

Invitation to Comment

Title	Public Access to Judicial Administrative Records (adopt Cal. Rules of Court, rules 10.500 and 10.501; repeal rule 10.802; and amend rule 10.803)
Summary	The proposed rules would provide public access to nondeliberative and nonadjudicative court records, budget, and management information relating to the administration of the courts
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Discussion	<p>Background</p> <p>On July 28, 2009, Governor Arnold Schwarzenegger signed Senate Bill X4 13 (Stats. 2009, ch. 22, effective July 28, 2009). Among other provisions, SBX4 13 addresses public access to the administrative records of judicial branch entities. SBX4 13 adds section 68106.2 to the Government Code, which clarifies the public's right to access certain administrative records held by the Administrative Office of the Courts (AOC) and the superior courts. The statute also requires the Judicial Council to adopt rules of court by January 1, 2010, that "provide public access to nondeliberative or nonadjudicative court records, budget and management information."</p> <p>The proposed rules are intended to implement the requirements of SBX4 13 by establishing public access provisions applicable to judicial administrative records held by the trial and appellate courts, the Judicial Council, and the AOC. Section 68106.2 and the interim access provisions it contains sunset on the date when the Judicial</p>

Council adopts its rules.

The proposed rules reflect the judicial branch's recognition of and support for the public's right of access to information about its activities. The proposed rules draw from the California Public Records Act (CPRA, applicable to executive branch agencies) and the Legislative Open Records Act (LORA, applicable to the state Legislature). To some extent, the proposed rules also draw from the federal Freedom of Information Act (FOIA, applicable to federal executive branch agencies), upon which the CPRA was modeled. In general, the proposed rules mirror the principles of the CPRA in creating a presumption that records reflecting the administrative functions of judicial branch entities are open to the public. Like the CPRA and LORA, the rules specify exemptions to that basic tenet in appropriate circumstances. Provisions in the CPRA and LORA have been modified as appropriate to reflect the business of the courts and to ensure that appropriate exemptions from access are included to address the role and functions of the judicial branch.

The role of the judicial branch

The proposed rules take into consideration the role of the judicial branch and how it differs from the roles of the sister branches of government. The state's legislative and executive branches are the "political" branches of government, intended to represent and respond to the people's will. The public's right to petition the legislative and executive branches helps inform these bodies about the interests affected by their actions. In contrast, the judicial branch's role is to advance and apply the rule of law impartially and to ensure that all Californians receive equal access to justice.

Except in certain limited circumstances (e.g., juvenile dependency proceedings), the record of material presented to a court by the parties to a proceeding and the decision reached by the judicial officer are all open to the public. Judicial deliberations in a particular proceeding, however, take place in confidence and may include consultation with staff or other judicial officers. For example, on the appellate bench there must be concurrence among at least two justices on the Court of Appeal and four justices at the Supreme Court level to decide a case. Confidential communication within a court, with other judges and with staff attorneys, is essential for courts to perform their constitutional role.

In addition to its core adjudicative functions, courts also have an

administrative function. Like the legislative and executive branches, the judicial branch receives and expends public resources. How courts manage these resources are matters that should be open to public view subject to appropriate exemptions.

Process for Rule Development

To ensure that the proposed rules take into consideration the views of members of the judicial branch and interested parties, the AOC has conferred with a judicial working group that includes representatives from the Trial Court Presiding Judges Advisory Committee (TCPJAC), Court Executives Advisory Committee (CEAC), Administrative Presiding Justices Advisory Committee (APJs), Court of Appeal clerk/administrators (ACAs), and the California Judges Association. Earlier drafts of the proposed rules also were reviewed by the TCPJAC, CEAC, APJs, and ACAs. In addition, the judicial working group consulted with legislative staff; representatives of labor unions representing trial court employees; and representatives of organizations advocating open access to government information, including Californians Aware, the California First Amendment Coalition, and the California Newspaper Publishers Association.

This Proposal

This proposal recommends that rules 10.500 and 10.501 be adopted, rule 10.802 be repealed, and rule 10.803 be amended, effective January 1, 2010. Below is an overview of the proposed rules with an emphasis on rule 10.500, which contains the main provisions addressing public access to judicial administrative records. Rather than summarizing each provision of the rules, this overview describes the general premise and the main provisions of the rules. Where the proposed rules differ substantively from the provisions of the CPRA with respect to a particular topic, this overview also explains the reasons for the difference.

Adjudicative records

The CPRA excludes all agencies provided for in article VI of the California Constitution from the act.¹ Government Code section 68106.2(g) continues the Legislature's recognition that records relating to the adjudicative functions of the judicial branch are subject to a different access rubric. Subdivision (b)(1) of proposed

¹ An exception, not relevant here, is found in Gov. Code, § 6261, which requires judicial branch entities to allow public inspection of an itemized statement of their total expenditures and disbursement.

rule 10.500 specifically states that the rule applies to “nonadjudicative records,” consistent with Government Code 68106.2, and subdivision (b)(2) further states that the rule does not modify existing law with respect to public access to adjudicative records.

Public access to adjudicative records is, instead, governed by a large body of case law holding that both the federal (First Amendment to the United States Constitution) and the state (article I, section 2(a), California Constitution) constitutions provide broad access rights to judicial hearings and records. (*Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106.)

To clarify this distinction, subdivision (c)(1) of proposed rule 10.500 provides a definition of “adjudicative records” that are not subject to access under the rule.

Judicial administrative records

Proposed rule 10.500 provides access to judicial administrative records, as opposed to “adjudicative records.” Subdivision (c)(2) defines judicial administrative record broadly to mean “any writing containing information relating to the conduct of the people’s business that is prepared, owned, used, or retained by a judicial branch entity regardless of the writing’s physical form or characteristics, except an adjudicative record.” To assist in interpretation, subdivision (e)(2) provides an illustrative list of judicial administrative records.

Following the precepts of the CPRA, proposed rule 10.500 provides that judicial administrative records are open to the public unless specifically exempt.

Exemptions

The general premise of the CPRA is that all public records are disclosable unless specifically exempt. The specific exemptions of the CPRA all reflect instances when a competing public policy consideration such as public security or the right to privacy outweighs the right to access otherwise public documents. This weighing of public interests in determining the scope of the right to public access is codified in Government Code section 6255(a), the “catch-all” exemption of the CPRA. Under the catch-all exemption, a record may be exempt from disclosure when “on the facts of the particular case the public interest served by not disclosing the

record clearly outweighs the public interest served by disclosure of the record.”

