*, para. 1(a) (requiring reporting on implementation of an open meeting rule for any multimember body “that reviews issues and reports to the Judicial Council”).

Exempt bodies (Rule 10.75(c)(3))

Rule 10.75 would provide that the Judicial Council’s Litigation Management Committee, and the Advisory Committees on Civil and Criminal Jury Instructions are exempt from the rule requirements. (Proposed rule 10.75(c)(3).) As with all advisory bodies, those committees include many judges as members; however, these committees are distinct because they exclusively consider topics that are uniquely difficult or impossible for judges to address while adhering to the detailed ethical standards that govern the judiciary.¹⁴ For example, in performing the functions required by the rule of court creating it,¹⁵ the Litigation Management Committee discusses pending or anticipated claims and litigation against judicial officers, courts, and court employees. The civil and criminal jury instruction committees also may discuss decisions or rulings issued in cases that have not reached final resolution through the appellate process. Judges are ethically prohibited, however, from making public comment about pending or anticipated litigation.¹⁶

Furthermore, the canons of judicial ethics require that judges adhere at all times to high standards of conduct, promoting public confidence in the impartiality of the judiciary.¹⁷ Among other things, this means avoiding comments that could be misheard or misunderstood as reflecting a commitment on issues likely to come before a judge as an adjudicator in individual cases. Such comments could create doubts about the judge’s impartiality, and thus “do injury to the system of government under law,” which relies on “[d]eference to the judgments and rulings of courts.”¹⁸

Opening the meetings of these three committees would have the result of precluding judges, who are specially learned in the law and its applications, from meaningful participation on those committees.¹⁹ As open meeting requirements applicable to other government entities permit closed session discussion of pending litigation,²⁰ and as these three advisory bodies focus entirely, or to a significant extent, on the same topic, the proposed rule would exempt their meetings from its requirements.

Rule committees (Rule 10.75(c)(4))

Rule 10.75 also would provide that the meetings of the seven advisory bodies charged primarily with developing rules proposals to improve the administration of justice in specific types of proceedings, and of their subcommittees, ordinarily will be closed. The exception would be if a chair concludes that a particular agenda item may be addressed in open session or that a portion

¹⁴ See Cal. Code of Judicial Ethics, www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf.

¹⁵ See Cal. Rules of Court, rule 10.14.

¹⁶ Cal. Code of Judicial Ethics, canon 3B(9).

¹⁷ *Id.*, canons 1, 2A.

¹⁸ *Id.*, canon 1, advis. com. comment; see also *id.*, canon 2A & advis. com. comment.

¹⁹ See *id.*, canon 4B, advis. com. comment. (“As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice”).

²⁰ See Gov. Code, §§ 9029(a)(3), 9029.5(a) (Legislature open meeting laws); *id.*, § 11126(e) (Bagley-Keene Open Meeting Act (BKA) applicable to state bodies); *id.*, § 54956.9 (Ralph M. Brown Act (Brown Act) applicable to local government).

of the meeting qualifies as a budget meeting as that term is defined in subdivision (c)(1) of the proposed rule.²¹ (Proposed rule 10.75(c)(4).) Under subdivision (c)(1) of the proposed rule, budget meetings must be open.

As explained in the proposed advisory committee comment to subdivision (c)(4), the work of the seven rule committees and their subcommittees present many of the same ethical challenges and obstacles for judges who are members as for judges who are members of the bodies covered by subdivision (c)(3). The seven rule committees and their subcommittees focus primarily on analyzing, developing, and providing input concerning proposed legislation, rules, forms, and standards. That work necessarily entails a complex interchange of views, consideration of multiple perspectives, and the vetting of opposing legal arguments, which judges cannot undertake in public without risk that their comments will be misunderstood or used as a basis for disqualification or challenge.²²

Disqualifications and challenges may create significant practical issues for courts related to judicial workloads, and related concerns may deter judges from serving on those advisory bodies, in turn depriving the public of the benefit of their training and expertise in crafting procedures for the effective and efficient administration of justice. Subdivision (c)(4) is intended to prevent such deleterious results by clarifying that meetings of the seven rule committees and their subcommittees ordinarily will be closed, although any budget meetings must be open.²³ The listed committees would be subject to rule requirements regarding the posting of notice and agendas. As noted above, the public also would have the existing opportunities to comment regarding proposals that they develop both before and during meetings at which those proposals are presented for approval to the Judicial Council.²⁴

Closed sessions (Rule 10.75(d))

Open meetings laws applicable to all branches and levels of government include specified exceptions, recognizing that covered bodies must meet in private under limited circumstances to carry out their responsibilities in the best interests of the public. Similarly, proposed rule 10.75 recognizes that there are legitimate reasons to close some meetings. Based on the generally

²¹ The seven rule committees are the (1) Appellate Advisory Committee, (2) Civil and Small Claims Advisory Committee, (3) Criminal Law Advisory Committee, (4) Family and Juvenile Law Advisory Committee, (5) Probate and Mental Health Advisory Committee, (6) Rules and Projects Committee, and (7) Traffic Advisory Committee.

²² See Code Civ. Proc., §§ 170.1, 170.6.

²³ It may be noted that Connecticut, which has one of the most expansive state open meeting requirements in terms of its application to the judiciary, explicitly limits the scope of those requirements for judicial bodies and committees to meetings concerning “administrative functions.” (See Conn. Gen. Stats. Ann. § 1-200(1)(A) (West).) The Connecticut Supreme Court has interpreted the law as exempting a judicial branch rules committee similar to those described in subdivision (c)(4) of the proposed rule. (See *Rules Com. of the Superior Court v. Freedom of Information Commission* (1984) 192 Conn. 234 [472 A.2d 9].) More recently, the Connecticut Supreme Court narrowly interpreted the term “administrative” in the same law as covering only the following topics: “budget, personnel, facilities, and physical operations.” (*Clerk of the Superior Court v. Freedom of Information Commission* (2006) 278 Conn. 28 [895 A.2d 743].) Judicial branch committee meetings in Connecticut, therefore, would be open to the public only to the extent they concern those specific topics.

²⁴ See, above, at pp. 4–5, “Existing public access to Judicial Council advisory bodies.”

accepted grounds for closure of meetings and some specific needs of the judiciary and of the judicial officers who serve on Judicial Council advisory bodies and subcommittees, the proposed rule would recognize 11 bases for closing a meeting. (Proposed rule 10.75(d))(1)–(11).) As some advisory bodies have specific areas of focus and cover topics primarily appropriate for closed meetings (e.g., the Court Security Advisory Committee), it is anticipated that the majority of the meetings of those bodies may be closed.

