

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

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SUBJECT: Litigation Management Rules: Changes to Conform to Policy and Practice
(amend Cal. Rules of Court, rules 10.14, 10.201, and 10.202) (Action
Required)

Issue Statement

Rules 10.14, 10.201, and 10.202 of the California Rules of Court currently state that the Litigation Management Committee must oversee litigation and claims against the courts, the Judicial Council, the Administrative Office of the Courts, and their employees that seek recovery of \$50,000 or more or raise important policy issues. In June 2008, the Judicial Council adopted new governance policies that provide for Litigation Management Committee oversight of claims and litigation seeking \$100,000 or more or that raise important policy or court operations issues. (Judicial Council Policies and Principles (June 2008).) The rules should be amended to be consistent with the revised Judicial Council Policies.

Recommendation

The Administrative Office of the Courts' Office of the General Counsel recommends that the Judicial Council, effective December 9, 2008:

1. Amend rule 10.14 to (a) confirm that the Litigation Management Committee oversees claims and litigation in which the likely monetary exposure is \$100,000 or more, rather than those that seek recovery of that amount or more, and (b) include claims or litigation that raise issues of significance to the judicial branch in the description of matters that require committee oversight;

2. Amend rule 10.201 to increase the Office of the General Counsel’s authority to approve (a) payment of up to \$100,000 for claims, and (b) payment of up to \$100,000 for judgments and settlement of lawsuits that do not raise issues of significance to the judicial branch; and
3. Amend rule 10.202 to provide that the Office of the General Counsel must make recommendations to the Litigation Management Committee for settlement of claims or lawsuits requiring payment of \$100,000 or more or raising issues of significance to the judicial branch.

The text of proposed amended rules 10.14, 10.201, and 10.202 is attached at pages 4 – 6.

Rationale for Recommendation

The purpose of the rule amendments is to make the rules consistent with the most current Judicial Council Policies, which were adopted by the council in June 2008, and to make additional changes recommended by the Litigation Management Committee. The current Judicial Council Policies provide for committee oversight of claims and litigation against the courts, the Judicial Council, the Administrative Office of the Courts, and their employees that seek recovery of \$100,000 or more. Rule 10.14 currently provides that the committee oversees claims and litigation that seek recovery of \$50,000 or more, and rules 10.201 and 10.202 provide that the committee must approve any payment of claims, settlements, or judgments of \$50,000 or more. The rules should be amended to be consistent with the Judicial Council Policies by raising the threshold amount from \$50,000 to \$100,000.

Rule 10.14(a) would be amended to provide that the committee must oversee certain claims and litigation in which the likely monetary exposure is \$100,000 or more. The committee’s practice is to oversee litigation and claims that realistically present a monetary exposure of \$100,000 (until recently \$50,000) or more, and not those that may seek a recovery of this amount, but present little or no actual monetary exposure. This amendment, in conjunction with corresponding amendments to rules 10.201 and 10.202, would reflect the committee’s practice and make the best use of the committee’s oversight resources.

Rules 10.14, 10.201, and 10.202 also would be amended to replace “important policy issues” with “issues of significance to the judicial branch.” As described in the Judicial Council Policies, the important issues overseen by the committee may include whether to initiate litigation on behalf of a court, when to defend a challenged court practice, or how to resolve disputes where the outcome might have statewide implications. The proposed amendments convey the council’s broad intent for the committee’s role by using a broader general description in place of the possibly limiting reference to “policy” issues.

The proposed rule amendments concern the authority of a council internal committee to oversee and approve settlement of claims and litigation against the judicial branch and would make the litigation management rules consistent with current Judicial Council Policies. The committee has been consulted about these changes and recommends them. Because these rule amendments are minor substantive changes that are unlikely to create controversy and because they concern council governance matters, the Rules and Projects Committee recommends that the council adopt them without circulation for public comment. (See Cal. Rules of Court, rules 10.22(d) and (g).)

