

# JUDICIAL COUNCIL OF CALIFORNIA

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## **DRAFT** INVITATION TO COMMENT [ITC prefix as assigned]-\_\_

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Title	Action Requested
Trial Court Management: Public Access to Administrative Decisions of Trial Courts	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend rule 10.620	January 1, 2016
Proposed by	Contact
Trial Court Presiding Judges Advisory Committee	Claudia Ortega, 415-865-7623 claudia.ortega@jud.ca.gov
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Court Executives Advisory Committee	
Ms. Mary Beth Todd, Chair	

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### **Executive Summary and Origin**

Rule 10.620 addresses public access to certain administrative decisions made by trial courts. It sets forth requirements for trial courts to provide public notice, and seek public input, regarding budget recommendations made by trial courts to Judicial Council and specified administrative decisions. The decisions subject to public notice and comment requirements include any decision to close or reduce the hours of a court location. (Cal. Rules of Court, rule 10.620(d)(3).) When notice is required, the rule specifies the ways in which it must be given, including a requirement that notice be posted at all court locations that accept papers for filing. (Cal. Rules of Court, rule 10.620(g)(3).)

Amendments to Government Code section 68106, which took effect on January 1, 2012, created new requirements for public notice and comment when trial courts decide to close court facilities or reduce hours. These requirements are inconsistent with the requirements of rule 10.620, and trial courts have faced confusion in determining how notice is to be provided. The Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) jointly propose amending the rule to repeal those provisions that are inconsistent with Gov. Code section 68106, leaving the statute as the sole governing authority regarding notice where it is applicable, and to make the language of the rule regarding posting of notice at court facilities consistent with section 68106.

*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.*

## **Background**

Rule 10.620 was adopted in 2004 (as Rule 6.620) pursuant to Government Code section 68511.6, which requires that Judicial Council adopt rules providing for public notice and an opportunity to comment regarding trial court administrative and financial decisions. Government Code section 68106 then took effect in 2010, putting in place specific requirements for public notice and opportunity to comment on decisions to close courtrooms, or to close or reduce the hours of clerks' offices.

Under the previous language of section 68106, subsection (b), sixty day advance written public notice was required before closing any courtroom or closing or reducing the hours of a clerks' office. To reconcile the requirements of the statute and of the rule, some courts used a two-step notice procedure. A first notice would be issued, pursuant to the rule, fifteen court days before the decision was made, with public comment invited. Then, pursuant to the statute, another notice would be provided sixty days before the decision was implemented, but no further public comment would be solicited.

Section 68106 was amended effective January 1, 2012, to add the following requirements: 1) that notice be given "by electronic distribution to individuals who have subscribed to the court's electronic distribution service ...." (subd. (b)(1)); 2) that the notice include "information on how the public may provide written comments during the 60-day period on the court's plan ...." (subd. (b)(2)(A)); 3) that the court "review and consider all public comments received" (*ibid.*); and 4) that the court "immediately provide notice to the public," if it changes its plans during the comment period (*ibid.*).

The existing notice requirements of rule 10.620, as applied to court closures and reduction of hours, are inconsistent with these new provisions of section 68106. In particular, rule 10.620 requires that public notice be given at least fifteen court days before a decision is made, including a decision to close or significantly reduce the hours of a court location, and that public comment be allowed within that notice period. The rule further requires that a second public notice be given of such closures or service reductions within fifteen court days after the action is taken. By contrast, Government Code section 68106 now requires public notice to be provided no less than sixty days before a courtroom is closed or a clerks' office closed or its hours reduced, with the public comment period running concurrent with the notice period.

Courts have continued to struggle with the question of how to provide notice due to the inconsistency of rule 10.620 with the new statutory requirements.

## **The Proposal**

Subdivision (d)(3) and (f)(5) of rule 10.620 would be repealed to eliminate the application of the rule's notice requirements to decisions to close court locations or significantly reduce the hours of a court location. In addition, the proposed amendments conform the language of rule 10.620 (g)(3) regarding the posting of notice at court locations to the language of Government Code section 68106.

Currently, rule 10.620 requires a trial court to seek input from the public regarding specified decisions by providing public notice at least fifteen court days before the date on which the decision is to be made or the action is to be taken. (Cal. Rules of Court, rule 10.620(e).) The rule further requires that public notice be given of specified actions not later than fifteen court days after the event. (Cal. Rules of Court, rule 10.620(f).)

Under rule 10.620, subdivision (d)(3), the pre-decision notice requirement is applicable to “[t]he planned, permanent closure of any court location for an entire day or for more than one-third of the hours the court location was previously open for either court sessions or filing of papers.” Under subdivision (f)(5), the post-implementation notice requirement is applicable to “[a] significant permanent decrease in the number of hours that a court location is open during any day for either court sessions or filing of papers, except those governed by (d)(3).” (Closures and reductions governed by (d)(3) are subject to the post-implementation notice requirement under subdivision (f)(6), which applies to any action for which public input was required under any part of subsection (d).)