Below, this report summarizes each of the 11 provisions authorizing closure of a meeting, noting the provisions that would differ substantively from the provisions of other open meeting laws and explaining the reasoning behind each.

Discussion of individuals (Rule 10.75(d)(1))

Subdivision (d)(1) of the proposed rule would allow the chair of an advisory body or subcommittee to close a meeting to discuss an individual’s character, qualifications, competence, performance, behavior, or health, allegations of individual misconduct, or matters that, if publicly discussed, would constitute an unwarranted invasion of personal privacy. The provision is comparable to provisions in existing open meeting laws, although the discussions of bodies covered under existing laws typically may involve the bodies’ own employees.²⁵

Judicial Council advisory bodies do not themselves employ staff, but rather rely on personnel of the Administrative Office of the Courts (AOC), the council’s staff agency.²⁶ The need to protect discussions concerning individuals arises because advisory bodies sometimes review the qualifications or performance of individuals as it relates to their area of focus. For example, the Governing Committee for the Center for Judicial Education and Research may evaluate the performance of course instructors.²⁷ The council’s internal Executive and Planning Committee also considers the qualifications of individual applicants in developing recommendations to the Chief Justice for appointments to advisory bodies.²⁸ The purpose of this exception is to protect the privacy of individuals whose work or qualifications is being scrutinized by an advisory body, and to allow the advisory body members to speak candidly about such individuals, facilitating the highest performance in accomplishing these public functions.

Litigation, privilege (Rule 10.75(d)(2))

Subdivision (d)(2) of the proposed rule would allow the closure of a meeting to discuss claims, administrative claims, or pending or anticipated litigation in which a judicial branch entity or a member, officer, or employee of such an entity has been, or is likely to be, named a party. This exception is found in other California open meeting laws and its purpose is to permit a covered body to confer with its attorney in circumstances where, if that conversation were to occur in

²⁵ See Gov. Code, § 9029(a)(1) (Legislature open meeting law); *id.*, § 11126(a), (c)(2), (c)(8), (c)(9), (c)(19), (f)(2), (f)(3), (f)(7), (g)(1), (g)(2) (BKA, state bodies); *id.*, §§ 54956.7, 54957, 54956.86, 54957.10 (Brown Act, local government).

²⁶ See *id.*, § 68500; Cal. Rules of Court, rules 10.80–10.81.

²⁷ See Cal. Rules of Court, rule 10.50(c)(3).

²⁸ *Id.*, rule 10.11(h).

open session, it would prejudice the position of the covered body in the litigation.²⁹ Subdivision (d)(2) varies from comparable provisions in other California open meeting laws in that it applies to discussion of claims, administrative claims, and litigation against parties beyond the advisory body or the Judicial Council.³⁰ The difference is appropriate because the council's Litigation Management Committee oversees such activities statewide for all judicial branch entities and their officers and employees.³¹ Other advisory bodies also may have an interest in such claims, administrative claims, or litigation, for example, because a ruling may create new law applicable to them. Subdivision (d)(2) would permit advisory bodies to discuss such matters without exposing themselves to litigation or prejudicing another judicial branch entity or individual. It also allows the continued participation of judges as members of those advisory bodies, as judges are ethically prohibited from discussing pending or anticipated litigation in public.³²

Subdivision (d)(2) also differs from other open meeting laws in that it would allow the closure of a meeting to discuss non-litigation matters protected by the attorney-client privilege. The provision would accommodate the attorney-client relationship between the courts and the AOC's Legal Services Office. Among other things, the Legal Services Office provides legal opinions and analysis on court administration topics for court leaders. On issues of statewide importance, an attorney from that office may, for example, attend a meeting of the Court Executives Advisory Committee or the Trial Court Presiding Judges Advisory Committee to discuss a statewide legal opinion and answer questions. Because those opinions cover a broad area of legal issues, the resulting discussions may not always fall under other exceptions of the proposed rule. Subdivision (d)(2) is necessary, therefore, to permit candid discussions between court leaders and their attorneys, to ensure the effective and consistent administration of justice statewide.

Negotiations on contracts, labor issues, legislation (Rule 10.75(d)(3))

Subdivision (d)(3) of the proposed rule would allow the chair of an advisory body or subcommittee to close a meeting to discuss negotiations concerning a contract, labor issue or legislation. Similar exceptions for contract and labor negotiations are found in the Bagley-Keene Open Meeting Act³³ (applicable to state bodies) and the Ralph M. Brown Act³⁴ (applicable to legislative bodies of local agencies).³⁵ Additionally, under the Legislature's open meeting laws, political party caucuses may meet in closed session without limit.³⁶ The purpose of the exception in subdivision (d)(3) is to prevent the disclosure of information that would adversely affect the Judicial Council, or another judicial branch entity, in its negotiations with a vendor, labor organization, or political or governmental organization. For example, if a vendor is allowed to

²⁹ See Gov. Code, § 11126(e)(1) (BKA, state bodies); *id.*, § 54956.9(a) (Brown Act, local government).

³⁰ *Id.*, §§ 9029(a)(3), 9029.5(a) (Legislature open meeting laws); *id.*, § 11126(e) (BKA, state bodies); *id.*, § 54956.9 (Brown Act, local government).

³¹ See *id.*, § 912.7; Cal. Rules of Court, rule 10.14.

³² See Cal. Code Judicial Ethics, canon 3B(9).

³³ Gov. Code, § 11120 et seq.

³⁴ *Id.*, § 54950 et seq.

³⁵ See *id.*, § 11126(c)(17) (BKA, state bodies); *id.*, § 54957 (Brown Act, local government).

³⁶ *Id.*, § 9029(b) (Legislature open meeting law).

attend the meeting in which the maximum price for a contract is set, the vendor could use that information in its proposal or negotiations to ensure that the Judicial Council pay the maximum price. Similarly, open discussions of legislative negotiations may compromise the council's legislative priorities. Under subdivision (d)(3), a closed session would be authorized until a contract or a labor agreement has been executed, after which time concerns about public discussions impacting the terms or conditions of an agreement would no longer apply.

Real estate transactions (Rule 10.75(d)(4))

Subdivision (d)(4) of the proposed rule, like comparable provisions in other California open meeting laws, would allow the chair of an advisory body or subcommittee to close a meeting for discussion of the purchase, sale, or lease of real property or the selection of a location for a facility until the property has been acquired or the relevant contracts have been executed.³⁷ The purpose would be to avoid requiring the disclosure of potential judicial branch interest in an individual property or public discussion of the potential terms of a real estate transaction, either of which could negatively impact the price for the judicial branch and have other adverse consequences. If the public (including a potential seller) could attend the meeting at which a maximum amount was approved for a purchase, for example, it could be difficult for the Judicial Council to obtain a lower price.