Alternative Actions Considered

The rules could remain unchanged, but they would not reflect current Judicial Council Policies and could create doubt about the scope of authority of the Litigation Management Committee and the Office of the General Counsel to oversee claims and litigation and to approve payments of claims and judgments and settlement of lawsuits.

Comments From Interested Parties

The proposed amended rules were not circulated for public comment. See discussion above, under Rationale for Recommendation.

Implementation Requirements and Costs

The rules are proposed to be effective on approval by the council because the amendments reflect existing practice. Approval of the rules will result in no costs.

Attachments

Rules 10.14, 10.201, and 10.202 are amended, effective December 9, 2008, to read:

1 **Rule 10.14. Litigation Management Committee**

2
3 **(a) Litigation oversight**

4
5 The Litigation Management Committee must oversee litigation and claims
6 against trial court judges, appellate court justices, the Judicial Council, the
7 Administrative Office of the Courts, the trial and appellate courts, and the
8 employees of those bodies ~~that seek recovery of \$50,000 in which the likely~~
9 monetary exposure is \$100,000 or more or that raise important policy issues
10 of significance to the judicial branch by:

- 11
12 (1) Reviewing and approving any proposed settlement, stipulated
13 judgment, or offer of judgment; and
14
15 (2) Consulting with the Administrative Director or General Counsel, on
16 request, regarding important strategy issues.

17
18 **(b)–(c) *****

19
20 **Rule 10.201. Claim and litigation procedure**

21
22 **(a) *****

23
24 **(b) Procedure for action on claims**

25
26 To carry out the Judicial Council’s responsibility under Government Code
27 section 912.7 to act on a claim, claim amendment, or application for leave to
28 present a late claim against a judicial branch entity or a judge, the Office of
29 the General Counsel, under the direction of the Administrative Director of
30 the Courts, must:

- 31
32 (1)–(4) ***
- 33
34 (5) Allow a claim in the amount justly due as determined by the Office of
35 the General Counsel if it is a proper charge against the judicial branch
36 entity and the amount is less than ~~\$50,000~~ 100,000; and
37
38 (6) Make recommendations to the Litigation Management Committee
39 regarding proposed settlements of claims requiring payments of
40 ~~\$50,000~~ 100,000 or more.

1
2 **(c) Allowance and payment of claims**

3
4 The following may allow and authorize payment of any claim arising out of
5 the activities of a judicial branch entity or judge:
6

7 (1) The Office of the General Counsel, under the direction of the
8 Administrative Director of the Courts, if the payment is less than
9 ~~\$50,000~~ 100,000; or

10
11 (2) ***
12

13 **(d) Settlement of lawsuits and payment of judgments**

14
15 The following may settle lawsuits, after consultation with the affected entity
16 and any judge or employee being defended by the Judicial Council, and
17 authorize payment of judgments arising out of the activities of a judicial
18 branch entity or judge:
19

20 (1) The Office of the General Counsel, under the direction of the
21 Administrative Director of the Courts, if the payment is less than
22 ~~\$50,000~~ 100,000 and the lawsuit does not raise ~~important policy~~ issues
23 of significance to the judicial branch; or
24

25 (2) ***
26
27

28 **Rule 10.202. Claims and litigation management**

29
30 **(a) *****

31
32 **(b) Duties of the Office of the General Counsel**

33
34 To carry out the duty of the Judicial Council to provide for the
35 representation, defense, and indemnification of justices of the Courts of
36 Appeal or the Supreme Court, judges, subordinate judicial officers, court
37 executive officers and administrators, and trial and appellate court employees
38 under part 1 (commencing with section 810) to part 7 (commencing with
39 section 995), inclusive, of the Government Code, the Office of the General
40 Counsel under the direction of the Administrative Director of the Courts and
41 the General Counsel, must:
42

43 (1)–(4) ***

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(5) Make recommendations to the Litigation Management Committee regarding proposed settlements of claims or lawsuits requiring payments of \$~~50,000~~ 100,000 or more or raising ~~important policy~~ issues of significance to the judicial branch;

(6)–(8) ***

(c)–(d) ***