



Judicial Council of California • Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: April 24, 2014

Title

Judicial Branch Administration: Rule for
Public Access to Meetings of Judicial Council
Advisory Bodies

Agenda Item Type

Action Required

Effective Date

July 1, 2014

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 10.75

Date of Report

April 16, 2014

Recommended by

Hon. Douglas P. Miller, Chair, Executive and
Planning Committee

Hon. Harry E. Hull, Jr., Chair, Rules and
Projects Committee

Hon. Mary Ann O'Malley, Chair, Litigation
Management Committee

Hon. Kenneth K. So, Chair, Policy
Coordination and Liaison Committee

Hon. James E. Herman, Chair, Technology
Committee

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Executive Summary

The chairs of the Judicial Council's five internal committees recommend the adoption of a new rule of court that would provide greater public access to meetings of the council's internal and advisory committees and of other multimember bodies that the council creates to review issues and report to it. The rule recognizes the importance of open meetings, especially on matters concerning the judicial branch budget. The 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 such bodies, staffing and other resource limitations, and the need to maintain an effective rule-making process.

and collaborative justice. Although a number of council advisory bodies—including, for example, the Court Facilities Advisory Committee, the Family and Juvenile Law Advisory Committee, and the Trial Court Budget Advisory Committee—already hold public meetings and provide multiple opportunities for public observation and participation, the rule will establish a new standard of public access for those and all similar advisory bodies and most subcommittees.

Discretion to advisory body chairs. One commentator, the California Newspaper Publishers Association, noted that the proposed rule vests a significant amount of discretion in the chairs of the advisory bodies and suggested that the rule does not provide standards for them to use in exercising the discretion. For example, CNPA noted that rule 10.75(c)(3) vests discretion with the chairs of the rule committees listed in that provision to decide whether to open meetings of those committees, and expressed concern that the rule did not provide a standard for the chairs to apply in making such decisions. CNPA urged that the rule be amended to apply to the conduct of the body rather than the chairs and to create clear standards for the chair or presiding officer to apply in making decisions about whether to open committee meetings.

The internal chairs observe that the rule applies to the advisory bodies as led by their chairs, and do not agree that it lacks clear standards. They are confident that advisory body chairs will thoughtfully apply the principles and standards included in the rule and also in the California Code of Judicial Ethics. In determining whether a meeting or portion of a meeting is open or closed, the advisory body chairs will consider all the provisions in the rule, including those specifying which meetings are open and closed, and will consider all the advisory committee comments. The internal chairs also are working with staff to develop guidelines for the proper and consistent application of the rule, to assist committee chairs and staff, and provide uniformity, predictability, and equality of access for the public.

Specific comments

Below is a summary of the comments received on specific provisions of the rule and related responses.

Definitions (subd. (b)). One commentator, Courthouse News Service, remarked that the rule’s definition of advisory bodies is more narrow than that contemplated by the Legislature’s supplemental report language. CNS suggested that amendments were needed to clarify that the term encompasses all of the categories of advisory bodies contemplated in title 10 of the California Rules of Court, including internal committees, advisory committees, task forces, and other similar multimember bodies. CNS also noted that defining advisory bodies as those “created by formal Judicial Council action to review issues and report to the council,” as the rule did when circulated for public comment, may limit the council-created bodies that are subject to the rule and would exclude multimember bodies created by order of the Chief Justice. CNS suggested that bodies such as task forces that the Chief Justice may create perform work implicating important public policy decisions, so should be covered by the rule.

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

Title 10. Judicial Administration Rules

Division 1. Judicial Council

**Chapter 3. ~~Administrative Office of the Courts~~ Judicial Council Advisory Body
Meetings**

Rule 10.75. Meetings of advisory bodies

(a) Intent

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

(b) Advisory bodies and chairs

(1) “Advisory bodies,” as used in this rule, means any multimember body created by the Judicial Council to review issues and report to the council. For purposes of this rule, subcommittees that are composed of less than a majority of the members of the advisory body are not advisory bodies. However, standing subcommittees that are charged with addressing a topic as a continuing matter are advisory bodies for purposes of this rule irrespective of their composition.

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

(c) Open meetings

(1) Meetings

Advisory body meetings to review issues that the advisory body will report to the Judicial Council are open to the public, except as otherwise provided in this rule. A meeting open to the public includes a budget meeting, which is a meeting or portion of a meeting to discuss a proposed recommendation of the advisory body that the Judicial Council approve an allocation or direct an expenditure of public funds. A majority of advisory body members must not

1 decide a matter included on a posted agenda for an upcoming meeting in
2 advance of the meeting.