Security matters (Rule 10.75(d)(5))

Subdivision (d)(5) of the proposed rule, like comparable provisions in other California open meeting laws, would allow the closure of a meeting for discussion of security plans or procedures or other matters related to the safety of the public, judicial branch officers, or personnel, or the security of judicial branch facilities or equipment, including electronic data.³⁸ Because of the judicial branch's central role in the justice system, security concerns constitute a significant consideration in court operations. The work of the Court Security Advisory Committee underscores the importance and necessity of court security for the branch; that committee focuses exclusively on facility and personal security matters, making assessments of existing security resources and recommendations for improved security procedures.³⁹ Other committees such as the Court Executives Advisory Committee and the Court Facilities Advisory Committee also include security matters as part of their areas of focus. The exception in subdivision (d)(5) is necessary to maintain the security of court facilities and equipment and the safety of the individuals who work at and do business with the courts.

Non-final audit reports or proposed responses to such reports (Rule 10.75(d)(6))

Subdivision (d)(6) of the proposed rule would permit a chair to close a meeting for discussion of audit reports that are not yet final and responses to such non-final reports. The provision is consistent with existing law regarding pending or non-final audit reports. The State Auditor, for

³⁷ See Gov. Code, § 9029.5(a)(4) (Legislative open meeting law); *id.*, § 11126(c)(7) (BKA, state bodies); *id.*, § 54956.8 (Brown Act, local government).

³⁸ *Id.*, § 9029(a)(2) (Legislative open meeting law); *id.*, § 11126(c)(18) (BKA, state bodies); *id.*, § 54957(a) (Brown Act, local government).

³⁹ See Cal. Rules of Court, rule 10.61(a).

example, is statutorily precluded from publicly releasing written material “or substantive information pertaining to any audit not completed.”⁴⁰ Similarly, state and local governmental entities have been authorized to meet in closed session to discuss a confidential draft audit report from the State Auditor, and responses to the same.⁴¹

Subdivision (d)(6) of the proposed rule would cover discussion of non-final audit reports by Internal Audit Services (IAS) of the AOC, the staff agency to the Judicial Council. IAS performs audits of all judicial branch entities, recommending improvements based on results,⁴² which assist in meeting branch fiscal oversight responsibilities. Once formally accepted by the Judicial Council, audit reports are considered final and are posted on the California Courts website to facilitate public access.⁴³

Before this point, however, when the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch reviews a non-final audit report, however, the information is kept confidential and meetings involving discussion of such reports would be closed under the proposed rule.⁴⁴ Confidentiality is maintained until an audit is completed and the auditor’s report becomes final, to ensure that the auditor’s investigation is conducted as efficiently and effectively as possible. If non-final reports and supporting documentation were available before an audit was completed, mistakes and misinformation could be disseminated to the public. This would be harmful to both the public who may receive inaccurate information and to entities being audited that ultimately are found in compliance.

Trade secrets or confidential or proprietary information (Rule 10.75(d)(7))

Subdivision (d)(7) of the proposed rule would allow a chair to close a meeting of an advisory body or subcommittee to discuss trade secrets or confidential or proprietary information. The provision would be consistent with existing open meeting laws applicable to state and local government entities,⁴⁵ and with other authorities protecting such information generally.⁴⁶ It would permit the Judicial Council Technology Committee, for example, to meet in closed session to discuss a vendor proposal or consider a vendor demonstration (e.g., related to

⁴⁰ Gov. Code, § 8545(b).

⁴¹ *Id.*, § 11126.2 (BKA, state bodies); *id.*, § 54956.75(a) (Brown Act, local government).

⁴² See www.courts.ca.gov/12926.htm.

⁴³ See www.courts.ca.gov/12050.htm (containing final audit reports for the past 3 years). See also Cal. Rules of Court, rule 10.500(e)(2) (listing final audit reports as an example of a category of judicial administrative records subject to public inspection and copying under the rule).

⁴⁴ See www.courts.ca.gov/documents/FinancialAE-CommitteeCharge.pdf (stating the formal charge of the Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch). In addition to review of non-final audit reports, the advisory committee also, among other things, makes recommendations to improve judicial branch efficiency and financial accountability.

⁴⁵ See Gov. Code, §§ 11126(c)(13), (c)(15), (j)(3), 11126.4(a) (BKA, state bodies); *id.*, § 54956.87(b), (c) (Brown Act, local government).

⁴⁶ See, e.g., *id.*, § 3426 et seq. (California Uniform Trade Secret Act); Evid. Code, § 1060 et seq.; Pub. Contract Code, § 19206 (requiring the Judicial Council to adopt and publish a Judicial Branch Contracting Manual); Jud. Branch Contracting Manual, Judicial Council (Aug. 2012), ch. 4A, step 7 (confidentiality of bids); *id.*, ch. 4B, step 9 (same); *id.*, ch. 4C, step 10 (same); Cal. Rules of Court, rule 10.500(f)(10) (exempting from public disclosure judicial administrative records containing trade secrets and specified other privileged or confidential information).

computer applications, networking, or telecommunications systems) submitted during the solicitation process or as part of a contractual relationship with a judicial branch entity. Absent such a provision, vendors might be disinclined to submit bids for judicial branch entity projects, interfering with effective competitive bidding and the ability to secure favorable pricing for goods and services.

Unverified data or draft reports, except those for consideration in a budget meeting
(Rule 10.75(d)(8))

Subdivision (d)(8) of the proposed rule would allow the chair of an advisory body or subcommittee to close a meeting to discuss unverified data or draft reports, except those for consideration in a budget meeting as that term is defined in subdivision (c)(1) of the proposed rule. This provision accommodates a distinguishing feature of the Judicial Council governance structure, namely, its reliance on the active involvement and combined experience of advisory body members who are drawn from a wide cross-section of stakeholder groups, together performing many functions that other governmental bodies might delegate to staff to complete under the chair's supervision. The model is intended to ensure that the advice and recommendations provided to the council for its consideration in establishing policies and setting priorities for the judicial branch are the product of a thoughtful and comprehensive review, benefitting from the input of judicial officers and practitioners with expertise in the subject matter.

Although performed by members collectively, rather than by individual staff members, the work of evaluating unverified data or draft reports, appropriately is conducted in closed session. Advisory bodies and their subcommittees require an opportunity to consider whether there are gaps in initial information or analysis provided and to identify any further material needed to permit an accurate understanding of the relevant issues, before they begin the work of formulating recommendations. Although planning for data collection or report preparation, discussion of the completed product or final data, and development of policy recommendations based on them appropriately would occur in an open meeting, requiring public discussion of unverified and potentially inaccurate information or analysis is likely to create unnecessary public confusion. Some may mistakenly conclude that the information or analysis being discussed is verified and final, or reflects the collective view rather than the preliminary views of the authors. Subdivision (d)(8) is included in the proposed rule to avoid such misunderstandings and the resulting harm to the public interest.

