



Judicial Council of California, Administrative Office of the Courts
Office of Communications, 455 Golden Gate Ave., San Francisco, CA 94102-3688
California Courts Infoline 800-900-5980, www.courts.ca.gov

NEWS RELEASE

Contact: [Teresa Ruano](mailto:Teresa.Ruano@courts.ca.gov), 415-865-7740

FOR IMMEDIATE RELEASE

November 14, 2013

Judicial Council Leaders Circulate Proposal for Open-Meeting Rule

Early circulation of a draft rule designed to increase transparency of judicial administration while maintaining confidentiality required by ethics rules

SAN FRANCISCO—Five members of the Judicial Council of California announced today that they are disseminating for comment a “preliminary draft of a proposed rule” that is designed to greatly increase transparency within the judicial branch. The five chairs of the council’s [internal committees](#) developed the draft after meeting last month with the chairs and staff members of the council’s 30 advisory committees.

“This is clearly a work in progress,” said [Justice Douglas P. Miller](#), chair of the council’s Executive and Planning Committee. “Our usual process—which is required by court rules—is to draft a proposed rule and circulate it for public comment. However, because of the importance of the issue, the significant impact it will likely have on the branch, and our need to report to the Legislature concerning our progress by early January, we hope to increase opportunities for input by following a two-step process. First, we are circulating a preliminary draft of a proposed rule to solicit comments from the judicial branch, as well as our key stakeholders in the legislature, labor, and the media. Once we get their input, we’ll be able to revise the preliminary draft of the proposed rule, which we will circulate again, this time for formal public comment.”

The five members of the council who developed the preliminary draft include Justice Miller, [Justice Harry E. Hull, Jr.](#), chair of the Rules and Projects Committee; [Judge Mary Ann O’Malley](#), chair of the Litigation Management Committee; [Judge Ken K. So](#), chair of the Policy Coordination and Liaison Committee; and [Judge James E. Herman](#), chair of the Technology Committee.

“Our proposal to open up meetings of Judicial Council advisory bodies is unprecedented for this branch of government and entirely consistent with [Chief Justice Tani G. Cantil-Sakauye’s](#) efforts to increase transparency,” said Judge O’Malley, who helped develop the branch’s rule providing [public access to judicial administration records](#). “It’s important we get this rule right, which is

why we’re sharing a rough draft with others at this early stage. The judicial branch already has an inclusive process for developing rules. The branch, however, has special concerns—including the need to avoid legitimate ethical issues for justices and judges who perform significant work as volunteers on our advisory committees.”

One or more of the chairs will be meeting with key stakeholders in the next few weeks to get their feedback on what the rule should incorporate. In the meantime, comments can be submitted to: openmeetings@jud.ca.gov.

#

The Judicial Council is the policymaking body of the California courts, the largest court system in the nation. Under the leadership of the Chief Justice and in accordance with the California Constitution, the council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice. The Administrative Office of the Courts carries out the official actions of the council and promotes leadership and excellence in court administration.

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

20
21 **(b) Advisory bodies and chairs**

22
23 (1) “Advisory bodies,” as used in this rule, means any multimember body created
24 by formal Judicial Council action to review issues that will be reported to the
25 council.

26
27 (2) “Chair,” as used in this rule, includes a chair’s designee.

28
29 **(c) Meeting schedule and methods**

30
31 Advisory bodies meet as often as their chairs deem necessary to perform their
32 responsibilities, within available resources. Meetings may be in person or by
33 teleconference, video conference, or web conference.

34
35 **(d) Open meeting policy**

36
37 (1) Presumption

38
39 Advisory body meetings to review issues that will be reported to the Judicial
40 Council are open to the public, unless they are closed under (e). Meetings
41 open to the public include budget meetings, which are meetings or portions of
42 meetings to discuss a proposed recommendation that the Judicial Council

1 request funding, approve an allocation, or direct an expenditure of public
2 funds. A majority of advisory body members must not discuss or decide a
3 matter included on the agenda for an upcoming open meeting, or open
4 portion of a meeting, except in a meeting called by the advisory body chair or
5 as provided in subdivision (n).

6
7 (2) Subcommittees

8
9 An advisory body subcommittee meeting to consider a matter that the
10 advisory body will report to the Judicial Council must comply with this rule.

11
12 (3) Public attendance

13
14 The public may listen to open sessions of advisory body meetings by
15 telephone or other electronic means. The public also may attend any open
16 session of an in-person advisory body meeting if security measures permit
17 public attendance.