3
4 **(2) Exempt bodies**

5
6 The meetings of the following advisory bodies and their subcommittees are
7 exempt from the requirements of this rule:

8
9 (A) Advisory Committee on Civil Jury Instructions;

10
11 (B) Advisory Committee on Criminal Jury Instructions; and

12
13 (C) Litigation Management Committee.

14
15 **(3) Rule committees**

16
17 With the exception of any budget meetings, the meetings of the rule
18 committees listed in this subdivision and of their subcommittees are closed
19 unless the chair concludes that a particular agenda item may be addressed in
20 open session. Any budget meeting must be open to the public.

21
22 (A) Appellate Advisory Committee;

23
24 (B) Civil and Small Claims Advisory Committee;

25
26 (C) Criminal Law Advisory Committee;

27
28 (D) Family and Juvenile Law Advisory Committee;

29
30 (E) Probate and Mental Health Advisory Committee; and

31
32 (F) Traffic Advisory Committee.

33
34 **(d) Closed sessions**

35
36 The chair of an advisory body or an advisory body subcommittee may close a
37 meeting, or portion of a meeting, to discuss any of the following:

- 38
39 (1) The appointment, qualifications, performance, or health of an individual, or
40 other information that, if discussed in public, would constitute an
41 unwarranted invasion of personal privacy;
42

- (2) Claims, administrative claims, agency investigations, or pending or reasonably anticipated litigation naming, or reasonably anticipated to name, a judicial branch entity or a member, officer, or employee of such an entity;
- (3) Negotiations concerning a contract, a labor issue, or legislation;
- (4) The price and terms of payment for the purchase, sale, exchange, or lease of real property for a judicial branch facility before the property has been acquired or the relevant contracts have been executed;
- (5) Security plans or procedures or other matters that if discussed in public would compromise the safety of the public or of judicial branch officers or personnel or the security of judicial branch facilities or equipment, including electronic data;
- (6) Non-final audit reports or proposed responses to such reports;
- (7) Trade secrets or privileged or confidential commercial and financial information;
- (8) Development, modification, or approval of any licensing or other professional examination or examination procedure;
- (9) Evaluation of individual grant applications; or
- (10) Topics that judicial officers may not discuss in public without risking a violation of the California Code of Judicial Ethics, necessitating recusal, or encouraging disqualification motions or peremptory challenges against them, including proposed legislation, rules, forms, standards of judicial administration, or jury instructions.

(e) Notice of meetings

(1) Regular meetings

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

(2) Urgent circumstances

A meeting that is subject to this rule may be conducted on 24 hours notice in case of urgent circumstances requiring prompt action. The minutes of such

1 meetings must briefly state the facts creating the urgent circumstances
2 requiring prompt action and the action taken.

3
4 **(f) Form of notice**
5

6 (1) The notice and agenda for a meeting subject to this rule, whether open or
7 closed, must be posted on the California Courts website.
8

9 (2) The notice for meetings subject to this rule must state whether the meeting is
10 open or closed. If a meeting is closed or partially closed, the notice must
11 identify the closed agenda items and the specific subdivision of this rule
12 authorizing the closure.
13

14 (3) For meetings that are open in part or in full, the notice must provide:
15

16 (A) The telephone number or other electronic means that a member of the
17 public may use to attend the meeting;
18

19 (B) The time of the meeting, whether the public may attend in person, and,
20 if so, the meeting location; and
21

22 (C) The e-mail address or other electronic means that the public may use to
23 submit written comments regarding agenda items or requests to make
24 an audio recording of a meeting.
25

26 **(g) Contents of agenda**
27

28 The agenda for a meeting subject to this rule, whether open or closed, must contain
29 a brief description of each item to be considered during the meeting. If a meeting is
30 closed or partially closed, the agenda must identify the specific subdivision of this
31 rule authorizing the closure.
32

33 **(h) Meeting materials**
34

35 Materials for an open meeting must be posted on the California Courts website at
36 least three business days before the date of the meeting, except in extraordinary
37 circumstances.
38

39 **(i) Public attendance**
40

41 The public may attend open sessions of advisory body meetings by telephone or
42 other available electronic means. If the members of an advisory body gather in

1 person at a single location for a meeting, the public may attend in person at that
2 location if the chair concludes security measures permit.