Notably, however, the subdivision expressly excludes discussion of unverified data and draft reports in budget meetings.⁴⁷ Under the proposed rule, discussion of such materials in budget meetings would occur in public. The intent would be to ensure that the public has the opportunity to attend, observe, and understand the information that advisory body members receive and

⁴⁷ See, proposed rule 10.75(c)(1) (“[B]udget meetings . . . are meetings or portions of meetings to discuss a proposed recommendation that the Judicial Council approve an allocation, or direct an expenditure of public funds”).

consider as they develop advice and recommendations on the critical topic of the allocation and expenditure of public funds.

Licensing or other professional examinations (Rule 10.75(d)(9))

Subdivision (d)(9) of the proposed rule, like the Bagley-Keene Open Meeting Act covering state bodies, would permit the chair of an advisory body or subcommittee to close a meeting for certain discussions related to examinations.⁴⁸ Specifically, subdivision (d)(9) would allow a closed meeting to discuss development, modification, or approval of any licensing or other professional examination or examination procedure. The provision is needed, for example, to allow the Judicial Council's Court Interpreter Advisory Panel to consider issues related to certification and other examinations for interpreters who interpret court proceedings.⁴⁹ To protect the integrity of those examinations and, by extension, the quality of interpretation in the courts, those topics must be discussed in a nonpublic setting.

Evaluation of individual grant applications (Rule 10.75(d)(10))

Subdivision (d)(10) of the proposed rule would allow the chair of an advisory body or subcommittee to close a meeting for discussion concerning evaluation of grant applications. The Judicial Council's Sargent Shriver Civil Counsel Act Implementation Committee,⁵⁰ for example, reviews grant applications to develop funding recommendations for the council. Its discussions concerning the criteria to be applied and the evaluation procedure would occur in open session under the proposed rule. Consideration of individual grant applications could occur in closed session, however, to permit the candid evaluation of applications, including assessment of the quality of an applicant's staff and performance, and to avoid deterring applications.

Topics presenting ethical and related practical issues for judges (Rule 10.75(d)(11))

Subdivision (d)(11) also would permit closure of an advisory body or subcommittee meeting on ethical grounds. As noted, judicial officers who are members of advisory bodies and advisory body subcommittees are uniquely constrained by detailed ethical standards, limiting their public comments.⁵¹ These constraints are particularly relevant for judges who volunteer to serve on advisory bodies that develop or provide input concerning proposed legislation, rules, forms, or standards, a group that is not limited to those named in subdivision (c)(4).⁵² Judicial officers serving on other advisory bodies, however, also may have occasion to discuss or refer to active

⁴⁸ See Gov. Code, § 11126(c)(3) (BKA, state bodies).

⁴⁹ See Cal. Rules of Court, rule 10.51(a)(2) (the Court Interpreters Advisory Panel, among other things, makes recommendations to the Judicial Council concerning certification, testing, recruiting, training, and continuing education of court interpreters). See also www.courts.ca.gov/2695.htm (information concerning court interpreter examinations).

⁵⁰ See www.courts.ca.gov/documents/AB-590.pdf at pp. 2–3 (information concerning the Sargent Shriver Civil Counsel Act Implementation Committee).

⁵¹ See, e.g., Cal. Code of Judicial Ethics, canon 1 (Judges must personally observe high standards of conduct to preserve the integrity and independence of the judiciary); *id.*, canon 2A (Judges must “act at all times” in a manner that promotes public confidence integrity and impartiality of the judiciary”).

⁵² The rule committees named in subdivision (c)(4) of the proposed rule are included in that provision because their work focuses almost exclusively on the described rule-development functions. Other advisory bodies may perform similar functions on occasion.

cases, non-final decisions, or opposing interpretations of statute, legislation, or case law in reviewing issues for report to the Judicial Council. The proposed rule includes a provision permitting advisory bodies to discuss such matters in closed meetings, to ensure that judicial officers, who are specially learned in the law and its application, may continue to meaningfully participate, without risk of committing ethical violations, necessitating recusal, or encouraging disqualification motions or peremptory challenges that may distort court workloads and impede the efficient administration of justice. (Proposed rule 10.75(d)(11).)

Notice of meetings

Regular Meetings (Rule 10.75(e)(1))

Rule 10.75 would provide that public notice must be given of the date and agenda of each meeting that is subject to the rule, whether open or closed, at least five business days before the meeting. (Proposed rule 10.75(e)(1).)

Urgent Circumstances (Rule 10.75(e)(2))

The rule would provide that a meeting subject to the rule may be conducted on shortened notice (i.e., on less than five days notice) only in case of urgent circumstances requiring prompt action. The minutes of such meetings must briefly state the facts creating the urgent circumstances requiring prompt action and the action taken. (Proposed rule 10.75(e)(2).)

Form of notice (Rule 10.75(f))

The rule would provide that the notice and agenda for a meeting subject to the rule, whether open or closed, must be posted on the California Courts website (www.courts.ca.gov). The notice for meetings subject to the rule must state whether the meeting is open or closed and, if partly closed, which agenda items are closed. (Proposed rule 10.75(f)(1)–(2).)

For meetings that are open in part or in full, the notice must provide: (1) the telephone number or other electronic means that a member of the public may use to attend the meeting; (2) the time of the meeting, whether the public may attend in person, and, if so, the meeting location; and (3) the email address or other electronic means that the public may use to submit written comments regarding agenda items, requests to speak at a meeting, or requests to make an audio recording of a meeting. (Proposed rule 10.75(f)(3)(A)–(C).)

Contents of agenda (Rule 10.75(g))

Under rule 10.75, the agendas of meetings subject to the rule must contain a brief description of each item to be considered during the meeting. (Proposed rule 10.75(g).)

Meeting materials (Rule 10.75(h))

The rule would provide that materials for an open meeting must be posted on the California Courts website (www.courts.ca.gov) at least three business days before the date of the meeting, except in extraordinary circumstances. (Proposed rule 10.75(h).)

Public attendance (Rule 10.75(i))

For budgetary and other practical reasons, most advisory bodies and their subcommittees meet primarily by telephone or other electronic means, rather than in person. Advisory bodies perform a high volume of work, meet frequently, and may have 20 or more members who are located throughout the state and have full-time competing professional obligations. Many members are superior court judicial officers who must hear a daily calendar of cases from specific court locations, or attorneys who must appear at multiple court locations daily. Members typically join advisory body meetings by telephone from private locations (e.g., their chambers, their offices, or their homes), rather than from a single location that is accessible to the public. Rule 10.75 would provide that the public may attend all open meetings of advisory bodies by telephone or other electronic means, as members do. (Proposed rule 10.75(i).)