Proposed rule 10.500 incorporates the same exemptions from the CPRA where applicable (e.g., personnel, medical, or similar files) and modifies exemptions where appropriate to address the specific needs of the judicial branch. For example, to ensure that ex parte communications are avoided, subdivision (f)(3) of proposed rule 10.500 exempts from disclosure all direct contact information (i.e., work e-mail addresses and telephone numbers) for justices, judges, subordinate judicial officers, and their staff attorneys.

Proposed rule 10.500 also adds specific exemptions for the types of information that, while not specifically exempted by the CPRA, are specifically exempted under FOIA. For example, the CPRA does not provide a specific exemption for trade secrets or commercial or financial information of a proprietary nature. In contrast, FOIA allows a general exemption for “trade secrets and commercial or financial information obtained from a person and privileged and confidential.” To ensure that trade secrets and privileged and confidential commercial or financial information are not subject to mandatory disclosure, subdivision (f)(10) of proposed rule 10.500 incorporates the language of the CPRA and FOIA and of the leading case law interpreting FOIA.

Deliberative process exemption

Government Code section 68106.2(g) states that the rules of court adopted by the Judicial Council must “provide public access to *nondeliberative* or nonadjudicative court records, budget and management information.” (Italics added.) The deliberative process exemption, while not a specifically listed exemption under the CPRA, is a well-established exemption created by case law interpreting the catch-all exemption of the CPRA. The deliberative process exemption acknowledges that the public has a significant interest in allowing government officials to engage in thoughtful consideration of the matters that come before them without exposing their thought processes to public scrutiny. The policy of protecting the decision-making process is also recognized in other contexts. For example, courts have long recognized the common law privilege protecting the “mental processes” of legislators, and federal courts interpreting FOIA recognize the policy of protecting the “decision making process of government agencies.” (*N. L. R. B. v. Sears, Roebuck & Co.* (1975) 421 U.S. 132; *City of Fairfield v.*

Superior Court (1975) 14 Cal.3d 768.) In fact, FOIA contains a specific deliberative process exemption. (5 U.S.C. § 552(b)(5).)

Like FOIA, proposed rule 10.500 codifies the deliberative process exemption. Specifically, subdivision (f)(11) of rule 10.500 allows a judicial branch entity to exempt from disclosure “[r]ecords the disclosure of which would expose a judicial branch entity’s or judicial branch personnel’s decision-making process so as to discourage candid discussion within the entity or the judicial branch and thereby undermine the entity’s ability to perform its function, unless the public interest served by disclosure of the record clearly outweighs the public’s interest in withholding the record.” This provision is based on language from leading case law interpreting the CPRA and the deliberative process exemption. (*Times Mirror Co. v. Superior Court* (1991) 53 Cal.3d 1325; *California First Amendment Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Wilson v. Superior Court* (1996) 51 Cal.App.4th 1136.) The codification of the deliberative process exemption in subdivision (f)(11) reflects the language of the directing statute (see Gov. Code § 68106.2(g)), recognizes the well-established case law on the subject, and is consistent with current practice in the other two branches of government.

Exemption for records relating to complaints or investigations of judicial officers

Subdivision (f)(7) of proposed rule 10.500 exempts from mandatory disclosure “[r]ecords related to complaints regarding or investigations of justices, judges (including temporary and assigned judges), and subordinate judicial officers.”

Currently, the initial handling of complaints and investigations regarding judicial branch officers is the province of the presiding judge or presiding justice under rules 10.603(c)(4), 10.703, and 10.1016(a), respectively. These rules of court specify when a presiding judge or justice must refer an allegation of judicial misconduct to the Commission on Judicial Performance (CJP), which is an independent state agency established by the California Constitution. (Cal. Const., art. VI, §8.)

Because the judicial process is inherently adversarial, judicial officers are frequent targets for allegations of misconduct. Under the Code of Judicial Ethics, an allegation of judicial misconduct may result in the recusal of the assigned judicial officer. In addition, individuals with knowledge of complaints, either with or without

merit, may inappropriately use the information to manipulate judicial assignments or create a misleading public perception that the assigned judicial officer is not impartial.

To maintain the independence of the judiciary and thereby preserve the branch's constitutional duty to administer justice in a fair and impartial manner, the state Constitution provides that CJP proceedings be confidential. In addition, rule 10.703 requires all proceedings by a presiding judge with respect to subordinate judicial officers to be conducted as confidentially as possible. The proposed rule supports the principles underlying the confidentiality of CJP proceedings and proceedings under rule 10.703 by providing for confidential treatment of the records related to initial court investigations regarding judicial officers.

Costs for duplication, search, and review

Subdivision (e)(4) of proposed rule 10.500 specifies the fees that a judicial branch entity may charge in responding to a request for copies of judicial administrative records.

As in the CPRA, the rule in subdivision (e)(4)(A) allows a judicial branch entity to charge a requester its direct costs for duplication of records. Subdivision (e)(4)(B) allows a judicial branch entity to impose a standard charge on noncommercial requesters for document search and review time beyond two hours. And subdivision (e)(4)(C) allows a judicial branch entity to impose a standard charge on commercial requesters for all document search and review time.

Currently, the case law interpreting the CPRA does not authorize a state agency to recover the costs of document search and review. In addition, under the CPRA the purpose of a request does not impact the applicable fee. Because the CPRA does not contain a detailed cost recovery structure, FOIA was used as a reference. Under FOIA, an agency may charge for document search and review and the purpose of a request—commercial or noncommercial—determines the applicable fee.

The proposed rules adopt a compromise position, intending to protect broad rights to public access but also designed to assist judicial branch entities in recovering their direct costs in complying with the significant new requirements of the proposed rules. The Legislature has directed the adoption of rules that will necessarily create a substantial new workload for judicial branch staff when

court budgets have been cut significantly but has not provided for any supporting funding. This unfunded mandate comes at a time when, in addition to the courts being closed one day a month, judicial branch employees are being furloughed, courts are keeping positions open for substantial periods of time to save resources, clerks' counter hours are being reduced, and other cuts in critical services are being made. While public access to judicial administrative records is important and necessary, the reality of the current and foreseeable economic environment affecting all state government, including the judicial branch, must be acknowledged. Courts simply cannot absorb all of the costs associated with meeting these significant new mandates and continue to deliver their core services in a reasonably timely fashion.

Proposed rule 10.500(e)(4) establishes a reasonable approach to capture some of the direct costs attributable to this new responsibility. Mindful of the difference between the costs provisions of proposed rule 10.500 and that of the CPRA, we are particularly interested in receiving comments and suggestions regarding potential alternatives to address the critical lack of resources for meeting the broad new public access mandates.