Finally, Rule 10.620 (g)(3) currently requires that notice be posted “at all locations of the court that accept papers for filing.” The amended provision would require notice to be posted “within or about court facilities.”

Trial court leadership have conveyed to members of both the TCPJAC and CEAC that the existing inconsistency between the rule and the statute has led to difficulty in determining how to provide notice and an opportunity to comment on court closures or reductions in service. A number of trial courts have asked Judicial Council’s Legal Services Office for guidance regarding the notice requirements. Other courts, unaware of the statutory changes and resulting conflict, have mistakenly followed the now superseded requirements of the rule rather than the new statutory requirements.

With the repeal of subdivisions (d)(3) and (f)(5), rule 10.620 would no longer apply to notice of court closures or reductions in service. Notice of such decisions would be subject solely to the statutory requirements of Government Code section 68106, eliminating any confusion over how to provide for public notice and comment.

## **Alternatives Considered**

### **No change to rule 10.620**

The committees considered not recommending the repeal of subdivisions (d)(3) and (f)(5), but concluded that inaction would leave in place rule requirements that are incompatible with the statutory requirements under Government Code section 68106, resulting in continued confusion.

### **Conform rule 10.620 to Government Code section 68106**

The committees considered amending the rule to conform the notice and comment requirements regarding court closures and service reductions to the requirements of Government Code section 68106. The committees concluded that such amendment would require significant revision of the rule to leave existing notice and comment requirements in place for the other types of decisions covered under the rule while creating new specially applicable provisions for court closures and service reductions. The end result, however, would be the same as is accomplished by the simpler alternative of repealing subdivisions (d)(3) and (f)(5). Moreover, rewriting the rule to conform to the statute runs the risk of the statute once again being amended, leaving courts facing inconsistent requirements yet again.

### **Implementation Requirements, Costs, and Operational Impacts**

The repeal of subdivisions (d)(3) and (f)(5) should have a positive operational impact on the trial courts, as they will no longer face conflicting requirements for public notice and comment regarding court closures and service reductions. There is a potential cost savings as courts will no longer have to give the two-step notification previously required to comply with both the statute and the rule.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committee [or other proponent] is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- [Include any other specific issues for which the proponent seeks comments.]

The advisory committee [or other proponent] also seeks comments from *courts* on the following cost and implementation matters:

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

### **Attachments and Links**

1. Cal. Rules of Court, rule 10.620, at pages 5-8.

Rule 10.620 of the California Rules of Court would be amended, effective\_\_\_\_, 2015, to read:

1 **Rule 10.620. Public access to administrative decisions of trial courts**

2

3 **(a) Interpretation**

4

5 The provisions of this rule concern public access to administrative decisions by trial courts  
6 as provided in this rule. This rule does not modify existing law regarding public access to  
7 the judicial deliberative process and does not apply to the adjudicative functions of the trial  
8 courts or the assignment of judges.

9

10 **(b) Budget priorities**

11

12 The ~~Administrative-Director-Office-of-the-Courts~~ may request, on 30 court days' notice,  
13 recommendations from the trial courts concerning judicial branch budget priorities. The  
14 notice must state that if a trial court is to make recommendations, the trial court must also  
15 give notice, as provided in (g), that interested members of the public may send input to the  
16 Judicial Council~~Administrative Office of the Courts~~.

17

18 **(c) Budget requests**

19

20 Before making recommendations, if any, to the Judicial Council on items to be included in  
21 the judicial branch budget that is submitted annually to the Governor and the Legislature, a  
22 trial court must seek input from the public, as provided in (e), on what should be included  
23 in the recommendations.

24

25 **(d) Other decisions requiring public input**

26

27 Each trial court must seek input from the public, as provided in (e), before making the  
28 following decisions:

29

30 (1) A request for permission from the Judicial Council ~~Administrative Office of the~~  
31 ~~Courts~~ to reallocate budget funds from one program component to another in an  
32 amount greater than \$400,000 or 10 percent of the total trial court budget, whichever  
33 is greater.

34

35 (2) The execution of a contract without competitive bidding in an amount greater than  
36 \$400,000 or 10 percent of the total trial court budget, whichever is greater. This  
37 subdivision does not apply to a contract entered into between a court and a county  
38 that is provided for by statute.

39

40 (3) ~~The planned, permanent closure of any court location for an entire day or for more~~  
41 ~~than one-third of the hours the court location was previously open for either court~~  
42 ~~sessions or filing of papers. As used in this subdivision, planned closure does not~~

Rule 10.620 of the California Rules of Court would be amended, effective\_\_\_\_, 2015, to read:

~~include closure of a location on a temporary basis for reasons including holidays, illness, or other unforeseen lack of personnel, or public safety.~~

(4) —The cessation of any of the following services at a court location:

(A) The Family Law Facilitator; or

(B) The Family Law Information Center.