In addition, if members of an advisory body gather in person at a single location for a meeting, the rule would permit the public also to attend in person at that location if the chair concludes security measures permit. (Proposed rule 10.75(i).) Security concerns necessarily are a significant consideration, particularly for judicial officers, who are exposed to special risks as a result of their adjudicative responsibilities.⁵³

Conduct at meeting (Rule 10.75(j))

The rule would state that members of the public who attend open meetings in person must remain orderly and that the chair may order the removal of any disorderly person. (Proposed rule 10.75(j).)

Public comment**Written comment (Rule 10.75(k)(1))**

The rule would provide that the public may submit written comments for any agenda item of a regularly noticed open meeting up to one complete business day before the meeting. (Proposed rule 10.75(k)(1).) Written comments received closer to the meeting time will be accepted, although time constraints may preclude members from reviewing them for the meeting.

Written comments are accepted as an alternative to spoken comments for meetings that are conducted, or that the public attends, by telephone. As noted, most advisory body meetings are conducted by telephone or other electronic means. Often meetings are scheduled for times that judicial officers, attorneys, and other members with ties to the courts can attend, before or after a court's daily calendar of cases is heard, or during lunch breaks. The agendas for such meetings may be long, with 20 or more advisory body members attending. Adding a period for public comment during such meetings would make it difficult to conclude business in the finite periods available. Doing so also would significantly increase meeting costs, as multiple telephone lines

⁵³ See, e.g., Fautsko, *Courthouse Security Incidents Trending Upward: The Challenges Facing State Courts Today*, Nat. Center for State Cts. (2012), <http://ncsc.contentdm.oclc.org/cdm/ref/collection/facilities/id/163> ("The number of threats and violent incidents targeting the judiciary has increased dramatically"; citing data spanning more than 30 years).

and additional staff would be needed to manage the calls to ensure comment time limits are observed and avoid improper disruptions.

In-person comment (Rule 10.75(k)(2))

The rule would provide that, if security measures permit public attendance at an open in-person advisory body meeting, the meeting must include an opportunity for public comment regarding agenda items. The reference to agenda items is intended to clarify that comments pertaining to a specific court case will not be received, as judicial officers are ethically prohibited from engaging in ex parte communications with members of the public who are parties to cases before them.⁵⁴ Anyone wishing to speak during the public comment portion of the meeting must submit a request at least one complete business day before the meeting with the following information: (1) the speaker's name and the name and purpose of the organization that the speaker represents if any, (2) the speaker's contact information, (3) the agenda item that the public comment will address, and (4) any written materials that the speaker proposes to distribute at the meeting. (Proposed rule 10.75(k)(2).)

Reasonable limits (Rule 10.75(k)(3))

The rule would provide that the advisory body chair has the discretion to establish reasonable limits on the length of time for each speaker and the total amount of time permitted for public comment. The chair may also decide whether public comments will be heard at the beginning of the meeting or in advance of the agenda items. (Proposed rule 10.75(k)(3).)

Making an audio recording of a meeting (Rule 10.75(l))

The rule would provide that the chair of an advisory body may permit a member of the public to make an audio recording of an open meeting, or the open portion of a meeting, if a written request is submitted at least three business days before the meeting. (Proposed rule 10.75(l).) In light of the unique security threats that judicial officers confront,⁵⁵ the proposed rule would not provide for photography, video-recording, or broadcasting of advisory body members or meetings.

Minutes as official records (Rule 10.75(m))

The rule would provide that the minutes of each meeting subject to the rule must be prepared for approval at a future meeting. When approved by the advisory body, the minutes will constitute the official record of the meeting. Approved minutes for open meetings, or the open portion of a

⁵⁴ See Cal. Code of Judicial Ethics, canon 3B(7) ("A judge shall not initiate, permit, or consider ex parte communications").

⁵⁵ See, e.g., Nat. Center for State Cts., Courthouse Violence in 2010-2012, Lessons Learned, Final Rep. (Nov. 2013), p. 1, <http://nscs.contentdm.oclc.org/cdm/ref/collection/facilities/id/180> (discussing violent incidents in courthouses and attacks against judges); Nat. Center for State Cts., Home Security Audit and Recommendations (2013) www.ncsc.org/Services-and-Experts/Areas-of-expertise/~/media/Files/PDF/Services%20and%20Experts/Areas%20of%20expertise/~/Emergency%20Preparedness/06272013-Home-Security-Audit.ashx ("[I]ncreased violence in recent years has resulted in three judges being murdered at home"); Paddock, *Man on trial in Stockton stabs judge and is killed by police*, L.A. Times (Mar. 5, 2009).

meeting, must be posted on the California Courts website (www.courts.ca.gov). (Proposed rule 10.75(m).)

Circulated proposals (Rule 10.75(n))

For advisory bodies to perform their duties and responsibilities, it is essential that they have the means to conduct business in a timely and effective manner. Because it is not always feasible for advisory bodies to conduct or conclude all their business through in-person or telephonic meetings, there is a need to provide proposals for approval quickly by electronic means. The proposed rule would provide for this situation in a way that ensures openness and public access.

Necessity (Rule 10.75(n)(1))

Rule 10.75 would provide that an advisory body chair may circulate a proposal by email or other electronic means to all advisory body members for consideration between meetings if (1) the advisory body discussed and considered the proposal at a previous open meeting but concluded more information was needed; or (2) the chair concludes that prompt action is needed. (Proposed rule 10.75(n)(1).)

Notice (Rule 10.75(n)(2))

The rule would provide that, if a circulated proposal concerns a matter appropriate for an open meeting, the advisory body must provide public notice and allow one complete business day for public comment concerning the proposal, before acting on the proposal. The notice must be posted on the California Courts website (www.courts.ca.gov) and must provide an email address or other electronic means by which the public may submit written comments. The advisory body may forego public comment if the chair concludes that prompt action is required. (Proposed rule 10.75(n)(2).)

Communications concerning circulated proposals (Rule 10.75(n)(3))

Once an advisory body chair circulates a proposal under subdivision (n) of the proposed rule, advisory body members would have to restrict their communications with each other regarding the proposal to email or other electronic means until the advisory body has acted on the proposal. (Proposed rule 10.75(n)(3).)

Official Record (Rule 10.75(n)(4))

The rule would provide that minutes describing the action taken regarding the proposal must be prepared for approval at a future meeting. The minutes would have to include the text of all emails or electronic communications concerning the proposal exchanged among advisory body members before the advisory body acted on the proposal. When approved by the advisory body, the minutes would constitute the official record of the circulated proposal. Approved minutes for a proposal on a matter appropriate for an open meeting would be posted to the California Courts website (www.courts.ca.gov). (Proposed rule 10.75(n)(4).)