No requirement to create a record or to list, compile, assemble data in response to a request

Subdivision (e)(1) of proposed rule 10.500 provides the following:

“Nothing in this rule requires a judicial branch entity to create a record or to list, compile, or assemble data in response to a request for judicial administrative records if the judicial branch entity does not list, compile, or assemble the data in the requested form for its own use or for provision to other agencies. Extracting or compiling data loaded from extractable fields in a single database using software already owned or licensed by the judicial branch entity does not constitute the creating of a record or the compilation or assemblage of data.”

In addition, subdivision (i)(2) of proposed rule 10.500 provides “...if the judicial branch entity agrees to perform data compilation or extraction to produce a record in response to a request, the requester will bear the cost of producing a copy of the record, including the cost to construct a record and to produce a copy of the record.”

These provisions vary from the CPRA, which allows a subject

entity to recover the costs of producing a copy of a record in an electronic format if the request would require data compilation, extraction, or programming to produce the record. The CPRA, however, has not been interpreted to require the creation or assemblage of a new record from disparate sources of information.

Given the current and foreseeable budget situation and the impact on staffing, requiring a judicial branch entity to engage in extensive data compilation in response to a request, even if the requestor pays for the associated costs, is not feasible for many courts that simply do not have the technological capability or staff to provide such services. More importantly, such a requirement would interfere with a court's ability to carry out its core functions. Subdivisions (e)(1) and (i)(2) of proposed rule 10.500 take into consideration the limits on courts' staff and technological resources and represent a clarification and reasonable interpretation of the provisions of the CPRA addressing access to electronic records.

Inspection of records

Subdivision (e)(5) of proposed rule 10.500 provides that “[a] judicial branch entity must make judicial administrative records in its possession and not exempt from disclosure open to inspection at all times during the office hours of the judicial branch entity provided that the record is of a nature permitting inspection.”

Although this provision mirrors the language of the CPRA, concerns were raised that it could be interpreted to require immediate production of judicial administrative records. To clarify, neither subdivision (e)(5) nor the CPRA provision on which it is modeled requires the immediate production of records. Subdivision (e)(5) merely provides that any request may be made at any time during the office hours of the judicial branch entity. As discussed below, subdivision (e)(6) of proposed rule 10.500 governs the actual timeline applicable to both requests for copies and requests for inspection—the judicial branch entity will review the request to determine if the records are available and make responsive records available promptly.

Time for determination of disclosable records

Under subdivision (e)(6) of proposed rule 10.500, a judicial branch entity must respond to a person who has requested judicial administrative records within 10 calendar days from receipt of the request, and must advise the requester whether the requested records will be made available and, if applicable, the reason any

records will be withheld. Under subdivision (e)(8), the time limit for this response may be extended in certain specified unusual circumstances, but the extension may not exceed 14 calendar days and the requester must be given written notice stating the reasons for the extension and the date on which the entity expects to make its determination.

These provisions mirror the requirements of the CPRA. In so doing, the provisions apply a different time standard than currently applies to some categories of judicial administrative records. Under current rule 10.802(e), a superior court, the AOC, and the Judicial Council are required to make certain budget and management information available to a requester within 10 business days of the request (previous fiscal year information must be provided within 20 business days of the request). Rule 10.802(e) governs only a small category of records that will be subject to the proposed public access rules.

Applying different response times to different types of information, however, would be infeasible for judicial branch entities to administer. The proposed rule replaces the time requirements in 10.802 with new standards for response time applicable to all requests. As with the CPRA, nothing in the rule is intended to prevent judicial branch entities from producing records as soon as they are available.

Dispute resolution

Current rule 10.803 provides an expedited process by which disputes regarding access to AOC and superior court budget and management information may be heard in the superior court by a justice of the Court of Appeal. Attorney fees may be granted to prevailing plaintiffs through California's private attorney general statute, Code of Civil Procedure section 1021.5. Because the current rule does not address the records of the Courts of Appeal or the Supreme Court, it does not provide a dispute resolution process applicable to disputes involving such records.

The dispute resolution process in proposed rule 10.500 has been modeled more closely on the CPRA. Under subdivision (j), disputes with superior courts about budget and management information will remain subject to the expedited review process under rule 10.803. All other disputes under the proposed rules will be governed by the same procedure as that set forth in the CPRA. As in the CPRA, subdivision (j) also provides that a prevailing party is entitled to

recover reasonable costs and attorney fees, provided that if the judicial branch entity is the prevailing party, it will recover its attorney fees and costs only if the claim is determined to be clearly frivolous.

Rule 10.501

Proposed rule 10.500 will replace the majority of existing rule 10.802 regarding public access to a limited category of budget and management information. To avoid potential confusion, rule 10.802 will be repealed in its entirety.

Existing rule 10.802, however, also contains requirements that the superior courts and the AOC maintain the specified categories of budget and management information. While the maintenance requirement is intended to survive as it applies to these categories of information, it is not intended to apply to any additional records that will be subject to public access under proposed rule 10.500. To preserve the current requirement and clarify its extent, the maintenance of records provisions of 10.802 have been moved into a new proposed rule 10.501.

Attachments

1 Rules 10.500 and 10.501 of the California Rules of Court would be adopted, rule
2 10.802 would be repealed, and rule 10.803 would be amended, effective January
3 1, 2010, to read:

4
5 **TITLE 10. JUDICIAL ADMINISTRATION RULES**

6
7 **Division 3. Judicial Administration Rules Applicable to All Courts**

8
9 **Rule 10.500. Public access to judicial administrative records**

10
11 **(a) Intent**

12
13 The Judicial Council intends by this rule to implement Government Code
14 section 68106.2(g), added by Senate Bill X4 13 (Stats. 2009, ch. 22), which
15 requires the adoption of a rule of court that provides public access to
16 nondeliberative or nonadjudicative court records, budget and management
17 information.

18
19 This rule clarifies and expands the public's right of access to judicial
20 administrative records and must be broadly construed to further the public's
21 right of access.

22
23 **(b) Application**

24
25 (1) This rule applies to public access to nondeliberative and
26 nonadjudicative court records, budget, and management information
27 relating to the administration of the courts.

28
29 (2) This rule does not modify existing law regarding public access to
30 adjudicative records.

31
32 (3) This rule does not restrict the rights to disclosure of information
33 otherwise granted by law to a recognized employee organization.

34
35 (4) This rule does not affect the rights of litigants, including parties to
36 administrative proceedings, under the laws of discovery of this state,
37 nor limit or impair any rights of discovery in a criminal case.