3
4 **(j) Conduct at meeting**

5
6 Members of the public who attend open meetings in person must remain orderly.
7 The chair may order the removal of any disorderly person.
8

9 **(k) Public comment**

10
11 **(1) Written comment**

12
13 The public may submit written comments for any agenda item of a regularly
14 noticed open meeting up to one complete business day before the meeting.
15

16 **(2) In-person comment**

17
18 If security measures permit public attendance at an open in-person advisory
19 body meeting, the meeting must include an opportunity for public comment
20 on each agenda item before the advisory body considers the item. Requests to
21 comment on an agenda item must be submitted before the meeting begins,
22 indicating the speaker's name, the name of the organization that the speaker
23 represents if any, and the agenda item that the public comment will address.
24 The advisory body chair may grant a request to comment on an agenda item
25 that is received after a meeting has begun.
26

27 **(3) Reasonable limits and timing**

28
29 The advisory body chair has discretion to establish reasonable limits on the
30 length of time for each speaker and the total amount of time permitted for
31 public comment. The chair may also decide whether public comments will be
32 heard at the beginning of the meeting or in advance of the agenda items.
33

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

35
36 An advisory body chair may permit a member of the public to make an audio
37 recording of an open meeting, or the open portion of a meeting, if a written request
38 is submitted at least two business days before the meeting.
39

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

41
42 Minutes of each meeting subject to this rule, whether open or closed, must be
43 prepared for approval at a future meeting. When approved by the advisory body,

1 the minutes constitute the official record of the meeting. Approved minutes for the
2 open portion of a meeting must be posted on the California Courts website.

3
4 **(n) Adjourned meetings**

5
6 An advisory body chair may adjourn a meeting to reconvene at a specified time
7 without issuing a new notice under (e)(1), provided that, if open agenda items
8 remain for discussion, notice of the adjourned meeting is posted on the California
9 Courts website 24 hours before the meeting reconvenes. The notice must identify
10 any remaining open agenda items to be discussed, the time that the meeting will
11 reconvene, the telephone number that the public may use to attend the meeting and,
12 if the public may attend the reconvened meeting in person, the location. The
13 advisory body may not consider new agenda items when the meeting reconvenes
14 except as permitted under (e)(2).

15
16 **(o) Action by e-mail between meetings**

17
18 An advisory body may take action by e-mail between meetings in circumstances
19 specified in this subdivision.

20
21 **(1) Circumstances**

22
23 An advisory body chair may distribute a proposal by e-mail to all advisory
24 body members for action between meetings if:

25
26 (A) The advisory body discussed and considered the proposal at a previous
27 meeting but concluded additional information was needed; or

28
29 (B) The chair concludes that prompt action is needed.

30
31 **(2) Notice**

32
33 If an e-mail proposal concerns a matter that otherwise must be discussed in
34 an open meeting, the advisory body must provide public notice and allow one
35 complete business day for public comment concerning the proposal, before
36 acting on the proposal. The notice must be posted on the California Courts
37 website and must provide an e-mail address to which the public may submit
38 written comments. The advisory body may forego public comment if the
39 chair concludes that prompt action is required.

40
41 **(3) Communications**

42
43 If an e-mail proposal concerns a matter that otherwise must be discussed in

1 an open meeting, after distribution of the proposal and until the advisory
2 body has acted, advisory body members must restrict their communications
3 with each other about the proposal to e-mail. This restriction only applies to
4 proposals distributed under this subdivision.

5
6 (4) Official record

7
8 Written minutes describing the action taken on an e-mail proposal that
9 otherwise must be discussed in an open meeting must be prepared for
10 approval at a future meeting. The minutes must attach any public comments
11 received. When approved by the advisory body, the minutes constitute the
12 official record of the proposal. Approved minutes for such a proposal must be
13 posted to the California Courts website. The e-mails exchanged concerning a
14 proposal that otherwise would have been considered in a closed meeting will
15 constitute the official record of the proposal.

16
17 (p) **Review requirement**

18 The Judicial Council will review the impact of this rule within one year of the
19 rule's adoption and periodically thereafter to determine whether amendments are
20 needed. In conducting its review, the council will consider, among other factors,
21 the public interest in access to meetings of the council's advisory bodies, the
22 obligation of the judiciary to comply with judicial ethics standards, and the public
23 interest in the ability of advisory bodies to effectively assist the Judicial Council by
24 offering policy recommendations and alternatives for improving the administration
25 of justice.