Adjourned meetings (Rule 10.75(o))

The rule would provide that an advisory body chair may adjourn a meeting to reconvene at a specified time without issuing a new notice, provided that, if open agenda items remain for discussion, notice of the adjourned meeting is posted on the California Courts website 24 hours before the meeting reconvenes. The notice must identify any remaining open agenda items to be discussed, the time that the meeting will reconvene, the telephone number or other electronic means that the public may use to attend the meeting and, if the public may attend the reconvened meeting in person, the location. The advisory body may not consider new agenda items when the meeting reconvenes unless the exception for urgent circumstances in subdivision (e)(2) applies. (Proposed rule 10.75(o).)

Implementation Requirements, Costs, and Operational Impacts

Implementation of the proposed rule would require a significant commitment of time, funding, and staff resources. As noted above, almost 30 advisory bodies, a greater number of subcommittees, and more than 400 volunteer members would be affected. Following successive years of significant state budget cuts to the judicial branch, all of these advisory bodies have been operating with reduced budgets, sharing overlapping staff, meeting primarily by telephone, and restricting their work to essential or mandated projects. Existing resources are fully committed.

Consistent and effective implementation of the proposed meeting requirements, however, would entail considerable member and staff time for planning, communication, and training; development of new document templates; and consideration of attendant technology, meeting space, security, and accommodation requirements and resources. Web materials would need to be created and posted. More meeting space and additional security would be needed. At present, the Judicial Council's San Francisco headquarters is the primary meeting location with both entrance security screening and conference rooms capable of accommodating public meetings, and managing the space to permit more large meetings will be a significant challenge.

More advisory body staff would be needed to handle the increased work of advisory bodies and subcommittees. In addition to communications with members, scheduling meetings, conducting research, preparing analyses, and developing other materials, under the rule proposal, staff also would have to prepare public notices, agendas, and minutes; receive and distribute public comments before meetings; respond to meeting-related inquiries and requests from the public and the media; post meeting materials; schedule and manage telephone and in-person meetings to facilitate public attendance; receive, respond to, and plan accommodations for disabled attendees; and handle the distribution of proposals between meetings.

The above activities necessarily would have an impact on the speed with which the advisory bodies' work can be completed and the volume of work that can be accomplished. The added demands on staff and the new notice requirements also would make it more difficult for advisory bodies to seek input from each other regarding proposals before they are presented to the Judicial Council for consideration and approval.

The consultation process is critical because it ensures proposals are considered in advance from multiple perspectives and their potential practical ramifications identified. This in turn permits advisory bodies to forge consensus within the branch and among stakeholders concerning the proposals, and permits smooth implementation of proposals, if approved. Given that they often are developing statutorily mandated proposals or are responding to external events and must comply with deadlines set by law or imposed by others, however, the new notice requirements that the proposed rule would impose will make it more difficult for advisory bodies to consult with each other. This may have an impact on the quality of proposals, relationships within the branch and with stakeholders, and the administration of justice generally, if implementation of proposals becomes an issue.

These additional challenges, their impact on communication, and concerns about the professional risks for members and chairs in attempting to meet rule requirements, may reduce the willingness of branch representatives and justice partners to continue volunteering their time, performing the critical work of the advisory bodies. Advisory body members all have separate demanding professional obligations, and the work of the advisory bodies also can be consuming, requiring significant dedication of time, thought, and energy. As noted, at present, there are more than 400 volunteer members. Each of these individuals is a necessary part of the work that must be done to present fair, innovative, workable, and fully conceived proposals to the Judicial Council, permitting it, in turn, to take the action needed for all Californians to have equal access to an efficient and effective, independent and impartial system of justice.

Attachment
Rule 10.75

Rules 10.75 of the California Rules of Court would be adopted, effective July 1, 2014, to read:

1 Title 10. Judicial Administration Rules

2
3 Division 1. Judicial Council

4
5 Chapter 3. Judicial Council Advisory Body Meetings

6
7 Rule 10.75. Meetings of Advisory Bodies

8
9 (a) Intent

10
11 The Judicial Council intends by this rule to supplement and expand on existing
12 rules and procedures providing public access to the council and its advisory bodies.
13 Existing rules and procedures provide for circulation of advisory body proposals
14 regarding rules, forms, standards, and jury instructions for public comment,
15 posting of written reports for the council on the California Courts website
16 (www.courts.ca.gov), public attendance and comment during council meetings,
17 real time audio casts of council meetings, and public posting of council meeting
18 minutes. This rule expands public access to advisory body meetings.

19
20 (b) Advisory bodies and chairs

- 21
22 (1) “Advisory bodies,” as used in this rule, means any multimember body
23 created by formal Judicial Council action to review issues and report to the
24 council.
25
26 (2) “Chair,” as used in this rule, includes a chair’s designee.

27
28 (c) Open meeting policy

29
30 (1) Meetings

31
32 Advisory body meetings to review issues that the advisory body will report to
33 the Judicial Council are open to the public, unless they are closed under (d).
34 Meetings open to the public include budget meetings, which are meetings or
35 portions of meetings to discuss a proposed recommendation that the Judicial
36 Council approve an allocation or direct an expenditure of public funds. A
37 majority of advisory body members must not decide a matter included on a
38 posted agenda for the open portion of an upcoming meeting in advance of the
39 meeting.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

(2) Subcommittees

If an advisory body subcommittee is charged with addressing a subject as a continuing matter or includes a majority of the members of the advisory body, the subcommittee must meet in open session under this rule when considering an issue that the advisory body will report to the Judicial Council, unless the subcommittee meeting is closed under (d).

(3) Exempt bodies

The meetings of the following advisory bodies and their subcommittees are exempt from the requirements of this rule:

- (A) Advisory Committee on Civil Jury Instructions;
- (B) Advisory Committee on Criminal Jury Instructions; and
- (C) Litigation Management Committee.

(4) Rule committees

The meetings of the following rule committees and their subcommittees are closed unless the chair concludes that a particular agenda item may be addressed in open session or that a portion of the meeting qualifies as a budget meeting, as that term is defined in (c)(1):

- (A) Appellate Advisory Committee;
- (B) Civil and Small Claims Advisory Committee;
- (C) Criminal Law Advisory Committee;
- (D) Family and Juvenile Law Advisory Committee;
- (E) Probate and Mental Health Advisory Committee;
- (F) Rules and Projects Committee; and
- (G) Traffic Advisory Committee.