38
39 **DRAFTER'S NOTES**

40
41 Subdivision (b)(1) corresponds to Government Code section 68106.2(g).
42

1 Subdivision (b)(2) corresponds to Government Code section 6260. An Advisory
2 Committee Comment with further information regarding this paragraph has been
3 added to the end of this rule.

4
5 Subdivision (b)(3) corresponds to rule 10.802(k).

6
7 Subdivision (b)(4) corresponds to Government Code section 6260.

8
9 **(c) Definitions**

10
11 As used in this rule:

- 12
13 (1) “Adjudicative record” means any writing prepared for or filed or used
14 in a court proceeding or the judicial deliberation process.
15
16 (2) “Judicial administrative record” means any writing containing
17 information relating to the conduct of the people’s business that is
18 prepared, owned, used, or retained by a judicial branch entity regardless
19 of the writing’s physical form or characteristics, except an adjudicative
20 record.
21
22 (3) “Judicial branch entity” means the Supreme Court, each Court of
23 Appeal, each superior court, the Judicial Council, and the
24 Administrative Office of the Courts.
25
26 (4) “Judicial branch personnel” means justices, judges (including
27 temporary and assigned judges), subordinate judicial officers, members
28 of the Judicial Council and its advisory bodies, and directors, officers,
29 employees, volunteers, and agents of a judicial branch entity.
30
31 (5) “Person” means any natural person, corporation, partnership, limited
32 liability company, firm, or association.
33
34 (6) “Writing” means any handwriting, typewriting, printing,
35 photographing, photocopying, electronic mail, fax, and every other
36 means of recording on any tangible thing any form of communication
37 or representation, including letters, words, pictures, sounds, or symbols,
38 or combination thereof, , regardless of the manner in which the record
39 has been stored.
40

1 **DRAFTER’S NOTES**

2
3 Subdivision (c)(1) is based on the definitions of “court record” in rule 2.502 and
4 Government Code section 68151(a), and on the language of leading case law.
5 (*Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106.)

6
7 The definitions in subdivisions (c)(5) and (c)(6) correspond to Government Code
8 sections 6252 and 9072. The California Public Records Act is in Government
9 Code section 6250 et seq., and the Legislative Open Records Act is in
10 Government Code section 9070 et seq.

11
12 **(d) Construction of rule**

13
14 Unless otherwise indicated, the terms used in this rule have the same
15 meaning as under the Legislative Open Records Act (beginning with Gov.
16 Code, § 9070) and the California Public Records Act (beginning with Gov.
17 Code, § 6250) and must be interpreted consistently with the interpretation
18 applied to the terms under those acts. This rule does not require the
19 disclosure of a record if the type of record would not be subject to disclosure
20 under those acts.

21
22 **DRAFTER’S NOTES**

23
24 This subdivision corresponds to rule 10.802(i).

25
26 **(e) Public access**

27
28 (1) Access

29
30 A judicial branch entity must allow inspection and copying of judicial
31 administrative records unless the records are exempt from disclosure
32 under this rule or by law.

33
34 Nothing in this rule requires a judicial branch entity to create a record or
35 to list, compile, or assemble data in response to a request for judicial
36 administrative records if the judicial branch entity does not list, compile,
37 or assemble the data in the requested form for its own use or for provision
38 to other agencies. Extracting or compiling data loaded from extractable
39 fields in a single database using software already owned or licensed by
40 the judicial branch entity does not constitute the creating of a record or
the compilation or assemblage of data.

41 If a judicial administrative record contains information that is exempt
42 from disclosure and the exempt portions are reasonably segregable, a

1 judicial branch entity must allow inspection and copying of the record
2 after deletion of the portions that are exempt from disclosure. A judicial
3 branch entity is not required to allow inspection or copying of the portion
4 of a writing that is a judicial administrative record unless that portion is
5 reasonably segregable from the portion that constitutes an adjudicative
6 record.

7 (2) *Examples*

8
9 Judicial administrative records subject to inspection and copying unless
10 exempt from disclosure under subdivision (f) include, but are not
11 limited to, the following:

- 12
13 (A) Budget information submitted to the Administrative Office of the
14 Courts after enactment of the annual Budget Act;
- 15
16 (B) Any other budget and expenditure document pertaining to the
17 administrative operation of the courts, including quarterly
18 financial statements and statements of revenue, expenditure, and
19 reserves;
- 20
21 (C) Actual and budgeted employee salary and benefit information, by
22 position classification, consisting of the number of employees and
23 compensation by classification, and any document, whether
24 prepared periodically or for a special purpose, that shows any
25 changes in salaried positions by classification;
- 26
27 (D) Copies of executed contracts with outside vendors and payment
28 information and policies concerning goods and services provided
29 by outside vendors without an executed contract;
- 30
31 (E) Final audit reports; and
- 32
33 (F) Employment contracts between judicial branch entities and their
34 employees.

35
36 (3) *Procedure for requesting records*

37
38 A judicial branch entity must make available on its public Web site or
39 otherwise publicize the procedure to be followed to request a copy of or
40 to inspect a judicial administrative record. At a minimum, the
41 procedure must include the address to which requests are to be

1 addressed, to whom requests are to be directed, and the office hours of
2 the judicial branch entity.

3
4 (4) Costs: duplication, search, and review

5
6 (A) A judicial branch entity, on request, must provide a copy of a
7 judicial administrative record not exempt from disclosure if the
8 record is of a nature permitting copying, subject to payment of the
9 fee specified in this rule or other applicable statutory fee:

10
11 (i) A judicial branch entity may impose a fee reasonably
12 calculated to cover the judicial branch entity's direct costs of
13 producing a paper or hard copy of any record;

14
15 (ii) A judicial branch entity may impose a fee reasonably
16 calculated to cover the judicial branch entity's direct costs of
17 creating a record or producing an electronic copy of a record
18 as specified in subdivision (i); and

19
20 (iii) A judicial branch entity may require advance payment of
21 any fee.

22
23 (B) When records are requested for other than commercial use, a
24 judicial branch entity may impose a reasonable standard charge
25 for document search and review, provided that no charge may be
26 imposed for the first two hours of search and review time.

27
28 (C) When records are requested for commercial use, a judicial branch
29 entity may impose a reasonable standard charge for document
30 search, review, and duplication.

31
32 (D) A superior court must provide a copy of the certified judicial
33 administrative record if the judicial administrative record
34 requested has been certified by the superior court.

