

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**SP17-07**

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Title	Action Requested
Judicial Council: Advisory Committee Memberships and Terms	Review and submit comments by January 2, 2018
Proposed Rules, Forms, Standards, or Statutes Amend rules 10.31, 10.42, 10.43, 10.44, and 10.60 of the California Rules of Court	Proposed Effective Date February 1, 2018
Proposed by Rules and Projects Committee Hon. Harry E. Hull, Chair	Contact Patrick O'Donnell, patrick.o'donnell@jud.ca.gov, 415-865-7665

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### Executive Summary and Origin

The Judicial Council's Rules and Projects Committee (RUPRO) proposes amending several rules of court relating to memberships on advisory committees.<sup>1</sup> The amendments would amend rule 10.31, the general rule on memberships, to clarify the terms of the chairs, members, and advisory members. It would also amend the rules relating to four specific advisory committees to add new or modify existing categories of membership.

### Background

Current rule 10.31 is the general rule concerning advisory committee membership and terms. Rules 10.42, 10.43, 10.44, and 10.60 specifically relate to the Criminal Law Advisory Committee, the Family and Juvenile Law Advisory Committee, the Probate and Mental Health Advisory Committee, and the Tribal Court–State Court Forum, respectively; each of these rules prescribes the categories of membership for the particular committee. Members are recruited and appointed based on the categories prescribed in the rules.

### The Proposal

This proposal would amend five rules relating to the terms and membership of advisory Committees.

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<sup>1</sup> A number of the specific proposals have been made by the advisory committees themselves, as described below.

*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 These proposals are circulated for comment purposes only.*

### **Amendments to rule 10.31, Advisory committee membership and terms**

This proposal would amend rule 10.31, the general rule on committee membership and terms, in several respects. These changes clarify provisions in the rule, address uncertainties, and formalize practices.

Subdivision (b) on terms would be modified to state that the Chief Justice appoints advisory committee members to three-year terms unless another term is specified in the rules “or in the order appointing a member” (new text in quotation marks). For the sake of clarity, the following sentences would be added to (b): “Members may apply for reappointment but there is no presumption of reappointment. All appointments are at the sole discretion of the Chief Justice.” The final sentence in (b) providing for one-year appointments of judges who have served less than two years on the bench would be deleted; the program for one-year appointments of new judges was discontinued a number of years ago.

In subdivision (c) on chairs and vice chairs, a new sentence would be added: “Except for the Court Executives Advisory Committee, when a member’s term as chair ends, the chair’s membership on the advisory committee also ends, unless the Chief Justice orders otherwise.”

Finally, subdivision (d) on advisory members would be amended to include a sentence specifying the term of these members: “Advisory members are appointed for three-year terms unless another term is specified in the order appointing the advisory member.”

### **Amendments to rule 10.42, Criminal Law Advisory Committee**

This proposal would amend rule 10.42, the rule establishing the Criminal Law Advisory Committee, to include as an additional category of membership on that committee, a mental health professional with experience in criminal law issues. The addition of this new membership category for a mental health professional will enable the committee to more effectively carry out its responsibilities in making recommendations to the Judicial Council for improving the administration of justice in criminal proceedings.

The committee has previously recognized the importance of mental health issues in the criminal justice system and is committed to assisting the Judicial Council in addressing those issues. A mental health professional who has experience in and knowledge of the intersection of mental health and criminal justice issues would be of great value to the committee when it performs its core objective of considering rule and form proposals to promote timely, consistent, and effective criminal case processing. A mental health professional will also assist the committee in providing relevant feedback and comments on pending legislation involving the criminal justice system when mental health issues may overlap.

An alternative would be to leave the committee’s membership categories unchanged. But this could result in no mental health professionals applying, and the committee would be deprived on the benefit of having such expertise.

### **Amendments to rule 10.43, Family and Juvenile Law Advisory Committee**

The Family and Juvenile Law Advisory Committee proposes that rule 10.43 be amended to include, as an additional category of membership, a mental health professional with experience in family and children's issues . The addition of this new membership category for mental health professionals will enable the committee to more effectively carry out the responsibilities recently given to it to address mental health issues and to more effectively carry out its responsibilities in making recommendations to the Judicial Council for improving the administration of justice in family and juvenile proceedings.

As is the case with the Criminal Law Advisory Committee, the Family and Juvenile Law Advisory Committee has previously recognized the importance of mental health issues in family and juvenile proceedings and is committed to assisting the Judicial Council in addressing those issues. In addition, the committee received referrals from the Executive and Planning Committee and the Rules and Projects Committee to assist the Council in its ongoing effort to implement recommendations from advisory bodies that had sunsetsed.

The Task Force for Criminal Justice Collaboration on Mental Health Issues was established in 2008 and the Mental Health Issues implementation Task Force was formed in 2012 to review the recommendations of the original task force and develop a plan for implementing its recommendations. The final report of the implementation task force recommended that the work on mental health be transitioned to the appropriate committees. This transition was accomplished last year by the referral of various task force recommendations to six advisory committees and by the appointment of persons with expertise in mental health to several of those committees.