1 (d) Closed sessions

2
3 The chair of an advisory body or an advisory body subcommittee may close a
4 meeting, or portion of a meeting, to discuss any of the following:

- 5
6 (1) The character, qualifications, competence, performance, behavior, or health
7 of an individual or allegations of individual misconduct or matters that if
8 discussed in public would constitute an unwarranted invasion of personal
9 privacy;
- 10
11 (2) Claims, administrative claims, or pending or anticipated litigation in which a
12 judicial branch entity or a member, officer, or employee of such an entity has
13 been, or is likely to be, named as a party, or other matters protected by
14 attorney-client privilege;
- 15
16 (3) Negotiations concerning a contract, a labor issue, or legislation;
- 17
18 (4) The purchase, sale, or lease of real property or selection of a location for a
19 judicial branch facility until the property has been acquired or the relevant
20 contracts have been executed;
- 21
22 (5) Security plans or procedures or other matters related to the safety of the
23 public or of judicial branch officers or personnel or the security of judicial
24 branch facilities or equipment, including electronic data;
- 25
26 (6) Non-final audit reports or proposed responses to such reports;
- 27
28 (7) Trade secrets or confidential or proprietary information;
- 29
30 (8) Unverified data or draft reports, except those for consideration in a budget
31 meeting as defined in (c)(2);
- 32
33 (9) Development, modification, or approval of any licensing or other
34 professional examination or examination procedure;
- 35
36 (10) Evaluation of individual grant applications; or
- 37
38 (11) Topics that judicial officers who are members of the advisory body or
39 subcommittee cannot discuss in public without risking a violation of the
40 California Code of Judicial Ethics, necessitating recusal, or encouraging
41 disqualification motions or peremptory challenges against them, including
42 proposed legislation, rules, forms, standards of judicial administration, or jury
43 instructions.

1 (e) Notice of meetings

2
3 (1) Regular Meetings

4
5 Public notice must be given of the date and agenda of each meeting that is
6 subject to this rule, whether open or closed, at least five business days before
7 the meeting.

8
9 (2) Urgent Circumstances

10
11 A meeting that is subject to this rule may be conducted on shortened notice
12 only in case of urgent circumstances requiring prompt action. The minutes of
13 such meetings must briefly state the facts creating the urgent circumstances
14 requiring prompt action and the action taken.

15
16 (f) Form of notice

17
18 (1) The notice and agenda for a meeting subject to this rule, whether open or
19 closed, must be posted on the California Courts website (www.courts.ca.gov).

20
21 (2) The notice for meetings subject to this rule must state whether the meeting is
22 open or closed and, if partly closed, which agenda items are closed.

23
24 (3) For meetings that are open in part or in full, the notice must provide:

25
26 (A) The telephone number or other electronic means that a member of the
27 public may use to attend the meeting;

28
29 (B) The time of the meeting, whether the public may attend in person, and,
30 if so, the meeting location; and

31
32 (C) The email address or other electronic means that the public may use to
33 submit written comments regarding agenda items, requests to speak at
34 a meeting, or requests to make an audio recording of a meeting.

35
36 (g) Contents of agenda

37
38 The agenda must contain a brief description of each item to be considered during a
39 meeting subject to this rule.

1 **(h) Meeting materials**

2
3 Materials for an open meeting must be posted on the California Courts website
4 (www.courts.ca.gov) at least three business days before the date of the meeting,
5 except in extraordinary circumstances.

6
7 **(i) Public attendance**

8
9 The public may attend open sessions of advisory body meetings by telephone or
10 other electronic means. If the members of an advisory body gather in person at a
11 single location for a meeting, the public may attend in person at that location, if the
12 chair concludes security measures permit.

13
14 **(j) Conduct at meeting**

15
16 Members of the public who attend open meetings in person must remain orderly.
17 The chair may order the removal of any disorderly person.

18
19 **(k) Public comment**

20
21 **(1) Written comment**

22
23 The public may submit written comments for any agenda item of a regularly
24 noticed open meeting up to one complete business day before the meeting.

25
26 **(2) In person comment**

27
28 If security measures permit public attendance at an open in-person advisory
29 body meeting, the meeting must include an opportunity for public comment
30 regarding agenda items. Anyone wishing to speak during the public comment
31 portion of the meeting must submit a request at least one complete business
32 day before the meeting with the following information: the speaker's name,
33 the name and purpose of the organization that the speaker represents if any,
34 the speaker's contact information, the agenda item that the public comment
35 will address, and any written materials that the speaker proposes to distribute
36 at the meeting.

37
38 **(3) Reasonable limits**

39
40 The advisory body chair has discretion to establish reasonable limits on the
41 length of time for each speaker and the total amount of time permitted for
42 public comment. The chair may also decide whether public comments will be
43 heard at the beginning of the meeting or in advance of the agenda items.

1 **(l) Making an audio recording of a meeting**

2
3 An advisory body chair may permit a member of the public to make an audio
4 recording of an open meeting, or the open portion of a meeting, if a written request
5 is submitted at least three business days before the meeting.

6
7 **(m) Minutes as official records**

8
9 Minutes of each meeting subject to this rule must be prepared for approval at a
10 future meeting. When approved by the advisory body, the minutes constitute the
11 official record of the meeting. Approved minutes for the open portion of a meeting
12 must be posted on the California Courts website (www.courts.ca.gov).

13
14 **(n) Circulated proposals**

15
16 **(1) Necessity**

17
18 An advisory body chair may circulate a proposal by email or other electronic
19 means to all advisory body members for consideration between meetings if:

20
21 **(A) The advisory body discussed and considered the proposal at a previous**
22 **open meeting but concluded more information was needed; or**

23
24 **(B) The chair concludes that prompt action is needed.**

25
26 **(2) Notice**

27
28 If a circulated proposal concerns a matter appropriate for an open meeting,
29 the advisory body must provide public notice and allow one complete
30 business day for public comment concerning the proposal, before acting on
31 the proposal. The notice must be posted on the California Courts website
32 (www.courts.ca.gov) and must provide an email address or other electronic
33 means by which the public may submit written comments. The advisory body
34 may forego public comment if the chair concludes that prompt action is
35 required.

36
37 **(3) Communications concerning circulated proposals**

38
39 When the chair circulates a proposal under this subdivision, advisory body
40 members must restrict their communications with each other regarding the
41 proposal to email or other electronic means until the advisory body has acted
42 on the proposal.

1 (4) Official Record

2
3 Written minutes describing the action taken regarding the circulated proposal
4 must be prepared for approval at a future meeting. The minutes must include
5 the text of all e-mails or electronic communications concerning the circulated
6 proposal exchanged among advisory body members before the advisory body
7 acts on the proposal. When approved by the advisory body, the minutes
8 constitute the official record of the circulated proposal. Approved minutes for
9 a circulated proposal on a matter appropriate for an open meeting must be
10 posted to the California Courts website (www.courts.ca.gov).