26
27
28 **Advisory Committee Comment**

29 **Subdivisions (a) and (c)(1).** This rule expands public access to Judicial Council advisory bodies.
30 The council recognizes the important public interest in access to those meetings, and to
31 information regarding administration and governance of the judicial branch. Meetings of the
32 Judicial Council are open, and notice and materials for those meetings are provided to the public,
33 under rules 10.5 and 10.6. Rules in Division 1 of Title 10 describe the council's advisory bodies
34 and require that proposals for rules, forms, standards of judicial administration, and jury
35 instructions be circulated for public comment. (See Cal. Rules of Court, rules 10.10–10.22,
36 10.30–10.70.) Reports to the council presenting proposals and recommendations are publicly
37 posted on the California Courts website (www.courts.ca.gov). Internal committee chairs report at
38 each council meeting regarding the activities of the internal committees in the period since the
39 last council meeting, and internal committee meeting minutes also are posted on the California
40 Courts website. This rule expands on those existing rules and procedures to increase public
41 access, by opening the meetings of advisory bodies to review issues that the advisory body will
42 report to the council. The rule does not apply to meetings that do not involve review of issues to
43 be reported to the council, such as meetings providing education and training of members.

1 discussion of best practices, or sharing of information of general interest unrelated to advice or
2 reports to the council. Those non-advisory matters are outside the scope of this rule.

3
4 **Subdivision (b)(1).** The definition provided in (b)(1) is intended exclusively for this rule and
5 includes internal committees, advisory committees, task forces, and other similar multimember
6 bodies that the council creates to review issues and report to it. (Cf. Cal. Rules of Court,
7 rule 10.30(a) [“Judicial Council advisory bodies are typically advisory committees and task
8 forces].)

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

23
24 The work of the three advisory bodies listed in subdivision (c)(2) exclusively involves discussion
25 of topics that are uniquely difficult or impossible for judges to address while honoring the
26 detailed ethics standards governing the judiciary. For example, as required by rule, the Litigation
27 Management Committee discusses pending or anticipated claims and litigation against judicial
28 officers, courts, and court employees. Jury instruction committees also may discuss decisions or
29 rulings issued in cases that have not reached final resolution through the appellate process. Thus,
30 opening the meetings of these three committees would result in precluding judges, who are
31 specially learned in the law, from meaningful participation on those committees.
32 Subdivision (c)(2) is added to avoid this result.

33
34 The work of the six rule committees listed in subdivision (c)(3) almost always will trigger similar
35 issues. Those bodies focus primarily on developing, and providing input concerning, proposed
36 legislation, rules, forms, and standards of judicial administration. That work necessarily entails a
37 complex interchange of views, consideration of multiple perspectives, and the vetting of opposing
38 legal arguments, which judges cannot undertake in public without risk that their comments will
39 be misunderstood or used as a basis for disqualification or challenge. Service on the referenced
40 committees, and public participation in discussing the referenced topics may make it difficult for
41 a judge to hear and decide all matters assigned to the judge, and conceivably could lead to
42 frequent disqualification of the judge, exposing the judge to risk of an ethics violation. This may
43 create significant practical issues for courts related to judicial workloads, while also deterring

1 individuals specially learned in the law from serving on advisory bodies, in turn depriving the
2 public of the benefits of their training and experience in crafting procedures for the effective and
3 efficient administration of justice. Subdivisions (c)(3) and (d)(10) are intended to prevent such
4 deleterious results by clarifying that meetings of the six rule committees whose work almost
5 entirely focuses on these topics ordinarily will be closed and that meetings of other bodies
6 performing similar functions also will be closed as the chairs deem appropriate, with the
7 exception that any budget meetings must be open.

8
9 **Subdivision (d)(7).** Definitions of the terms “trade secret,” “privileged information,” and
10 “confidential commercial and financial information,” are provided in rule 10.500(f)(10).

11
12 **Subdivision (k)(1).** Due to budget constraints, members’ schedules, and the geographic diversity
13 of most committees’ membership, advisory body meetings typically are held via teleconference
14 or other method not requiring the members’ in person attendance. Because judicial officer and
15 attorney members may have limited time for meetings (e.g., only a lunch hour), the volume of
16 advisory body business to be accomplished in those periods may be considerable, and the costs of
17 coordinating teleconferences that would accommodate spoken comments from the public would
18 be significant in the aggregate, the rule only provides for public comment in writing. To ensure
19 sufficient time for advisory body staff to gather and distribute written comments to members, and
20 for members to review comments before the meeting, the rule requires that comments be
21 submitted one complete business day before the meeting.

22
23 **Chapter 34. Administrative Office of the Courts**