**(e) Manner of seeking public input**

When a trial court is required to seek public input under this rule, it must provide public notice of the request at least 15 court days before the date on which the decision is to be made or the action is to be taken. Notice must be given as provided in (g). Any interested person or entity who wishes to comment must send the comment to the court in writing or electronically unless the court requires that all public comment be sent either by e-mail or through a response system on the court’s Web site. For good cause, in the event an urgent action is required, a trial court may take immediate action if it (1) gives notice of the action as provided in (f), (2) states the reasons for urgency, and (3) gives any public input received to the person or entity making the decision.

**(f) Information about other trial court administrative matters**

A trial court must provide notice, not later than 15 court days after the event, of the following:

- (1) Receipt of the annual allocation of the trial court budget from the Judicial Council after enactment of the Budget Act.
- (2) The awarding of a grant to the trial court that exceeds the greater of \$400,000 or 10 percent of the total trial court budget.
- (3) The solicitation of proposals or the execution of a contract that exceeds the greater of \$400,000 or 10 percent of the trial court budget.
- (4) A significant permanent increase in the number of hours that a court location is open during any day for either court sessions or filing of papers. As used in this paragraph, a significant increase does not include an emergency or one-time need to increase hours.
- (5) ~~A significant permanent decrease in the number of hours that a court location is open during any day for either court sessions or filing of papers, except those governed by~~

Rule 10.620 of the California Rules of Court would be amended, effective\_\_\_\_, 2015, to read:

1           ~~(d)(3). As used in this paragraph, a significant decrease does not include a decrease~~  
2           ~~in response to an emergency need to close a location on a temporary basis for~~  
3           ~~reasons including illness or other unforeseen lack of personnel or public safety.~~  
4

5           (6)—The action taken on any item for which input from the public was required under (d).  
6           The notice must show the person or persons who made the decision and a summary  
7           of the written and e-mail input received.  
8

9           **(g) Notice**

10           When notice is required to be given by this rule, it must be given in the following ways:

- 11
- 12
- 13           (1) Posted on the trial court’s Web site, if any.
- 14
- 15           (2) Sent to any of the following persons or entities—subject to the requirements of (h)—
- 16           who have requested in writing or by electronic mail to the court executive officer to
- 17           receive such notice:
- 18
- 19                   (A) A newspaper, radio station, and television station in the county;
- 20
- 21                   (B) The president of a local or specialty bar association in the county;
- 22
- 23                   (C) Representatives of a trial court employees organization;
- 24
- 25                   (D) The district attorney, public defender, and county counsel;
- 26
- 27                   (E) The county administrative officer; and
- 28
- 29                   (F) If the court is sending notice electronically using the provisions of (h), any
- 30                   other person or entity that submits an electronic mail address to which the
- 31                   notice will be sent.
- 32
- 33           (3) ~~Posted at all locations of the~~ within or about court facilities~~that accept papers for~~  
34           ~~filing.~~
- 35

36           **(h) Electronic notice**

37

38           A trial court may require a person or entity that is otherwise entitled to receive notice under

39           (g)(2) to submit an electronic mail address to which the notice will be sent.

40

41           **(i) Materials**

Rule 10.620 of the California Rules of Court would be amended, effective\_\_\_\_, 2015, to read:

1 When a trial court is required to seek public input under (b), (c), or (d), it must also provide  
2 for public viewing at one or more locations in the county of any written factual materials  
3 that have been specifically gathered or prepared for the review at the time of making the  
4 decision of the person or entity making the decision. This subdivision does not require the  
5 disclosure of materials that are otherwise exempt from disclosure or would be exempt from  
6 disclosure under the state Public Records Act (beginning with Government Code section  
7 6250). The materials must be mailed or otherwise be made available not less than five  
8 court days before the decision is to be made except if the request is made within the five  
9 court days before the decision is to be made, the materials must be mailed or otherwise be  
10 made available the next court day after the request is made. A court must either (1) provide  
11 copies to a person or entity that requests copies of these materials in writing or by  
12 electronic mail to the executive officer of the court or other person designated by the  
13 executive office in the notice, if the requesting person or entity pays all mailing and  
14 copying costs as determined by any mailing and copy cost recovery policies established by  
15 the trial court, or (2) make all materials available electronically either on its Web site or by  
16 e-mail. This subdivision does not require the trial court to prepare reports. A person  
17 seeking documents may request the court to hold the material for pickup by that person  
18 instead of mailing.

19  
20 **(j) Other requirements**

21  
22 This rule does not affect any other obligations of the trial court including any obligation to  
23 meet and confer with designated employee representatives. This rule does not change the  
24 procedures a court must otherwise follow in entering into a contract or change the types of  
25 matters for which a court may contract.

26  
27 **(k) Enforcement**

28  
29 This rule may be enforced under Code of Civil Procedure section 1085.  
30  
31