11
12 (o) Adjourned meetings

13
14 An advisory body chair may adjourn a meeting to reconvene at a specified time
15 without issuing a new notice under (e)(1), provided that, if open agenda items
16 remain for discussion, notice of the adjourned meeting is posted on the California
17 Courts website 24 hours before the meeting reconvenes. The notice must identify
18 any remaining open agenda items to be discussed, the time that the meeting will
19 reconvene, the telephone number or other electronic means that the public may use
20 to attend the meeting and, if the public may attend the reconvened meeting in
21 person, the location. The advisory body may not consider new agenda items when
22 the meeting reconvenes except as permitted under (e)(2).

23
24 Advisory Committee Comment

25 Subdivisions (a), (c)(1), and (c)(2). This rule expands public access to Judicial Council advisory
26 bodies. The council recognizes the important public interest in access to those meetings, and to
27 information regarding administration and governance of the judicial branch. Meetings of the
28 Judicial Council are open, and notice and materials for those meetings are provided to the public,
29 under rules 10.5 and 10.6. Rules in this division describe the council’s advisory bodies and
30 require that proposals for rules, standards, forms, and jury instructions be circulated for public
31 comment. (See Cal. Rules of Court, rules 10.10–10.22, 10.30–10.70.) Reports to the council
32 presenting proposals and recommendations are publicly posted on the California Courts website
33 (www.courts.ca.gov). Internal committee chairs report at each council meeting regarding the
34 activities of the internal committees in the period since the last council meeting, and internal
35 committee meeting minutes also are posted on the California Courts website. This rule expands
36 on those existing rules and procedures to increase public access, by opening the meetings of
37 advisory bodies to review issues that the advisory body will report to the council. The rule does
38 not apply to meetings that do not involve review of issues to be reported to the council, such as
39 meetings providing education and training of members, discussion of best practices, or sharing of
40 information of general interest unrelated to advice or reports to the council. Those non-advisory
41 matters are outside the scope of this rule.

1 Subdivisions (c)(3), (c)(4), and (d)(11). The Code of Judicial Ethics governs the conduct of
2 judges and is binding upon them. It establishes high standards of conduct that judges must
3 personally observe, maintain, and enforce at all times to promote and protect public confidence in
4 the integrity and impartiality of the judiciary. (See Code Judicial Ethics, Preamble, canon 1,
5 canon 2A.) Among other things, compliance with these high ethical standards means avoiding
6 conduct that could suggest a judge does not have an open mind in considering issues that may
7 come before the judge. (*Id.*, canon 2A.) Judges also are prohibited from making public comments
8 about a pending or impending proceeding (*id.*, canon 3B(9)), signifying that they may not
9 publicly discuss case law that has not reached final disposition through the appellate process, or
10 pending or anticipated litigation, conduct that would be required to participate in the work
11 covered by the referenced subdivisions. Ethical standards also direct that they hear and decide all
12 matters assigned to them, avoiding extrajudicial duties that would lead to their frequent
13 disqualification. (*Id.*, canons 3B(1), 4A(4).)

14 The work of the three advisory bodies listed in subdivision (c)(3) exclusively involves discussion
15 of topics that are uniquely difficult or impossible for judges to address while honoring the
16 detailed ethical standards governing the judiciary. For example, as required by rule, the Litigation
17 Management Committee discusses pending or anticipated claims and litigation against judicial
18 officers, courts, and court employees. Jury instruction committees also may discuss decisions or
19 rulings issued in cases that have not reached final resolution through the appellate process. Thus,
20 opening the meetings of these three committees would result in precluding judges, who are
21 specially learned in the law, from meaningful participation on those committees. Subdivision
22 (c)(3) is added to avoid this result.

23 The work of the seven rule committees listed in subdivision (c)(4) almost always will trigger
24 similar issues. Those bodies focus primarily on developing, and providing input concerning,
25 proposed legislation, rules, forms, and standards of judicial administration. That work necessarily
26 entails a complex interchange of views, consideration of multiple perspectives, and the vetting of
27 opposing legal arguments, which judges cannot undertake in public without risk that their
28 comments will be misunderstood or used as a basis for disqualification or challenge. Service on
29 the referenced committees, and public participation in discussing the referenced topics may make
30 it difficult for a judge to hear and decide all matters assigned to the judge, and conceivably could
31 lead to frequent disqualification of the judge, exposing the judge to risk of an ethical violation.
32 This may create significant practical issues for courts related to judicial workloads, while also
33 detering individuals specially learned in the law from serving on advisory bodies, in turn
34 depriving the public of the benefits of their training and experience in crafting procedures for the
35 effective and efficient administration of justice. Subdivisions (c)(4) and (d)(11) are intended to
36 prevent such deleterious results by clarifying that meetings of the seven rule committees whose
37 work almost entirely focuses on these topics ordinarily will be closed and that meetings of other
38 bodies performing similar functions also will be closed as the chairs deem appropriate, with the
39 exception that any budget meetings must be open.

40 Subdivision (k)(1). Due to budget constraints, members' schedules, and the geographic diversity
41 of most committee members, advisory body meetings typically are held via teleconference or
42 other method not requiring the members' in person attendance. Because judicial officer and

1 attorney members may have limited time for meetings (e.g., only a lunch hour), the volume of
2 advisory body business to be accomplished in those periods may be considerable, and the costs of
3 coordinating teleconferences that would accommodate spoken comments from the public would
4 be significant in the aggregate, the rule only provides for public comment in writing. To ensure
5 sufficient time for advisory body staff to gather and distribute written comments to members, and
6 for members to review comments before the meeting, the rule requires that comments be
7 submitted one complete business day before the meeting.



JUDICIAL COUNCIL OF CALIFORNIA

Open Meeting Rule—Judicial Council Advisory Body Meetings

KEY DATES AND ACTIVITIES

The following table highlights the scheduled key dates and activities for the development and implementation of an open-meeting rule of court. Dates and activities are subject to change.

Target Date	Activity
November 14	Preliminary draft of the proposed open-meeting rule of court is released to the public, and stakeholders
November 14 to November 20	Public comment period on the preliminary draft of the proposed open-meeting rule of court
November 14	Legislative briefings to review the preliminary draft of the proposed open-meeting rule of court
December 12	Presentation to the Judicial Council on the branch's progress with an open-meeting rule of court
December 20 to February 7	Public comment period on the proposed open-meeting rule of court
January 1	Submit a report on the branch's progress to the Joint Legislative Budget Committee
April 24–25	Judicial Council Meeting—review and adopt an open-meeting rule of court with an effective date of July 1, 2014