18
19 (4) Exempt bodies

20
21 Because of the topics that they address and the unique ethical and related
22 practical issues that may be raised for judicial officers who are members,
23 meetings of the following advisory bodies and their subcommittees are not
24 subject to the provisions of this rule:

25
26 (A) Litigation Management Committee;

27
28 (B) Criminal Jury Instructions Advisory Committee; and

29
30 (C) Civil Jury Instructions Advisory Committee.

31
32 (e) **Closed sessions**

33
34 An advisory body or an advisory body subcommittee may hold a closed session to
35 discuss any of the following:

36
37 (1) A personnel matter or a discussion or evaluation of an individual's character,
38 qualifications, competence, performance, or physical or mental health;

39
40 (2) Claims or pending or anticipated litigation in which a judicial branch entity
41 has an interest;

42

- 1 (3) Contract or labor negotiations;
- 2
- 3 (4) Legislative strategy or negotiations;
- 4
- 5 (5) Draft reports and agenda setting;
- 6
- 7 (6) The purchase, sale, or lease of real property;
- 8
- 9 (7) Security plans or procedures;
- 10
- 11 (8) Allegations of criminal or professional misconduct;
- 12
- 13 (9) Draft or pending audit reports or proposed responses to such reports;
- 14
- 15 (10) Trade secrets, or confidential or proprietary information;
- 16
- 17 (11) Collection and review of raw data and statistics;
- 18
- 19 (12) Development, modification, or approval of any examination or examination
- 20 procedure;
- 21
- 22 (13) Evaluation of individual grant applications;
- 23
- 24 (14) Member orientation or training;
- 25
- 26 (15) Discussions protected by the attorney-client privilege;
- 27
- 28 (16) Discussions on matters or subjects that will not be included in a report to the
- 29 Judicial Council;
- 30
- 31 (17) Discussions that, if held in public, might cause a violation of canon 3B(9) of
- 32 the California Code of Judicial Ethics, or encourage disqualification motions
- 33 or peremptory challenges against judicial officers who serve on the advisory
- 34 body.
- 35

36 **(f) Notice of meetings**

37

38 (1) Regular Meetings

39

40 Public notice must be given of the date and agenda of each meeting described

41 in (d)(1) and (d)(2) at least five business days before the meeting.

42

1 (2) *Urgent Circumstances*

2
3 A meeting may be conducted on shortened notice only in case of urgent
4 circumstances requiring prompt action. The minutes of such meetings must
5 briefly state the facts creating the urgent circumstances requiring prompt
6 action and the action taken.

7
8 **(g) Form of notice**

9
10 (1) The notice and agenda for meetings must be posted on the California Courts
11 website (www.courts.ca.gov).

12
13 (2) The notice must state whether the meeting is open or closed and, if partly
14 closed, which agenda items are closed.

15
16 (3) For open meetings, the notice must provide:

17
18 (A) The telephone number, website address, or other electronic means that
19 a member of the public may use or access to listen to the meeting;

20
21 (B) Whether the public also may attend in person and, if so, the meeting
22 location; and

23
24 (C) The e-mail address to which the public may submit written comments
25 regarding agenda items or requests to speak at a meeting or to video
26 record, photograph, or broadcast a meeting.

27
28 **(h) Contents of agenda**

29
30 The agenda must contain a brief description of each item to be considered during a
31 meeting described in (d)(1) or (d)(2).

32
33 **(i) Meeting materials**

34
35 Materials for an open meeting must be posted on the California Courts website
36 (www.courts.ca.gov) at least three business days before the date of the meeting,
37 except in extraordinary circumstances.

38
39 **(j) Conduct at meeting**

40
41 Members of the public who attend open meetings in person must remain orderly.
42 The chair may order the removal of any disorderly person.

1
2 **(k) Public comment**

3
4 **(1) Written comment**

5
6 The public may submit written comments for any agenda item of a regularly
7 noticed open meeting up to one complete business day before the meeting.
8

9 **(2) In person comment**

10
11 If security measures permit public attendance at an open in-person advisory
12 body meeting, the meeting must include an opportunity for public comment
13 regarding agenda items. Anyone wishing to speak during the public comment
14 portion of the meeting must submit a request at least one complete business
15 day before the meeting with the following information: the speaker's name,
16 the name and purpose of the organization that the speaker represents if any,
17 the speaker's contact information, the agenda item that the public comment
18 will address, and any written materials that the speaker proposes to distribute
19 at the meeting. Nothing in this paragraph affects or modifies the right to
20 provide written comments under paragraph (1).
21

22 **(3) Reasonable limits**

23
24 The advisory body chair has discretion to establish reasonable limits on the
25 length of time for each speaker and the total amount of time permitted for
26 public comment. The chair may also decide whether public comments will be
27 heard at the beginning of the meeting or in advance of the agenda items.
28