35
36 (5) Inspection

37
38 A judicial branch entity must make judicial administrative records in its
39 possession and not exempt from disclosure open to inspection at all
40 times during the office hours of the judicial branch entity provided that
41 the record is of a nature permitting inspection.
42

1 (6) Time for determination of disclosable records

2
3 A judicial branch entity, on a request that reasonably describes an
4 identifiable record or records, must determine within 10 calendar days
5 from receipt of the request whether the request, in whole or in part,
6 seeks disclosable judicial administrative records in its possession and
7 must promptly notify the requesting party of the determination and the
8 reasons for the determination.

9
10 (7) Response

11
12 If a judicial branch entity determines that a request seeks disclosable
13 judicial administrative records, the judicial branch entity must make the
14 disclosable judicial administrative records available promptly. The
15 judicial branch entity must include with the notice of the determination
16 the estimated date and time when the records will be made available. If
17 the judicial branch entity determines that the request, in whole or in
18 part, seeks nondisclosable judicial administrative records, it must
19 convey its determination in writing, include a contact name and
20 telephone number to which inquiries may be directed, and state the
21 express provision of this rule justifying the withholding of the records
22 not disclosed.

23
24 (8) Extension of time for determination of disclosable records

25
26 In unusual circumstances, to the extent reasonably necessary to the
27 proper processing of the particular request, a judicial branch entity may
28 extend the time limit prescribed for its determination under subdivision
29 (e)(6) by no more than 14 calendar days by written notice to the
30 requesting party, stating the reasons for the extension and the date on
31 which the judicial branch entity expects to make a determination. As
32 used in this section, “unusual circumstances” means the following:

33
34 (A) The need to search for and collect the requested records from
35 multiple locations or facilities that are separate from the office
36 processing the request;

37
38 (B) The need to search for, collect, and appropriately examine a
39 voluminous amount of records that are included in a single
40 request; or

41
42 (C) The need for consultation, which must be conducted with all
43 practicable speed, with another judicial branch entity or other

1 governmental agency having substantial subject matter interest in
2 the determination of the request, or among two or more
3 components of the judicial branch entity having substantial
4 subject matter interest in the determination of the request.
5

6 (9) Reasonable efforts
7

8 (A) On receipt of a request to inspect or obtain a copy of a judicial
9 administrative record, a judicial branch entity, in order to assist
10 the requester in making a focused and effective request that
11 reasonably describes an identifiable judicial administrative record,
12 must do all of the following to the extent reasonable under the
13 circumstances:
14

15 (i) Assist the requester to identify records and information
16 responsive to the request or to the purpose of the request, if
17 stated;
18

19 (ii) Describe the information technology and physical location
20 in which the records exist; and
21

22 (iii) Provide suggestions for overcoming any practical basis for
23 denying inspection or copying of the records or information
24 sought.
25

26 (B) The requirements of (9)(A) will be deemed to have been satisfied
27 if the judicial branch entity is unable to identify the requested
28 information after making a reasonable effort to elicit additional
29 clarifying information from the requester that will help identify
30 the record or records.
31

32 (C) This subdivision (e)(9) does not apply to a request for judicial
33 administrative records if the judicial branch entity makes the
34 requested records available or determines that the requested
35 records are exempt from disclosure under this rule.
36

37 (10) No obstruction or delay
38

39 Nothing in this rule may be construed to permit a judicial branch entity
40 to delay or obstruct the inspection or copying of judicial administrative
41 records that are not exempt from disclosure.
42

1 (11) Greater access permitted

2
3 Except as otherwise prohibited by law, a judicial branch entity may
4 adopt requirements for itself that allow for faster, more efficient, or
5 greater access to judicial administrative records than prescribed by the
6 requirements of this rule.

7
8 (12) Control of records

9
10 A judicial branch entity must not sell, exchange, furnish, or otherwise
11 provide a judicial administrative record subject to disclosure under this
12 rule to a private entity in a manner that prevents a judicial branch entity
13 from providing the record directly under this rule. A judicial branch
14 entity must not allow a private entity to control the disclosure of
15 information that is otherwise subject to disclosure under this rule.

16
17 **DRAFTER'S NOTES**

18
19 Subdivisions (e)(1), (5), and (6) correspond to Government Code section 6253.

20
21 Subdivision (e)(4) corresponds to Government Code sections 6253(b) and
22 68106.2(b), with the addition of the principles of Title 5 U.S.C. section 552(a)(4)
23 regarding commercial requesters.

24
25 Subdivision (e)(7) corresponds to Government Code sections 6253 and 6255.

26
27 Subdivision (e)(8) corresponds to Government Code section 6253(c).

28
29 Subdivision (e)(9) corresponds to Government Code section 6253.1.

30
31 Subdivision (e)(10) corresponds to Government Code section 6253(d).

32
33 Subdivision (e)(11) corresponds to Government Code section 6253(e).

34
35 Subdivision (e)(12) corresponds to Government Code sections 6253.3 and
36 6270(a).

37
38 **(f) Exemptions**

39
40 Nothing in this rule requires the disclosure of judicial administrative records
41 that are any of the following:

- 42
43 (1) Preliminary writings, including drafts, notes, working papers, and
44 inter-judicial branch entity or intra-judicial branch entity memoranda,

1 if the public interest in withholding those records clearly outweighs the
2 public interest in disclosure;

- 3
- 4 (2) Records pertaining to pending or anticipated claims or litigation to
5 which a judicial branch entity or judicial branch personnel is a party,
6 until the pending litigation or claim has been finally adjudicated or
7 otherwise resolved;
- 8
- 9 (3) Personnel, medical, or similar files, or other personal information the
10 disclosure of which would constitute an unwarranted invasion of
11 personal privacy, including but not limited to records revealing home
12 addresses, home telephone numbers, cellular telephone numbers,
13 private e-mail addresses, and social security numbers of judicial branch
14 personnel; and work e-mail addresses and work telephone numbers of
15 justices, judges, subordinate judicial officers, and their staff attorneys;
16
- 17 (4) Test questions, scoring keys, and other examination data used to
18 develop, administer, and score examinations for employment,
19 certification, or qualification;
20
- 21 (5) Records the disclosure of which is exempted or prohibited under state
22 or federal law, including provisions of the California Evidence Code
23 relating to privilege, or by court order in any court proceeding;
24
- 25 (6) Records the disclosure of which would compromise the security of a
26 judicial branch entity or the safety of judicial branch personnel;
27
- 28 (7) Records related to complaints regarding or investigations of justices,
29 judges (including temporary and assigned judges), and subordinate
30 judicial officers;
31
- 32 (8) The contents of real estate appraisals or engineering or feasibility
33 estimates and evaluations made for or by the judicial branch entity
34 relative to the acquisition of property or to prospective public supply
35 and construction contracts, until all of the property has been acquired or
36 the relevant contracts have been executed. This provision does not
37 affect the law of eminent domain;
38
- 39 (9) Records related to activities governed by Government Code sections
40 71600 et seq. and 71800 et seq. that reveal deliberative processes,
41 impressions, evaluations, opinions, recommendations, meeting minutes,
42 research, work products, theories, or strategy or that provide
43 instruction, advice, or training to employees who are not represented by