As one of the committees to which referrals were made, the Family and Juvenile Law Advisory Committee has determined that being able to recruit and regularly include as a member a person knowledgeable in mental health would assist it in performing its new responsibilities. Hence, it recommends amending rule 10.43 to include the new membership category.

An alternative would be to leave the committee's membership categories unchanged. But this would probably result in no persons with expertise in mental health applying, and the committee would be deprived on the benefit of having such expertise.

### **Amendments to rule 10.44, Probate and Mental Health Advisory Committee**

The Probate and Mental Health Advisory Committee proposes that the Judicial Council amend rule 10.44 of the California Rules of Court to add a new membership category for a lawyer working for a public-interest organization or court self-help center whose practice focuses on guardianships or conservatorships.

Rule 10.44 sets forth the charge and membership of the Judicial Council's Probate and Mental Health Advisory Committee. Subdivision (c) of this rule currently requires the committee to include at least one member from each of the following categories:

- Judicial officer with experience in probate;
- Lawyer whose primary practice involves decedents' estates, trusts, guardianships, conservatorships, or elder abuse law;
- Lawyer or examiner who works for the court on probate or mental health matters;
- Investigator who works for the court to investigate probate guardianships or conservatorships;
- Person knowledgeable in mental health or developmental disability law;
- Person knowledgeable in private management of probate matters in a fiduciary capacity; and
- County counsel, public guardian, or other similar public officer familiar with guardianship and conservatorship issues.

The committee believes that the addition of a public-interest or court self-help lawyer would better inform its deliberations and improve its effectiveness in pursuing the Judicial Council's goals. Specifically, the lawyer's perspective would augment the committee's capacity to pursue the access and fairness goals of providing equal access to guardianship and conservatorship proceedings, striving to understand and be responsive to the needs of court users, and meeting the needs of the large number of self-represented litigants participating in guardianship and conservatorship proceedings. These improvements would, in turn, demonstrate the judicial branch's commitment to fair, impartial, and independent decision-making in areas of concern to the Legislature.

The committee considered not recommending this amendment on the basis that a public-interest or court self-help lawyer could be appointed in the existing category, "lawyer whose primary practice involves decedents' estates, trusts, guardianships, conservatorships, or elder abuse law." However, the committee's experience is that public-interest or court-self-help lawyers have rarely applied for membership under that category. When they have applied, they have not been appointed. The committee believes that qualified candidates are much more likely to apply for membership to the committee if applications are solicited in a category specifically designated for persons in their position.

#### **Amendments to rule 10.60, Tribal Court–State Court Forum**

The Tribal Court–State Court Form is governed by rule 10.60. Rule 10.60 (c) establishes the membership of the Forum. Subdivision (c)(5) provides that the members must include:

As ex officio members, the Director of the California Attorney General's Office of Native American Affairs and the Governor's Tribal Advisor.

This provision has become outdated and its ex officio language is problematic. The Director of the California Attorney General's Office of Native American Affairs retired in September 2017 and the Governor's Tribal Advisor retired in October 2017. It is unclear whether either of them will be replaced. In addition, the California Department of Social Services recently created an

Office of Tribal Affairs, which is charged with serving as a hub for all tribal related work at the Department of Social Services.

The co-chairs of the forum propose that rule 10.60(c)(5) be amended to reflect the recent changes in the structure and personnel conducting tribal work on behalf of the executive branch and to permit flexibility in appointments to the forum on issues of importance to members working on issues of importance to the forum. Specifically, they recommend that subdivision (c)(5) be amended as follows:

~~As ex officio members, the Director of the California Attorney General's Office of Native American Affairs and the Governor's Tribal Advisor. At least one, but no more than three, California executive branch officials responsible for tribal-related work.~~

This proposed revision of the membership language should overcome the limitations of the existing language and provide a positive framework for recruiting and including executive branch officials as members of the forum.

### **Alternatives Considered**

The rules on membership and terms on advisory committees could be left unchanged. But for the reasons stated above, there are definite benefits in having additional categories of members on each of the committees described above. There are also benefits in generally clarifying the terms of the chairs, members, and advisory members.

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

The implementation requirements of most of the changes recommended in this proposal should not be significant. The recruitment of members in new categories would take place at the same time as the recruitment process for other members and should not require any substantial amount of additional work or attention. The costs of implementation will depend on whether members in new categories are added to the existing number of members or adjustments are made in the number of appointments in other categories such that the total size of committees remains at the current levels.