29 **(l) Video recording, photographing, and broadcasting at meeting**

30
31 An advisory body chair may permit a member of the public to video record,
32 photograph, or broadcast during the open portion of an in person meeting. Any
33 such activities must not disrupt the security and dignity of a meeting. A request to
34 record, photograph, or broadcast a meeting must be submitted at least three
35 business days before the meeting.
36

37 **(m) Minutes as official records**

38
39 Minutes of each meeting described in (d)(1) and (d)(2) must be prepared for
40 approval at a future meeting. When approved by the advisory body, the minutes
41 constitute the official record of the meeting. Approved minutes for open meetings,

1 or the open portion of a meeting, must be posted on the California Courts website
2 (www.courts.ca.gov).

3
4 **(n) Circulated proposals**

5
6 **(1) Necessity**

7
8 An advisory body may act between meetings via circulated proposal if:

9
10 **(A) The advisory body discussed and considered the proposal at a previous**
11 **open meeting but concluded more information was needed; or**

12
13 **(B) The chair concludes that prompt action is needed to permit timely**
14 **action in reporting to the Judicial Council or in acting on its behalf.**

15
16 **(2) Notice**

17
18 If a circulated proposal concerns a matter appropriate for an open meeting,
19 the advisory body must provide public notice and allow one complete
20 business day for public comment concerning the proposal. The notice must
21 be posted on the California Courts website (www.courts.ca.gov) and must
22 provide an email address to which the public may submit written comments.
23 The advisory body may forego public comment if the chair concludes that
24 prompt action is required to permit a timely report to the Judicial Council.

25
26 **(3) Communication**

27
28 All communications between advisory body members about the circulated
29 proposal must occur via e-mail. If a proposal concerns a matter appropriate
30 for an open meeting, the text of e-mail communications about the circulated
31 proposal must be posted on the California Court website, with member e-mail
32 addresses and contact information redacted.

33
34 **(4) Official Record**

35
36 Written minutes describing the action taken regarding the circulated proposal
37 must be prepared for approval at a future meeting. When approved by the
38 advisory body, the minutes constitute the official record of the circulated
39 proposal. Approved minutes for a circulated proposal on a matter appropriate
40 for an open meeting must be posted to the California Courts website
41 (www.courts.ca.gov).

Advisory Committee Comment

1
2
3 **Subdivisions (a), (d)(1), and (d)(2).** This rule expands public access to Judicial Council advisory
4 bodies. The council recognizes the important public interest in access to those meetings, and to
5 information regarding administration and governance of the judicial branch. Meetings of the
6 Judicial Council are open, and notice and materials for those meetings are provided to the public,
7 under rules 10.5 and 10.6. Rules in this division describe the council’s advisory bodies and
8 require that proposals for rules, standards, forms, and jury instructions be circulated for public
9 comment. (See Cal. Rules of Court, rules 10.10–10.22, 10.30–10.70.) Reports to the council
10 presenting proposals and recommendations are publicly posted on the California Courts website
11 (www.courts.ca.gov) and internal committee chairs report at each council meeting regarding the
12 activities of the internal committees in the period since the last council meeting. This rule
13 expands on those rules and procedures to increase public access.

14
15 **Subdivisions (d)(4) and (e)(17).** Judicial officers are prohibited by canon 3B(9) of the California
16 Code of Judicial Ethics from making any public comment about a pending or impending
17 proceeding. (See Cal. Code Judicial Ethics, Terminology [defining “impending proceeding” and
18 “pending proceeding”].) They may not, therefore, publicly discuss case law that has not reached
19 final disposition through the appellate process, or pending or anticipated litigation. Judicial
20 officers who are members of advisory bodies also may be challenged at a higher rate, precluding
21 them from hearing certain cases, if they discuss proposed legislation, proposed jury instructions,
22 related case law, or branch litigation in public, potentially creating significant practical issues for
23 courts related to judicial workloads. (See, e.g., Code Civ. Proc., §§ 170.1, 170.6.)

24
25 **Subdivision (k)(1).** Due to budget constraints, members’ schedules, and the geographic diversity
26 of most committee members, advisory body meetings typically are held via teleconference or
27 other method not requiring the members’ in person attendance. Because judicial officer and
28 attorney members may have limited time for meetings (e.g., only a lunch hour), the volume of
29 advisory body business to be accomplished in those periods may be considerable, and the costs of
30 coordinating teleconferences that would accommodate spoken comments from the public would
31 be significant in the aggregate, the rule only provides for public comment in writing. To ensure
32 sufficient time for advisory body staff to gather and distribute written comments to members, and
33 for members to review comments before the meeting, the rule requires that comments be
34 submitted one complete business day before the meeting.