1 employee organizations under those sections. Nothing in this
2 subdivision limits the disclosure duties of a judicial branch entity with
3 respect to any other records relating to the activities governed by the
4 employee relations acts referred to in this subdivision;
5

6 (10) Records containing trade secrets or privileged or confidential
7 commercial and financial information. For purposes of this rule:
8

9 (A) “Trade secret” means any formula, plan, pattern, process, tool,
10 mechanism, compound, procedure, production data, or
11 compilation of information that is not patented, that is known only
12 to certain individuals within a commercial concern who are using
13 it to fabricate, produce, or compound an article of trade or a
14 service having commercial value, and that gives its user an
15 opportunity to obtain a business advantage over competitors that
16 do not know or use it;
17

18 (B) “Privileged information” refers to material that falls within
19 recognized constitutional, statutory, or common law privileges;
20

21 (C) “Confidential information” means:
22

23 (i) For information involuntarily submitted to the judicial
24 branch entity, information the disclosure of which would (1)
25 impair the judicial branch entity’s ability to obtain necessary
26 information in the future or (2) cause substantial harm to the
27 competitive position of the person from whom the
28 information was obtained;
29

30 (ii) For information voluntarily submitted to the judicial branch
31 entity, the kind of information that would customarily not be
32 released to the public by the person from whom it was
33 obtained;
34

35 (11) Records the disclosure of which would expose a judicial branch entity’s
36 or judicial branch personnel’s decision-making process so as to
37 discourage candid discussion within the entity or the judicial branch
38 and thereby undermine the entity’s ability to perform its function,
39 unless the public interest served by disclosure of the record clearly
40 outweighs the public’s interest in withholding the record; or
41

1 (12) If on the facts of the specific request for records the public interest
2 served by withholding the record clearly outweighs the public interest
3 served by disclosure of the record.

4
5 **DRAFTER'S NOTES**

6
7 Subdivision (f)(1) corresponds to Government Code sections 9075(a) and
8 6254(a).

9
10 Subdivision (f)(2) corresponds to Government Code sections 6254(b) and
11 9075(b).

12
13 Subdivision (f)(3) corresponds to Government Code sections 6254(c), 6254.21,
14 6254.29, and 9075(c).

15
16 Subdivision (f)(4) corresponds to Government Code section 6254(g). There is no
17 corresponding Legislative Open Records Act provision.

18
19 Subdivision (f)(5) corresponds to Government Code sections 6254(k) and
20 9075(i).

21
22 Subdivision (f)(6) corresponds to Government Code section 6254(aa). There is
23 no corresponding Legislative Open Records Act provision.

24
25 Subdivision (f)(8) corresponds to Government Code section 6254(h). There is no
26 corresponding Legislative Open Records Act provision.

27
28 Subdivision (f)(9) corresponds to Government Code section 6254(p). There is no
29 corresponding Legislative Open Records Act provision.

30
31 Subdivision (f)(10) corresponds to title 5 U.S.C. section 552(b)(4); subdivision
32 (f)(10)(A) corresponds to Government Code section 6254.7; and subdivision
33 (f)(10)(B-C) corresponds to leading case law interpreting title 5 U.S.C. section
34 552(b)(4).

35
36 Subdivision (f)(11) is based on the language of leading case law. (*Times Mirror*
37 *Co. v. Superior Court* (1991) 53 Cal.3d 1325; *California First Amendment*
38 *Coalition v. Superior Court* (1998) 67 Cal.App.4th 159; *Wilson v. Superior Court*
39 (1996) 51 Cal.App.4th 1136.)

40
41 Subdivision (f)(12) corresponds to Government Code section 6255(a).

42
43 **(g) Computer software; copyrighted materials**

44
45 (1) A computer mapping system, graphic system, program, software, or
46 source code developed by a judicial branch entity or used by a judicial

1 branch entity for the storage or manipulation of data is not a judicial
2 administrative record.

3
4 (2) A judicial branch entity is not required to duplicate records under this
5 rule in violation of any copyright.

6
7 (3) The status of a writing as a judicial administrative record is not affected
8 because the writing is stored in a computer.

9
10 **DRAFTER'S NOTES**

11
12 This subdivision corresponds to Government Code section 6254.9.

13
14 **(h) Waiver of exemptions**

15
16 (1) Disclosure of a judicial administrative record that is exempt from
17 disclosure under this rule or provision of law by a judicial branch entity
18 or judicial branch personnel acting within the scope of their office or
19 employment constitutes a waiver of the exemptions applicable to that
20 particular record.

21
22 (2) This subdivision does not apply to disclosures:

23
24 (A) Made through discovery proceedings;

25
26 (B) Made through other legal proceedings or as otherwise required by
27 law;

28
29 (C) Made to another judicial branch entity or judicial branch
30 personnel for the purposes of judicial branch administration;

31
32 (D) Within the scope of a statute that limits disclosure of specified
33 writings to certain purposes; or

34
35 (E) Made to any governmental agency or to another judicial branch
36 entity or judicial branch personnel, if the material will be treated
37 confidentially.

38
39 **DRAFTER'S NOTES**

40
41 This subdivision corresponds to Government Code section 6254.5. There is no
42 corresponding Legislative Open Records Act provision.

43

1 **(i) Availability in electronic format**

2
3 (1) A judicial branch entity, on request, must make a copy of a judicial
4 administrative record that is not exempt from disclosure under this rule
5 available in an electronic format, provided that:

6
7 (A) No law prohibits disclosure;

8
9 (B) The record already exists in the requested electronic format; and

10
11 (C) The disclosure does not jeopardize or compromise the security or
12 integrity of the original record or of any proprietary software in
13 which it is maintained.

14
15 (2) If in order to comply with (i)(1) the judicial branch entity would be
16 required to produce a copy of the record and the record is produced
17 only at otherwise regularly scheduled intervals, or if the judicial branch
18 entity agrees to perform data compilation or extraction to produce a
19 record in response to a request, the requester will bear the cost of
20 producing a copy of the record, including the cost to construct a record
21 and to produce a copy of the record.

22
23 **DRAFTER'S NOTES**

24
25 This subdivision corresponds to Government Code section 6253.9 but omits the
26 language in 6253.9(c)-(e). There is no corresponding Legislative Open Records
27 Act provision.