### **Request for Specific Comments**

In addition to comments on the proposal as a whole, the Rules and Projects Committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

### **Attachments and Links**

Cal. Rules of Court, rules 10.31, 10.42, 10.43, 10.44, and 10.60

Rules 10.31, 10.42, 10.43, 10.44, and 10.60 of the California Rules of Court would be amended, effective February 1, 2018, to read:

1      **Rule 10.31. Advisory committee membership and terms**

2            **(a) \* \* \***

3            **(b) Terms**

4

5         The Chief Justice appoints advisory committee members to three-year terms unless  
6         another term is specified in these rules or in the order appointing a member. Terms  
7         are staggered so that an approximately equal number of each committee's members  
8         changes annually. Members may apply for reappointment but there is no  
9         presumption of reappointment. All appointments and reappointments are at the sole  
10        discretion of the Chief Justice. The Chief Justice also may appoint judicial officers  
11        who have served less than two years on the bench to one year terms.

12            **(c) Chair and vice-chair**

13

14         The Chief Justice appoints an advisory committee member to be a committee chair  
15         or vice-chair for a one-year term except for the chair and vice-chair of the Court  
16         Executives Advisory Committee, who may be appointed to two-year terms. Except  
17         for the Court Executives Advisory Committee, when a member's term as the chair  
18         of an advisory committee ends, that member's term on the committee also ends,  
19         unless the Chief Justice orders otherwise.

20            **(d) Advisory members**

21

22         On the request of the advisory committee, the Chief Justice may designate an  
23         advisory member to assist an advisory committee or a subcommittee. Advisory  
24         members are appointed for three-year terms unless another term is specified in the  
25         order appointing the advisory member. Advisory members may participate in  
26         discussions and make or second motions but cannot vote.

27            **(e) Termination of membership**

28

29         Committee membership terminates if a member leaves the position that qualified  
30         the member for the advisory committee unless (g) applies or the Chief Justice  
31         determines that the individual may complete the current term.

32            **(f) \* \* \***

33            **(g) Retired judges**

34

1       A judge's retirement does not cause a vacancy on the committee if the judge is  
2       eligible for assignment. A retired judge who is eligible for assignment may hold a  
3       committee position based on his or her last judicial position.

6       **Rule 10.42. Criminal Law Advisory Committee**

8       **(a) \* \* \* \***

10      **(b) Membership**

12       The committee must include at least one member from each of the following  
13       categories:

- 15       (1) Appellate court justice;  
16  
17       (2) Trial court judicial officer;  
18  
19       (3) Judicial administrator;  
20  
21       (4) Prosecutor;  
22  
23       (5) Criminal defense lawyer; **and**  
24  
25       (6) Probation officer; **and**  
26  
27       (7) Mental health professional with experience in criminal law issues.

30       **Rule 10.43. Family and Juvenile Law Advisory Committee**

32       **(a) \* \* \***

34      **(b) Membership**

36       The committee must include at least one member from each of the following  
37       categories:

- 39       (1) Appellate court justice;  
40  
41       (2) Trial court judicial officer;  
42  
43       (3) Judicial administrator;

- (4) Child custody mediator;
  - (5) Lawyer whose primary practice area is family law;
  - (6) Lawyer from a public or private defender's office whose primary practice area is juvenile law;
  - (7) Chief probation officer;
  - (8) Child welfare director;
  - (9) Court Appointed Special Advocate (CASA) director;
  - (10) County counsel assigned to juvenile dependency cases;
  - (11) Domestic violence prevention advocate;
  - (12) District attorney assigned to juvenile delinquency cases;
  - (13) Lawyer from the California Department of Child Support Services or a local child support agency; and
  - (14) Public-interest children's rights lawyer; and
  - (15) Mental health professional with experience with family and children's issues.

## **Rule 10.44. Probate and Mental Health Advisory Committee**

**(a)-(b)** \* \* \*

### (c) Membership

The committee must include at least one member from each of the following categories:

- (1) Judicial officer with experience in probate;
  - (2) Lawyer whose primary practice involves decedents' estates, trusts, guardianships, conservatorships, or elder abuse law;

## **Rule 10.60. Tribal Court–State Court Forum**

(a)-(b) \* \* \*

### (c) Membership

The forum must include the following members:

- (1) Tribal court judges or justices selected by tribes in California, as described in (d), but no more than one tribal court judge or justice from each tribe;
  - (2) At least three trial court judges from counties in which a tribal court is located;
  - (3) At least one appellate justice of the California Courts of Appeal;
  - (4) At least one member from each of the following committees: the Access and Fairness Advisory Committee, Civil and Small Claims Advisory Committee, Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee, Governing Committee of the Center for Judicial Education and Research, Probate and Mental Health Advisory Committee, and Traffic Advisory Committee; and
  - (5) ~~As ex officio members, the Director of the California Attorney General's Office of Native American Affairs and the Governor's Tribal Advisor. At~~

1           least one, but no more than three, California executive branch officials  
2           responsible for tribal-related work.

3  
4       The composition of the forum must have an equal or a close-to-equal number of  
5       judges or justices from tribal courts and state courts.

6  
7       **(d)-(e)** \* \* \*