28
29 **(j) Public access disputes**

30
31 (1) Disputes under this rule with a superior court about access to budget
32 and management information are subject to the process described in
33 rule 10.803.

34
35 (2) For all other disputes under this rule, any person may institute
36 proceedings for injunctive or declarative relief or writ of mandate in
37 any court of competent jurisdiction to enforce his or her right to inspect
38 or to receive a copy of any judicial administrative record under this
39 rule.

40
41 (3) Whenever it is made to appear by verified petition that a judicial
42 administrative record is being improperly withheld from disclosure, the
43 court with jurisdiction thereof will order the judicial branch entity to

1 disclose the records or show cause why it should not do so. The court
2 will decide the case after examining the record, in camera if
3 appropriate, papers filed by the parties, and any oral argument and
4 additional evidence as the court may allow.

5
6 (4) If the court finds that the judicial branch entity's decision to refuse
7 disclosure is not justified under this rule, the court will order the
8 judicial branch entity to make the record public. If the court finds that
9 the judicial branch entity's decision was justified, no disclosure will be
10 compelled and the court will issue an order supporting the decision.

11
12 (5) An order of the court, either directing disclosure or supporting the
13 decision of the judicial branch entity refusing disclosure, is not a final
14 judgment or order within the meaning of section 904.1 of the Code of
15 Civil Procedure from which an appeal may be taken, but will be
16 immediately reviewable by petition to the appellate court for the
17 issuance of an extraordinary writ. Upon entry of an order under this
18 subdivision, a party must, in order to obtain review of the order, file a
19 petition within 20 days after service on him or her of a written notice of
20 entry of the order or within such further time not exceeding an
21 additional 20 days as the court may for good cause allow. If the notice
22 is served by mail, the period within which to file the petition will be
23 increased by 5 days. A stay of an order or judgment will not be granted
24 unless the petitioning party demonstrates it will otherwise sustain
25 irreparable damage and probable success on the merits. Any person
26 who fails to obey the order of the court will be cited to show cause why
27 he or she is not in contempt of court.

28
29 (6) The court will award court costs and reasonable attorney fees to the
30 plaintiff should the plaintiff prevail in litigation filed under this
31 subdivision. The costs and fees will be paid by the judicial branch
32 entity and will not become a personal liability of any individual. If the
33 court finds that the plaintiff's case is clearly frivolous, it will award
34 court costs and reasonable attorney fees to the judicial branch entity.

35
36 **DRAFTER'S NOTES**

37
38 Subdivision (j)(1) corresponds to the dispute process of rule 10.803.

39
40 Subdivision (j)(2-6) corresponds to the dispute process in Government Code
41 sections 6258-6259.

42
43

1 Advisory Committee Comment:
2

3 **Subdivisions (b)(1) and (b)(2):** This rule does not apply to adjudicative
4 records, and is not intended to modify existing law regarding public access to
5 adjudicative records. Public access to adjudicative records is established by case
6 law and provides generally that records that accurately and officially reflect the
7 work of the court are public records open to inspection. (*Estate of Hearst v. The*
8 *Superior Court of Los Angeles County* (1977) 67 Cal.App.3d 777.) Other
9 documents prepared in the course of judicial work but not regarded as official
10 court records, however, such as preliminary drafts, personal notes, and rough
11 records of proceedings, are not subject to public access because the perceived
12 harm to the judicial process by requiring this material to be available to the public
13 is greater than the benefit the public might derive from its disclosure. (*Copley*
14 *Press, Inc., v. The Superior Court of San Diego County* (1992) 6 Cal.App.4th
15 106.)
16
17

18 **Rule 10.501. Maintenance of budget and management information**
19

20 **(a) Maintenance of information by the superior court**
21

22 Each superior court must maintain for a period of three years from the close
23 of the fiscal year to which the following relate:
24

- 25 (1) Official documents of the superior court pertaining to the approved
26 superior court budget allocation adopted by the Judicial Council and
27 actual final year-end superior court revenue and expenditure reports as
28 required in budget procedures issued by the Administrative Office of
29 the Courts to be maintained or reported to the council, including budget
30 allocation, revenue, and expenditure reports;
31
32 (2) Records or other factual management information on matters that are
33 within the scope of representation as defined in Government Code
34 section 71634 unless distribution is otherwise precluded by law; and
35
36 (3) Records or other factual management information on other matters
37 referred to in Government Code section 71634 unless distribution is
38 otherwise precluded by law.
39

40 **(b) Maintenance of information by the Administrative Office of the Courts**
41

42 The Administrative Office of the Courts must maintain for a period of three
43 years from the close of the fiscal year to which the following relate:

- 1
- 2 (1) Official approved budget allocations for each superior court;
- 3
- 4 (2) Actual final year-end superior court revenue and expenditure reports
- 5 required by budget procedures issued by the Administrative Office of
- 6 the Courts to be maintained or reported to the council that are received
- 7 from the courts, including budget revenues and expenditures for each
- 8 superior court;
- 9
- 10 (3) Budget priorities as adopted by the council; and
- 11
- 12 (4) Documents concerning superior court budgets considered or adopted by
- 13 the council at council business meetings on court budgets.
- 14

15

16 **DRAFTER'S NOTES**

17

18 New rule 10.501 is comprised of the maintenance of records provisions of rule

19 10.802(a) and 10.802(b) in order to preserve those provisions following the

20 repeal of rule 10.802 in its entirety.

21

22 ~~Rule 10.802. Maintenance of and public access to budget and management~~

23 ~~information~~

24

25 ~~(a) Maintenance of information by the superior court~~

26

27 ~~Each superior court must maintain for a period of three years from the close~~

28 ~~of the fiscal year to which the following relate:~~

29

30 ~~(1) Official documents of the superior court pertaining to the approved~~

31 ~~superior court budget allocation adopted by the Judicial Council and~~

32 ~~actual final year-end superior court revenue and expenditure reports as~~

33 ~~required in budget procedures issued by the Administrative Office of~~

34 ~~the Courts to be maintained or reported to the council, including budget~~

35 ~~allocation, revenue, and expenditure reports;~~

36

37 ~~(2) Records or other factual management information on matters that are~~

38 ~~within the scope of representation as defined in Government Code~~

39 ~~section 71634 unless distribution is otherwise precluded by law; and~~

40

41 ~~(3) Records or other factual management information on other matters~~

42 ~~referred to in Government Code section 71634 unless distribution is~~

43 ~~otherwise precluded by law.~~

1
2 **(b) — Maintenance of information by the Administrative Office of the Courts**

3
4 The Administrative Office of the Courts must maintain for a period of three
5 years from the close of the fiscal year to which the following relate:

6
7 (1) Official approved budget allocations for each superior court;

8
9 (2) Actual final year end superior court revenue and expenditure reports
10 required by budget procedures issued by the Administrative Office of
11 the Courts to be maintained or reported to the council that are received
12 from the courts including budget revenues and expenditures for each
13 superior court;

14
15 (3) Budget priorities as adopted by the council; and

16
17 (4) Documents concerning superior court budgets considered or adopted by
18 the council at council business meetings on court budgets.

19
20 **(c) — Legislative priorities or mandates**

21
22 The information maintained under (a) and (b) must indicate, to the extent
23 known, the legislative requirements the funding is intended to address, if
24 any, and any itemization of the funding allocation by purpose, program or
25 function, and item of expense.

26
27 **(d) — Public access**

28
29 (1) Each superior court must, on written request, make available to the
30 requesting person those documents required to be maintained under (a).

31
32 (2) The Administrative Office of the Courts must, on written request, make
33 available to the requesting person those documents required to be
34 maintained under (b).

35
36 **(e) — Time for response**

37
38 Information requested under this rule must be made available within 10
39 business days of receipt of the written request for information relating to the
40 current or immediate previous fiscal year. Information relating to other fiscal
41 years must be made available within 20 business days of receipt of the
42 written request for information. If the information requested is not within the
43 scope of this rule, the Administrative Office of the Courts or the superior

1 court must so inform the requesting party within 10 business days of receipt
2 of the written request.

3
4 **(f) — Costs**

5
6 The Administrative Office of the Courts and the superior court may charge a
7 reasonable fee to cover any cost of copying any document provided under
8 this rule. The amount of the fee must not exceed the direct cost of
9 duplication. A recognized employee organization and a superior court may
10 provide for a different amount in their memorandum of understanding.

11
12 **(g) — Preparation of reports not required**

13
14 This rule does not require the Judicial Council, the Administrative Office of
15 the Courts, or any superior court to prepare any budgetary, revenue, or
16 expense report or documentation that is not otherwise expressly required to
17 be prepared by this rule or any other provision of law or rule of court.

18
19 **(h) Effect on other rules**

20
21 This rule is not intended to repeal, amend, or modify the application of any
22 rule adopted by the council before the effective date of this rule. To the
23 extent that any other rule is contrary to the provisions of this rule, this rule
24 applies.

25
26 **(i) — Public Records Act**

27
28 The information required to be provided by (a) and (b) of this rule must be
29 interpreted consistently with the requirement that the same information be
30 provided under the Public Records Act (beginning with Government Code
31 section 6250), and the terms have the same meaning as under that act. This
32 rule does not require the disclosure of information that would not be subject
33 to disclosure under that act.

34
35 **(j) — Internal memoranda**

36
37 Nothing in this rule requires disclosure of internal memoranda unless
38 otherwise required by law.

39
40 **(k) — Rights of exclusive bargaining agent**

41

1 Nothing in this rule is intended to restrict the rights to disclosure of
2 information otherwise granted by law to a recognized employee
3 organization.
4

5 ~~(A)~~ **Informational sessions**
6

7 The Administrative Office of the Courts will provide informational sessions
8 and materials on superior court budgets for the general public and designated
9 employee representatives. The information will include the following areas,
10 among others:

11
12 ~~(1) Description and timing of the budget development process, including~~
13 ~~decisions made at each phase of the cycle, and how budget priorities~~
14 ~~are determined;~~
15

16 ~~(2) Availability of budget information, including the type of information~~
17 ~~available, when it is available, and how it can be obtained; and~~
18

19 ~~(3) The authority of a superior court to reallocate funds between budget~~
20 ~~program components.~~
21

22 **Rule 10.803. Information access disputes—writ petitions (Gov. Code,**
23 **§ 71675)**
24

25 **(a) Availability**
26

27 This rule applies to petitions filed under rule 10.500(j)(1) and Government
28 Code section 71675(b).
29

30 **DRAFTER'S NOTES**
31

32 Rule 10.803 is amended in order to clarify its application to disputes over access
33 to superior court records. Government Code section 71675(b) establishes the
34 petition process for specified records of the superior court. Proposed rule 10.500
35 now provides access to these records.
36

37 **(b) Assignment of Court of Appeal justice to hear the petition**
38

39 (1) The petition must state the following on the first page, below the case
40 number, in the statement of the character of the proceeding (see rule
41 2.111(6)):
42

1 “Writ petition filed under rule 10.500(j)(1) and Government Code
2 section 71675—Assignment of Court of Appeal justice required.”
3

4 (2) When the petition is filed, the clerk of the court must immediately
5 request of the ~~Judicial Assignments Unit of the Administrative Office~~
6 ~~of the Courts~~ Chief Justice the assignment of a hearing judge from the
7 panel established under (e).
8

9 (3) If an assignment is made, the judge assigned to hear the petition in the
10 superior court must be a justice from a Court of Appeal for a district
11 other than the district for that superior court.
12

13 **(c) Superior court hearing**
14

15 (1) The superior court must hear and decide the petition on an expedited
16 basis and must give the petition priority over other matters to the extent
17 permitted by law and the rules of court.
18

19 (2) The petition must be heard by a judge assigned by the Chief Justice
20 from the panel of hearing judges established under (e).
21

22 **(d) Appeal**
23

24 An appeal of the superior court decision must be heard and decided on an
25 expedited basis in the Court of Appeal for the district in which the petition
26 was heard and must be given priority over other matters to the extent
27 permitted by law and ~~the~~ rules of court. The notice of appeal must state the
28 following on the first page, below the case number, in the statement of the
29 character of the proceeding (see rule 2.111(6)):
30

31 “Notice of Appeal on Writ Petition filed under rule 10.500(j)(1) and
32 Government Code section 71675—Expedited Processing Requested.”
33

34 **(e) Panel of hearing judges**
35

36 The panel of judges who may hear the petitions in the superior court must
37 consist of Court of Appeal justices selected by the Chief Justice as follows:
38

39 (1) The panel must include at least one justice from each district of the
40 Court of Appeal.
41

42 (2) Each justice assigned to hear a petition under (c)(2) must have received
43 training on hearing the petitions as specified by the Chief Justice.

Item SP09-07 Response Form

Title: Public Access to Judicial Administrative Records (adopt Cal. Rules of Court, rules 10.500 and 10.501; repeal rule 10.802; and amend rule 10.803)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/>

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Thursday, October 29, 2009

***Circulation for comment does not imply endorsement by the Judicial Council.
All comments will become part of the public record of the proposal.***